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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO. 684 OF 2014
WITH
MISC. APPLICATION NO. 787/2014

Date Of Decision:- 21st January, 2019.

CORAM: R. VIJAYKUMAR, MEMBER (A).

R. N. SINGH, MEMBER (J).

Shri. Suresh Parvatrao Mhamunkar

S/o. Parvatrao Tukaram Mhamunkar

DOB 01.06.1953, age 60 years,

Worked as MCF Turner,

Under Chief Works Manager,

Parel Workshop, western Railway, Mumbai 400013.

R/a:- Satlaj Residency,

"A" Wing, flat No.704, Plot No.8B & 8E, Sector 35,

Kamothe, Navi Mumbai.

...Applicant

(Applicant by Advocate Shri. R.G. Walia)

Versus

1. *Union of India*

Through General Manager,

Western Railway,

Headquarters Office,

Churchgate, Mumbai 400020.

2. *Divisional Railway Manager (DRM) DRM's Office,*

Western Railway, Bombay Central,

Mumbai 400008.

3. *Chief Workshop Manager*

Lower Parel Workshop,

Western Railway,

Lower Parel,

Mumbai 400013.

...Respondents

(Respondents by Advocate Shri. V.S. Masurkar)

ORDER (ORAL)

PER:- R. N. SINGH, MEMBER (J)

1. This OA was filed by the applicant on 25.09.2014

under Section 19 of the Administrative Tribunals Act 1985

seeking the following reliefs:-

"8(a) This Hon'ble Tribunal will be pleased to call for the records and proceedings which led to the passing of the impugned order dated 21.06.2013 and after going through its legality, propriety and constitutional validity be pleased to quash and set aside the same with all consequential benefits.

(b) This Hon'ble Tribunal will be pleased to Order and direct the respondents to pay all retiral dues including packing allowance and bonus to the applicant with 18% interest thereon.

(c) This Hon'ble Tribunal will be pleased to hold and declare that no recovery can be made from the dues of the applicant including pension pursuant to impugned order dated 21.06.2013.

(d) Any Order or further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

(e) Cost of this Original Application may be provided for."

2. The applicant was appointed as Khalasi on regular basis in Group 'D' in 1978 and then was promoted through Semi-skilled and skilled posts, Skilled Artisan Grade-I in 1992 and at the time of retirement on 31.05.2013 was serving as Senior Technician (Master Craftsman) (Turner's Trade). After 5th Pay

Commission, the applicant had represented that his junior was getting more pay and in orders dated 21.11.2003 his pay was refixed from 01.01.1996 from Rs.4750 to Rs. 4875/-. At the time of retirement, the respondents through their audit department determined that his pay had been wrongly fixed in the abovesaid orders and that since he had not opted for fixation on promotion, his pay should have been correctly fixed at Rs. 4750/-. Consequent upon this determination the pay was determined for the subsequent years up to 2005 and again from 2006-2012 and total sum of Rs. 29,531/- was deducted from his retiral benefits.

3. When the case was heard the learned counsel for applicant stated the above facts and argued that the respondents were altering the basis for this pay fixation which they had earlier ordered in 2003 at the fag-end of his career after retirement and that also without issuing any show cause notice. He relies on the rulings of the Hon'ble Apex Court in *Rafiq Masih* case as reiterated by the respondents in their circular F.No.2016/F(E)II/6/3 dated 22.06.2016 enclosing the OM issued by the DoP&T in OM No. 18/26/2011-Estt (Pay-I) dated 06.02.2014.

4. The learned counsel for respondents has argued with reference to his reply that the applicant had not given the required options at the time of his promotion and in the circumstances, he was bound to accept the pay fixation and

therefore, at the time of retirement the audit determined his pay correctly and also held that the orders of pay fixation in relation to his junior issued in November 2003 were not in order. He also took objection to the fact that the applicant had made no proper representation to the respondents on this issue and had directly approached this Tribunal. The learned counsel for respondents has also referred to the IRE manual at para 1016 which as under:-

"1016. Recovery of overpayment made to railway servants by drawing and disbursing officers may be waived only after the strictest possible scrutiny and only if there is fullest justification for such waiver, which should be placed on record. Normally, no recoverable overpayment should be waited. But waiver may be justified if overpayment has occurred over long periods and the amount involved is very large compared, and, where it would require many years to recover the amount, it may be held that by crippling the resources of a comparatively lowpaid individual over a large number of years, his efficiency would considerably suffer and thereby the indirect loss to the Railway by the loss of his efficiency might be more than the loss to the Railway caused by writing off the recovery of the overpayment. The nature of the irregularity will also be an important consideration. The element of discretion, therefore, should be judiciously exercised and waiver should not be accorded merely on the ground that overpayment were drawn in good faith and are over one year old."

