

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00455/2018

Date of CAV : 13-11-2018
Date of Order : 15 -11-2018

Between :

S.Jaffar Sadiq Ali S/o Shaik Sahib,
Aged about 58 years,
Occ : Retd. Station Superintendent/Malkajgiri,
Office of the Sr.DOM/HYB, Hyderabad Division,
S.C.Railway, Secunderabad,
R/o H.No.7-9/3/3 Shaik manzil,
Eashwaraiah Enclave, Domalguda,
Hyderabad.Applicant

AND

1. Union of India rep by
The General Manager,
South Central Railway, Rail Nilayam,
III Floor, Secunderabad-500 071.
2. The Senior Divisional Personnel Officer,
South Central Railway, Hyderabad Division,
Hyderabad Bhavan, Secunderabad-500 071.
3. The Divisional Financial Manager,
Hyderabad Division, I Floor, Hyderabad Bhavan,
South Central Railway, Secunderabad-500 071.
4. The Branch Manager,
Canara Bank, Gautam Nagar,
Malkajgiri, Secunderabad.Respondents

Counsel for the Applicant: Mr. N.Subba Rayudu
Counsel for the Respondents : Mr.V.VinodKumar, 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 direct the Respondents and the bank authorities herein to refund the recovery and wrongful/excess payment made to the applicant vide impugned order of DFM/HYB No.A/PN/HYB/6873, dated 21.06.2017 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 deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that, the applicant herein while working as Senior Instructor/ZRTI, Moula Ali (Parent Division Hyderabad Division) and proceeded on deputation to RITES on 14.10.2008 and thereafter subsequently got absorbed in RITES on 01.03.2011. Thereafter the applicant tendered his technical resignation from South Central Railway.

3. That the applicant's retirement benefits were arranged and PPO was issued by the FA & CAO/SCR/SC clearly indicating the amount of pension to be paid to the applicant and also indicating that the applicant is eligible for DA from time to time and the current rate of DA as on that date was 51%. After a lapse of over six years and two months the 3rd Respondent addressed letter to the RITES seeking for certain clarifications by letter dated

05.12.2016 and asking for a certificate calling for details as per Para (II)(a) of Railway Board letter dated 05.08.1999. Manager, Personnel CRIS/Delhi has certified that the pay of the applicant was not fixed at the minimum of the grade in RITES and that the applicant was drawing same pay and scale which he was drawing at the time of absorption in RITES.

4. Based on the letter of RITES the 3rd Respondent issued the impugned letter addressed to the bank ordering for recovery of excess amount paid towards admissible dearness relief paid to the applicant to the tune of Rs.5,52,326/-. The applicant made representations on 31.07.2017 to the ADRM/HYB and 11.01.2018 to the Bank officials wherein the applicant clearly stated that the overpayment of dearness relief was not due to any misguidance or misrepresentation of the applicant.

5. While the applicant had also mentioned the Railway Board instructions contained in this regard in its Serial Circular No.75/2016 dated 19.07.2016 reiterating the Railway Board instructions which had specifically instructed the Zonal Railways not to recover the excess payment made in terms of Hon'ble Apex Court judgment. However the respondent bank authorities commenced deduction by February, 2018 deducting 1/3 of the Pension amount and also withheld the amount of Rs.1,00,000/- which was in the applicant's savings bank account.

6. The applicant had neither misguided the respondents nor misrepresented any facts and the dearness relief was paid to the applicant

by the Respondents. The learned counsel for the applicant further 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 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 misrepresentation on the part of the applicant.

7. The applicant further submits that there is no misrepresentation nor was any fraud committed by the applicant for excess payment involved if any, on part of the applicant and if the recoveries are resorted to at this point of time the applicant who are group 'C' employee would be put to lot of hardship as the applicant having to maintain his families and to meet the educational and other essential expenditures and spent all the amounts under the bonafide belief that he was entitled for the emoluments that had been paid to him. Hence this application.

8. Respondents have filed reply statement stating that in terms of Railway Board letter dated 05.08.1999 and JPO No.01/2018, dated 27.07.2018 re-employed pensioner is eligible for dearness relief under the following circumstances "Dearness Relief for re-employed civilian pensioners entitled when their pay on re-employed". Further it was confirmed from Rail India Technical and Economic Services Limited that the applicant was holding the post of Station Master-I Senior Instructor at Zonal Railway Training Institute which was not included in the group classified as

“A” and it was certified that the entire amount of pension sanctioned / being sanctioned by the Central Government (SC Railway) was ignored in which the pay on re-employment ie no part of the pension was taken into account for fixation of pay in the pay scale of the post in which they were absorbed. His pay was not fixed at minimum of the grade in Rail India Technical and Economic Services Limited. The applicant is drawing higher pay and scale which he has not drawn at the time of absorption in Rail India Technical and Economic Services Limited.

9. The Respondents further submit that the applicant was on deputation to Rail India Technical and Economic Services Limited has opted to continue to work in Rail India Technical and Economic services Limited and tendered technical resignation in order to get absorbed in RITES 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.21,970/- in scale of Rs.9300-34800 ie pay was fixed at a stage more than the minimum of the scale of post in which he was re-employed.

10. The Respondents further submit that the applicant was not 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 same was reviewed based on Railway Board instructions in letter dated 05.08.1999 and advised for recovery. The applicant was employed for the period from 13.10.2008 in the Rail India Technical and

Economic Services Limited duly fixing his pay higher than the minimum of the pay scale thereby he is not entitled to drawl of 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 RITES Limited during the period. As per para No. 3(iv) of the Railway Board's letter RBE No.72/2016 recovery should be made in all cases of overpayment baring few exceptions of extreme hardships. In view of these submissions, Respondents pray for dismissal of the OA.

11. We have heard Mr.N.Subba Rayudu, learned counsel for the applicant and Mr.V.VinodKumar, learned Standing Counsel for Respondent Railways.

12. Learned counsel for the applicant, in support of his contentions, relied on the orders passed in OA No.533/2017, dated 21.03.2018 and OA Nos.80/2017 & batch, dated 28.09.2018 passed by this Tribunal wherein similar question of law has been decided.

13. The applicant who was working originally under the Railways proceeded on deputation to RITES Limited (Public Sector Undertaking) and absorbed in the said organisation with effect from 01-03-2011. A sum of Rs.5,52,326/- is sought to be recovered from the applicant which was paid as Dearness Relief already paid to the applicant. In this regard the impugned order was passed on 21.06.2017 (Annexure A-1, page-12 to the OA). The period of recovery of the said amount relates from 02-03-2011 to

21-06-2017 ie for about five years and nine months. The learned Standing Counsel for the Respondents submit that the proposed recovery will not cause undue hardship to the applicant as he has not joined in the minimum scale of pay. It is further seen that 1/3rd amount of pension had already been recovered from February, 2018 to May, 2018. Therefore this Tribunal is satisfied that undue hardship will be caused if the amount in question is recovered from the applicant. Accordingly the impugned order is set aside based on the case law cited above.

14. The Respondents are directed not to recover any further amounts in question from the applicant. They are also directed to refund the amount recovered in this connection from the months of February, 2018 to May, 2018 within a period of three months from the date of receipt of a copy of this order.

15. Original Application is accordingly allowed with no order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : 15th November, 2018.

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