

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

OA/021/00196/2017

Date of CAV : 13-11-2018  
Date of Order : 22-11-2018

Between :

R. Pratap Reddy S/o late Venkatarami Reddy,  
Aged : 64 years, Occupation : Retired Chief Catering Inspector,  
H.No.9-111-37, Street No.6, Anjaneyanagar, Boduppal,  
Ghatkesar Mandal, Medchal District,  
Telangana State. ....Applicant

AND

1. Union of India represented by  
The General Manager,  
South Central Railway, Rail Nilayam,  
3<sup>rd</sup> Floor, Secunderabad-500 025.
2. The Financial Advisor & Chief Accounts Officer,  
South Central Railway, Rail Nilayam,  
Secunderabad-500 025.
3. The Chief Personnel Officer,  
South Central Railway, Rail Nilayam,  
4<sup>th</sup> Floor, Secunderabad-500 025.
4. The Senior Divisional Financial Manager,  
South Central Railway, Sanchalan Bhavan,  
Secunderabad Division,  
Secunderabad-500 025.
5. The Senior Divisional Personnel Officer,  
South Central Railway, Sanchalan Bhavan,  
Secunderabad Division,  
Secunderabad-500 025. ....Respondents

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Counsel for the Applicant: Mr. N. Subbarayudu

Counsel for the Respondents : Mrs.KMJD Shyama Sundari, SC for Rlys

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CORAM :

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

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

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This application is filed under section19 of the Administrative Tribunals Act, 1985 to direct the respondents to stop recovery of alleged wrongful/excess payments made to the applicant vide the impugned order of FA&CAO/SCR/SSC letter No. A/PN/SC/Tech.Regn/2012-13/RPR/DR, dated 14.11.2016 and pass such other and further order or orders as this Tribunal deem fit and proper n the circumstances of the case.

2. The brief facts of the case are that the applicant herein was initially appointed as Assistant Catering Manager through Railway Recruitment Board in the Catering department of Railway Organization on 09-03-1977. Subsequently he was promoted as Catering Manager, Catering Inspector and Chief Catering Inspector and retired from Railways on 31.12.2006 in a Group-C post. Consequent upon the scrapping off the Catering department in S.C. Railway and handing over the same to IRCTC, the applicant along with his other counterparts worked in IRCTC on deemed deputation with the same pay as he was drawing in the Railways in CDA pattern without any deputation allowance and other consequential benefits that were given to the IRCTC employees.

3. That at the time of joining IRCTC the staff who migrated to IRCTC were under the impression that all the privileges and benefits that were available

to the Railway staff will also be available to them and grant of incentives such as pay fixation does not entitle the benefits that accrue to them from the previous employer. Besides the promises made by the Railways and the IRCTC that all pensionary benefits and subsequent career progress would be taken care of, made the applicant as well as other to see the brightening future ahead in IRCTC. The applicant was absorbed in IRCTC with effect from 01-07-2007. At this juncture, again the applicant had an option open whether to take pro-rata benefits or to continue in combined service. Initially even though the applicant opted for combined service but even after waiting for five years there was no sign of any modalities for combined service. Hence the applicant was absorbed on 01.07.2007 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. Thereafter the applicant had been continued to be paid pension including the dearness relief admissible from time to time.

4. However, the respondents issued the impugned notice to the bank authorities by letter dated 14.11.2016 advising the bank authorities to recover DR drawn from 28.09.2010 to till date and remit back to Railways quoting a Railway Board Circular dated 11.04.2016 stating that the employees who retired and joined PSUs are not eligible for drawing the dearness relief on basic pension.

5. Learned counsel for the applicant further submit that assuming for a while that there was excess payment made by the Respondents, the

principal of natural justice demands that the applicant should be put on notice regarding the proposed recovery before effecting the recovery. The excess amount alleged to have been paid to the applicant by the bank authorities was not attributable to any act of mis-representation on the part of the applicant.

6. The applicant contends that he is a Group-C employee and had retired as Chief Catering Inspector on 30-12-2006 from Railways and continued in IRCTC on deemed deputation from 01-01-2007 and finally retired from IRCTC on 31.08.2012. The proposed recoveries is to be made from 28.09.2010 to till date, which is more than six 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. The applicant retired from service of IRCTC on 31.08.2012 on attaining the age of superannuation. He ceases to be an IRCTC employee with effect from 31.08.2012 unfortunately the respondents directed the Bank authorities to recover the DR drawn from 28.09.2010 to till date without taking the applicant's retirement into consideration. Hence this application.

7. Respondents have not filed reply statement. I have heard Mr. N. Subba Rayudu, learned counsel for the applicant and Mrs.KMJD Shyama Sundari, learned Standing Counsel for Respondent Railways.

8. 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."

9. 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.

10. Consequently the impugned order effecting recovery of Rs.5,36,660/- 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 : 22<sup>nd</sup> November, 2018.

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