5. On this basis, he has argued that there are provisions in the IRE manual from Rule No. 1016 to 1019 which deal with the powers and discretion available with the respondents for recovery or for waving of such recovery and in

the circumstances, the rules which have the force of statute cannot be replaced by any OM or judicial pronouncements. He has also referred Rule No. 1017 which records that the respondents would not ordinarily wave recovery where amount involved does not exceed two months pay of railway servants concerned.

6. In rejoinder, the learned counsel for applicant by referring to "Annexure A-2" i.e. option form dated 15.07.1999 submits that the applicant has made the option before the respondents and he has also brought to their notice that the applicant is getting lower pay than his junior and keeping in view the such submissions of the applicant, the respondents revised the pay fixation of the pay of the applicant vide order dated 21.11.2003 (Annexure A-3). In this background the learned counsel for applicant emphasized that once keeping in view these options and the fact that the applicant was being paid lesser than his junior, the respondents have taken conscious decision to revise his pay way back in November 2003. The respondents cannot take a U-turn immediately after his retirement and reduced his pay and make recovery after around 10 years or more.

7. We have gone through the O.A. alongwith Annexures A-1 to A-3, application for condonation of delay and

rejoinder filed by the applicant. We have also gone through the Reply along with Annexure R-1 filed by the Respondents and have also carefully examined the various documents annexed in the case.

8. We have heard the learned counsel for the applicant and the learned counsel for the respondents and have carefully considered the facts, circumstances, law points and rival contentions in the case. The applicant has filed MA No.787/2014 seeking condonation of delay of three months in filing of the OA. It is contended by the applicant that he received the impugned order only after his retirement on 31.05.2013. The applicant further submits that after his retirement, he got busy in solving some domestic issues and thereafter it took some time to procure all documents related to the matter. Hence, delay of three months in filing of the OA. These facts have not been disputed by the respondents. The learned counsel for the applicant states that the applicant has a very strong case in his favour on merit and therefore keeping in view the facts and circumstances, the MA deserves to be allowed. In view of the facts and circumstances and law laid down by the Hon'ble Apex Court in the case titled Collector, Land Acquisition, Anantnag and Others Vs. Katiji and others, (1987) 2 SCC 107, we allow the MA. Delay in filing OA

OA is condoned.

9. The reference to the discretion provided in the IRE manual on Rules 1016 extracted above makes it very clear that such discretion is required to be considered in the context of railway servant whose efficiency could be effected by non application of discretion in the case of comparatively low paid individuals for recoveries over large number of years. In the present case person has already retired and therefore, this consideration is not applicable and it is evident from reading of this rule that none of these rules have any relevance to the case of the applicant who had retired and then was ordered recoveries when there is a gap in the rules and when the law has been settled by the Hon'ble Apex Court in *Rafiq Masih* and when the OM conveying these rulings have been circulated by the respondents, they are bound by the aspect set out in the said OM.

10. In the circumstances, considering that the applicant is retired as a Group 'C' employee and recoveries are proposed after more than ten years, the claim of the applicant in the OA is covered by the law laid down by the Hon'ble Apex Court and OM issued by the respondents on the subject and therefore impugned order dated 21.06.2013 is not sustainable in the eyes of law and accordingly the same is quashed and set aside. The

respondents are directed to refund the recovery made vide the impugned order dated 21.06.2013 within six weeks of receipt of certified copy of this orders. The respondents are further directed to pay interest at the rate as admissible in the case of GPF on such recoveries till refund thereof. The applicant is also entitled to consequential benefits vis a vis of refixation of pension and arrears of pension on such refixation of pension.

11. Accordingly, the OA is disposed of with above directions. No order as to costs.

(R.N. Singh)
Member (J)

srp

JW
✓/✓

(R. Vijaykumar)
Member (A)