

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00685/2018

Date of CAV : 06-11-2018
Date of Order : 22-11-2018

Between :

D. Moses Paul S/o Late D. Francis Paul,
Aged about 56 years, Occ : Dy.CHC (Group 'C' employee),
O/o DRM/Hyderabad Divn/SCR,
Hyderabad Bhavan, Secunderabad – 500 071.Applicant

AND

1. Union of India rep by
The General Manager,
South Central Railway, Rail Nilayam,
III Floor, Secunderabad-500 071.
2. The Financial Advisor & Chief Accounts Officer,
South Central Railway, Rail Nilayam,
III Floor, Secunderabad-500 071.
3. The Chief Personnel Officer,
South Central Railway, Rail Nilayam,
IV Floor, Secunderabad-500 071.
4. The Sr.DFM/Hyderabad Divn.,
South Central Railway, Hyderabad Bhavan,
Secunderabad-500 071.
5. The Sr.DPO/Hyderabad Divn.,
South Central Railway, Hyderabad Bhavan,
Secunderabad-500 071.
6. The Chief Manager,
State Bank of Hyderabad, CPPC,
Methodist Complex Abids,
Hyderabad-500001.
7. The Branch Manager,
State Bank of India, Lallaguda Branch,
Lallaguda, Secunderabad-500 017.Respondents

Counsel for the Applicant: Mr. Mohd.Osman

Counsel for the Respondents : Mr.V.VinodKumar, Sr CGSC
Mr.M.Brahma Reddy, SC for Rlys

CORAM :

THE 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 Tribunal's Act, 1985 to direct the respondents and the bank authorities herein to refund the recovery of wrongful/excess payment made to the applicant declaring impugned order of Sr.DFM/Hyderabad Divn/SCRLys as illegal arbitrary and quash and set asides the same as against the ruling of the Apex Court in the case of State of Punjab & Ors 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 Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that the applicant herein was appointed on 26.03.1990 as Traffic Apprentice n the South Central Railway and subsequently posted as Section Controller on 04.11.1992 and finally Dy.CHC on 07.06.1995 and worked such in the Operating Department of the Railway Organization in the office of Respondents. Consequently the applicant submitted Technical Resignation on 04.07.2011 and joined the RTCI on 05.07.2011. At the time of joining Rail Tel Corporation of India, the applicant who migrated to RTCI under the impression that all the privileges and benefits that were available to the Railway staff will also be available to

him and grant of incentives such as pay fixation does not entitle the benefits that accrue to him from the previous employer. The applicant was absorbed in RTCI on 05.07.2011. Consequent upon the resignation from Railways and absorption in RTCI, the applicant was granted with pension duly fixing basic and the dearness relief admissible from time to time.

3. The 4th Respondent issued the impugned notice to the bank authorities by letter dated 03.08.2016 advising the bank authorities to recover Dearness Relief drawn from 05.07.2011 to 31-10-2016 and remit back to railways since the employees who retired and join PSUs are not eligible for drawing the dearness relief on basic pension. Hence this OA.

4. The Respondents have filed reply statement stating that the applicant was appointed as Traffic Apprentice and during course of time was promoted as Dy. Chief Controller which was Group C post and proceed on deputation to RTCIL and got absorbed with effect from 5.7.2011 and his settlement dues were arranged and pension was also authorized vide PPO dated 30.09.2011 with effect from 04.07.2011.

5. The applicant's pay on absorption into Rail Tel Corporation of India was fixed at a stage above the minimum of pay scale in which he was absorbed in Rail Tel, dearness relief on pension is not admissible in terms of Railway Board's letter dated 11.04.2016 and the bank has been advised to recover the DR drawn from 05.07.2011 onwards and remit the same to the Railway with a copy marked to the applicant.

6. That the applicant who was on deputation to Rail Tel has opted to continue to work in RAIL TEL and tendered technical resignation in order to get absorbed in RAIL TEL and settlement dues were paid and pension authorized. Hence the provisions contained in Railway Board letter dated 05.08.1999 is rightly applicable. The pay of the applicant was fixed at Rs.31,160/- in scale of Rs.20600-46500 ie pay was fixed at a stage more than the minimum of the scale of post in which he was re-employed.

7. The Director Finance/CCA Railway Board vide letter dated 11.04.2016 reiterated the above rules and instructed to review all such re-employed case to ascertain whether undue amount of dearness relief is sanctioned to any re-employed pensioner. In pursuance of the same Sr. DFM's office conducted a review and noticed that in the case of the applicant that dearness relief was allowed. Hence the Bank authorities concerned have been advised that dearness relief is not admissible and to recover the dearness relief paid to the applicant duly endorsing copy of the letter to the applicant.

8. The respondents further submit that the applicant has not been covered under any of the situations cited by the Hon'ble Apex Court herein in the instant case the applicant was paid dearness relief for which he is not entitled to. The same was reviewed based on Railway Board's instructions contained in the letter dated 05.08.1999 and advised for recovery. The applicant was employed for the period from 20.12.2007 in the RAIL TEL 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 Rail Tel during the period. With these submissions, the Respondents pray for dismissal of the OA.

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

- i) WP No.2348/2017, dated 21.09.2018 of the High Court of Judicature at Bombay, Nagpur Bench, Nagpur ;
- ii) OA No.133/2017, dt. 28.09.2018 of CAT, Hyderabad Bench ;
- iii) OA No.543/2017, dt. 20.07.2018 of CAT, Hyderabad Bench.

10. I have also examined the case of the applicant in the light of the judgement of the Hon'ble Supreme Court in Rafiq Masih's case. The Hon'ble Supreme Court laid down the guidelines in para 12 of the judgement as follows :

"12. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement has summarized the following few situations, wherein recoveries by the employers would be impermissible in law :

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case where the Court arrives at the conclusion that recovery if made from the employee would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

11. I am not in agreement with the contention put forth by the learned Standing Counsel for Respondent Railways that the applicant's case cannot be brought under any one of the parameters laid down by the Hon'ble Supreme Court. Submitting technical resignation and joining the other post will not disentitle the applicant from claiming the benefit under the guidelines issued by the Hon'ble Apex Court in the above case. Further, the DoPT issued official memo dated 2.3.2016 and the Railways also issued a Circular dated 19.07.2016 directing the authorities to following the guidelines issued by the Hon'ble Apex Court in the above case and not to effect any recoveries. The circulars do not contain any exception which is sought for by the Respondents in their reply statement and, therefore, the case of the applicant is squarely covered by the judgement of the Hon'ble Supreme Court in Rafiq Masih's case.

12. Consequently the impugned order effecting recovery of Rs.7,40,789/- from the applicant is set aside. In the result, the OA is allowed without any order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : 22nd November, 2018.

