

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00082/2017

Date of CAV : 12-11-2018
Date of Order : 15-11-2018

Between :

B.S. Bramanad S/o B.S. Sadanand,
Aged 57 years, Occ : Retd., Catering Inspector,
R/o 1-11-67, Golnaka, Alwal, Secunderabad,
Telengana-500 010.Applicant

AND

1. Union of India rep by
The General Manager,
South Central Railway,
Rail Nilayam, III Floor,
Secunderabad-500 071.
2. The Chief Personnel Officer,
South Central Railway,
Rail Nilayam, III Floor,
Secunderabad-500 071.
3. The Financial Advisor & Chief Accounts Officer,
South Central Railway,
Rail Nilayam, III Floor,
Secunderabad-500 071.
4. The Senior Divisional Financial Manager,
Secunderabad Division,
III Floor, S.C. Railway,
Secunderabad-500 071.Respondents

Counsel for the Applicant: Mr. N. Subba Rayudu

Counsel for the Respondents : Mr. V. Vinod Kumar, SC for Rlys

CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunals Act, 1985 to stop the recovery and wrongful / excess payment made to the applicant vide impugned order of Sr. DFM/SC No. A/PN/SC/Tech.Regn/2012-13/BSB/DR, dated 14.11.2016 and quash and set aside the same by declaring it as illegal, arbitrary and against the ruling of the Hon'ble Apex Court in the case of State of Punjab & Others Vs. Rafiq Masih (White Washer) Etc (CA No.11527/2014 arising out of SLP (C) No.11684/2012) and pass such other and further order or orders as this Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that the applicant herein worked as a Catering Inspector in the Catering Department of the Railway Organization in the office of Respondents. Consequent upon the scrapping off the Catering Department in the S. C. Railway and handing over the same to IRCTC the employees were asked to work in IRCTC forcibly on deemed deputation en masse on a progressing basis from January, 2004 to February, 2005.

3. Subsequently the staff who were on deemed deputation were given options to remain in IRCTC or to revert back to Railways with a condition that those who wish to revert back would be treated as surplus staff and dealt accordingly. It is pertinent to mention herein that by that time the

applicant had served in Railways for considerable time for over 25 years and under such circumstances going back to Railways was an uncertainty of getting a post suited for his experience for a long time waiting for vacancies to arise. Thus the applicant took a step to work with IRCTC as he had abundant experience in the field of catering.

4. Thereafter the applicant was absorbed in IRCTC with effect from 1.1.2007. He took technical resignation from Railways and absorbed on 01-01-2007 in IRCTC. Consequent upon the resignation from Railways and absorption in IRCTC the applicant was granted with pension duly fixing basic and the dearness relief thereon. The 4th Respondent issued the impugned notice to the bank authorities by letter dated 02-12-2016 advising the bank authorities to recover DR drawn from 01.01.2007 to till date and remit back to railways.

5. The learned counsel for the applicant submits that assuming for a while that there was excess payment made by the respondents, the principle of natural justice demands that the applicant should be put on notice regarding the proposed recovery before affecting the recovery. The excess amount alleged to have been paid to the applicant by the bank authorities was not attributable to any act of misrepresentation on the part of the applicant. Under such circumstances, the Hon'ble Apex Court in the case of Sahib Ram Vs. State of Haryana (JT 1995 (1) SC 24) directed that the recovery of the amount paid till the date of decision may not be effected from him. In the case of Shyam Babu Verma Vs. Union of India reported in

JT 1994 (1) 574, the Hon'ble Apex Court held that "where the petitioners had been erroneously granted a higher scale of pay, due to no fault of theirs, and the scale granted to them was sought to be reduced in the year 1984 with effect from 1.1.1973, the Hon'ble Supreme Court held that it would not be just and proper to recover any excess amount already paid to them. In the cases of Union of India Vs. M. Bhaskar and Ors (1996 (2) SLJ 25 SC), the Hon'ble Apex Court held that "on account of the hardship caused to the concerned employees by the intended recoveries on account of wrong fixation by the authorities, it was directed that the recovery of the excess payment be not made from them".

6. The applicant herein is a Group 'C' employee and had retired and the proposed recovery is to be made from 01-01-2007 which is more than five years period and in view of the observations of the Hon'ble Apex Court, the proposed recovery by the respondents is arbitrary and illegal and is impermissible. Hence this application.

7. The respondents have filed reply affidavit stating that the applicant who was on deemed deputation to IRCTC has opted to continue to work in IRCTC and tendered technical resignation in order to get absorbed in IRCTC and settlement dues were paid and pension authorized. Hence the provisions contained in Railway Board's letter No. F[E]III/PN1/21, dated 05-08-1999 is rightly applicable. The pay of the applicant was fixed at Rs.9,150/- in scale of Rs.6550-200-11350 ie pay was fixed at a stage more than the minimum of the scale of post in which he was re-employed.

8. The applicant has not been covered under any of the situations cited by the Hon'ble Apex Court, here in the instant case the applicant was paid dearness relief for which he is not entitled to. The applicant was employed for the period from 01-01-2007 to 31-01-2014 in the IRCTC duly fixing his pay higher than the minimum of the pay scale thereby he is not entitled to drawing dearness relief on the pension granted for the service rendered in Railways. It is not correct to state that the applicant was at hardship and at pecuniary loss as the applicant was receiving the salary for the re-employment at IRCTC during the period. In view of these submissions, Respondents pray for dismissal of the OA.

9. I have heard Sri N. Subba Rayudu, learned counsel for the applicant and Sri V. Vinod Kumar, learned Standing Counsel for Railways, perused the material papers placed on record.

10. Learned counsel for the applicant, in support of his contentions, relied upon the following decisions :

- (a) OA No.533/2017, dated 21.03.2018 of CAT, Hyderabad Bench;
- (b) OA No.80/2017 & Batch of CAT, Hyderabad Bench.

11. The direction for recovery of the dearness relief on basic pension was made on 14.11.2016 as per Annexure A-1 to OA. The applicant submitted technical resignation on 03-12-2006 and was absorbed in IRCTC. Prior to that he had gone on deputation to IRCTC in the year 2004. Admittedly the applicant was a Group-C employee in the South Central Railways. The

period of recovery of dearness relief is from 01-01-2007 to 14-11-2016 as seen from Annexure A-1 to OA. Although the excess amount of recovery has not been calculated and it has been left to the concerned bank to calculate the same, it is stated that the said amount is about Rs.4 lakhs.

12. The learned Standing Counsel for the Respondents submits that there is no question of undue hardship as the applicant was drawing more pension than the original entitlement as per the terms of Railway Board letter dated 05-08-1999. Taking into consideration the above facts and circumstances and the decision of the Hon'ble Apex Court in the case of State of Punjab & Others Vs. Rafiq Masih (White Washer) and the decisions of this Tribunal in OA No. 80/2017 & batch, dated 28.09.2018, OA No.533/2017, dated 21.03.2018, this Tribunal held that in case the Respondents are not directed to stop the recovery of the amount in question then there will be undue hardship to the applicants therein. Hence the impugned order dated 14.11.2016 for recovery vide Annexure A-1 is set aside and the OA is allowed accordingly.

13. It is left open to the Respondents to fix responsibility on those persons who have failed to detect the matter earlier and thereby caused financial loss to the Respondents organization. The Respondents are also advised to regulate the grievances of the persons of similar nature keeping in view the judgments as referred to above and not to compel them or drive the similar employees to seek the similar relief before this Tribunal.

14. Accordingly the Original Application is allowed. No order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : 15th November, 2018.

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