

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/440/2017

**Reserved on: 19.12.2018
Order pronounced on: 20.12.2018**

Between:

P.Ch. Pottaiah, S/o. Pollaiah,
Aged about 62 years, Retd. Pointsman,
SC Railway, Guntur District, R/o. HB Colony,
MIG-211, Near Sai Bab Temple, Guntur – 522006.

...Applicant

And

1. The Union of India, Rep. by the General Manager,
South Central Railway, Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer,
South Central Railway, Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager,
South Central Railway, Guntur Division, Guntur.
4. The Senior Divisional Personnel Officer,
South Central Railway, Guntur Division, Guntur.

...Respondents

Counsel for the Applicant	...	Mr. M.V. Krishna Mohan
Counsel for the Respondents	...	Mr.N. Srinivasa Rao, SC for Rlys

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the recovery of Rs.61,917/- from the settlement dues of the applicant.

3. Brief facts of the case are that the applicant retired from the respondents organisation on 28.2.2015. At the time of retirement the respondents have recovered a sum of Rs.61,917/- due to wrong drawing of annual increment and which was revised on 1.7.2014. The applicant came to know of this

through an application under RTI Act. Applicant represented on 21.9.2015 but of no avail and hence the OA.

4. The contentions of the applicant are that the mistake in drawing the increment happened in the year 1986/1987 i.e. nearly 27 years back. It was not the mistake of the applicant in drawing the increment improperly. The recovery is against the Honourable Supreme Court observation on the subject. Hence the recovered amount has to be refunded.

5. Respondents admit that there was a mistake in drawing the increment without reckoning the unauthorised period of absence in 1985/86 as per Para 606 of IREM. The same was rectified just 2 days before retirement. Hence the recovery. The applicant claiming that he was not given notice for recovery is incorrect as the applicant has admitted in the OA that he came to know of the recovery before retirement. The applicant has a moral responsibility to bring it to the notice of the respondents for wrongly drawing the increment though he was on unauthorized absence. The recovery was made as per rules and hence question of refund does not arise.

6. Heard the learned counsel and went through the documents submitted.

7. The respondents admit that 2 days before retirement they did detect the mistake in wrong drawal of increment. Hence recovery was ordered as per rules. This action of the respondents is against law declared by the Honourable Supreme Court in *State of Punjab & Others Vs. Rafiq Masih (White Washer) & Others* reported in *2015 (4) SCC 334*. Consequent to the judgment of the Hon'ble Supreme Court cited, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training in OM No. F.18/03/2015-Estt.(Pay-1) dt.2.3.2016 issued instructions to all the departments to

implement the directions of the Hon'ble Apex Court in Rafiq Masih case. Accordingly, the respondents have also issued such an order vide Serial Circular No. 75/2016 dt. 19.07.2016 applying the same mutatis-mutandis to Railway employees also and stating that such recoveries should not be made. Having issued the instructions, it is not understood as to how the respondents can blatantly violate their own instructions. Further, this tribunal has directed the respondents in OA Nos. 80/2017 & batch vide order dt. 28.09.2018 to treat the verdict in a similar matter as judgment in rem, wherein it was ordered for refund of amount recovered, based on the Honourable Supreme Court judgment. In future the respondents may take note and act to avoid unnecessary litigation.

7(A) Reverting to the case in question, the action of the respondents is illegal and arbitrary to the extent of recovery. The claim of the applicant that the respondent cannot correct the mistake of the wrongly drawn increment does not stand as it is against IREM provision stated above. The main challenge was in regard to recovery and to this extant the OA fully succeeds and hence is **allowed**.

(B) Hence the respondents are directed to refund the amount of Rs.61,917/- recovered from the applicant's settlement dues in 60 days from the date of receipt of this order. There shall be no order to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 20th day of December, 2018

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