

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Thursday 7th day of February Two Thousand And Nineteen

PRESENT:

THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

O.A. 310/1541/2016

P. Kamaludeen (Retd.)

Superintendent/DRG,
Integral Coach Facotry,
Chennai- 600 038.

...Applicant

(By Advocate: M/s. R. Pandian, L. Kabilan & Saravana Prakash .S)

Versus

- 1) Union of India Rep. by
The General Manager,
Integral Coach Factory,
Chennai- 600 038;
- 2) The Chief Personnel Officer,
Integral Coach Factory,
Chennai- 600 038;
- 3) The Financial Adviser & Chief Accounts Officer,
Integral Coach Factory,
Chennai- 600 038;
- 4) The Manager,
UCO Bank,
Link Branch, Post Box No. 276,
Thambu Chetty Street,
Chennai- 600 001;
- 5) The Branch Manager,
UCO Bank,
ICF Colony Branch,
Konnur High Road,
Chennai- 600 038.Respondents
(By Advocate: Ms. S. Sujatha,
Mr. R. Selvakumar (R4 & R5))

ORAL ORDER

[Pronounced by Hon'ble Mr. R. Ramanujam, Member (A)]

The applicant has filed this OA seeking the following relief:-

"to direct the 3rd respondent to arrange to refund an amount of Rs. 25578/- deducted unlawfully from the applicant's pension account with applicable interest"

2. It is submitted that the applicant retired from Railway service on 30.06.1996 on superannuation and is in receipt of pension since then. Consequent to the implementation of VI CPC recommendations, his pension was revised and refixed at Rs. 9509/- with effect from 01.01.2006. However, suddenly from September 2012 onwards, the applicant's pension was reduced by Rs.1218/-. Notwithstanding the representations made by the applicant, the applicant was informed that an amount of Rs.25578/- was paid in excess on his retirement and the same was being deducted in 21 instalments starting from September 2012. The deduction has since been completed.

3. The applicant seeks to rely on the order of the Hon'ble Apex Court in CIVIL APPEAL NO. 11527 OF 2014 (Arising out of SLP(C) No.11684 of 2012) [State of Punjab and Others etc Vs. Rafiq Masih (White Washer) etc] wherein it was held that recovery was impermissible in law in the following cases:-

"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. Be that as it may, based on the

decisions referred to herein above, we may, as a ready reference, summarise 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."

4. Learned counsel for the applicant would argue that excess payments, if any, had accrued owing to a mistake committed by the respondents and not for the reason of misrepresentation by the applicant. The applicant was a Group C employee and a pensioner now. Accordingly, the law as laid down by the Hon'ble Apex Court in the aforesaid case and as accepted by the DOP&T in their OM dated 2.3.2016 is to be applied and the amount deducted

from his pension, refunded to him. He would, however, also submit that the applicant was not seeking restoration of his pension to Rs. 9509/- as fixed earlier.

5. In the reply filed by the respondents, it has been explained how the excess payment had been worked out. The respondents have relied on the order of the Hon'ble Apex Court in Civil Appeal No. 5899/2012 SLP (C) No. 30858 of 2011 with IA Nos. 2 & 3 wherein it was observed as follows:-

"the Hon'ble Apex Court in Civil Appeal No. 5899 of 2012 (SLP (C) No. 30858 of 2011 with IA Nos. 2 & 3 observed that (para 16) "we are concerned with the excess payment of public money which is described as "tax payer's money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bonafide mistake. Possibly effecting excess payment of public money by Government Officers may be due to various reasons like negligence, carelessness, collusion, favouritism etc., because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority or law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money otherwise it would amount to unjust enrichment."

6. I have considered the facts of the case. It is not in dispute that excess payment had accrued in the case of the applicant for no fault of his as there was no misrepresentation from his side. All relevant precedent cases including the one relied upon by the respondents had been considered in the order of the Supreme Court in the case of State of Punjab and ors etc. Vs Rafiq Masih (White Washer) etc., and it has also been accepted by the DOPT which had directed that such cases shall be processed as per the law laid down therein. Since it was not a new law but only a laying down of the law as it was in the light of the facts and circumstances of the cases which were taken into account and which preceded the date of the order, it could not be held that such order was inapplicable to cases where the cause of action had arisen before the date of the order.

7. Keeping in view the above, I deem it appropriate to direct the respondents to review their decision to recover excess payment from the applicant, process the applicant's request in accordance with OM dated 2.3.2016 of the DOP&T and pass a reasoned and speaking order within a period of four months from the date of receipt of copy of this order.

(R. RAMANUJAM)
MEMBER (A)

07.02.2019

Asvs.