

**Central Administrative Tribunal
Principal Bench**

OA No.4559/2017

Orders Reserved on 25.02.2019

Pronounced on: 11.03.2019

Hon'ble Mr. Pradeep Kumar, Member (A)

Ashok Kumar Yadav, aged 54 years,
S/o Sh. S.S. Yadav,
Retired SSO/ACS,
Northern Railway, New Delhi
R/o Flat No.C-203, Rail Vihar, Sector-47,
Gurgaon.

-Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The FA&CAO,
Northern Railway Headquarters,
Baroda House, New Delhi.
3. The Deputy General Manager (P),
RITES Limited,
RITES Bhawan, Sector-29
Gurgaon (Har).
4. The Senior Manager,
Bank of Baroda, Vatika Business Park,
Sohna Road,
Gurgaon.

-Respondents

(By Advocate Shri Shailendra Tiwari)

ORDER

The applicant has joined as Senior Section Officer (Accounts) under Deputy FA&CAO, Northern Railway, Jammu on 30.08.1988. He was deputed to a Public Sector Undertaking under Ministry of Railways by the name Rail India Technical and Economic Service (RITES) Limited for the period 01.06.2010 to 09.11.2011. Thereafter, he submitted his technical resignation from the Railways and was permanently absorbed in RITES w.e.f. 10.11.2011 as Assistant Manager (Finance).

While working in the Railways he was in the pay scale of Rs.9300-34800+Grade Pay Rs.4800/- and central DA. In this scale he was drawing Rs.23060/- per month including Grade Pay. He was absorbed in the RITES in the pay scale of Rs.20600-46500 which is an IDA scale equivalent to Grade Pay Rs.5400/- and his starting salary was fixed at Rs.26310/-.

2. The Railway issued a Pension Payment Order (PPO) on 10.11.2011. This pay order indicated that pensioner is eligible for dearness relief @58%. The RITES vide their letter dated 12.12.2011 advised FA&CAO/Pension, Northern Railway as under:

“Shri Ashok Kumar Yadav Ex.
SSO/Constn/Northern Railway, Jammu Tawi, has
absorbed in the RITES in the interest of administration
w.e.f. 10.11.2011.

In this connection it is certified that he has not been granted any higher scale of pay of CDA scale/grade and he has been given IDA scale equal to the status of SSO/Railway only and his pay has been fixed at the minimum level of the corresponding IDA-scale with the last parent pay drawn in the CDA scale.

Further, it is also certified that he was drawing less Dearness Allowance (IDA) @52% against the CDA Dearness Allowance @58% at the time of absorption.

Further, it is also added that he is still drawing less Dearness Allowance (IDA) against the CDA Dearness Allowance being his absorption in the IDA Scales.

Therefore he may please be allowed dearness allowance under the rules on pension also.”

3. Thereafter, RITES vide their letter dated 19.04.2017 advised the pension paying bank as under:

“Sh. Ashok Kumar Yadav was working as SSO, Dy.FA&CAO/Constn., Northern Railway JURL Project, Jammu Tawi prior to his absorption in RITES on 10/11/2011. His pay on absorption has been fixed about the minimum of the scale in the post of his absorption.

In terms of Department of Pension & Pensioners Welfare (DOP&W)'s OM No.45/73/97-P&PW(G) dt. 02.07.1999, DR is not payable to Re-employed pensioners during the period of re-employment in the following cases:-

- a) The employee who retired from Grade A posts in Government and
- (b) Other than Grade A employees where there pay has been fixed above the minimum of the scale of the post in which they are re-employed.

Further, in terms of DoP&PW's OM Nos.4/38/2008-P&PW(D) dt. 15.09.2008 and 42/15/2016-P&PW(G) dt. 16.11.2016, DR is also not payable to the re-employed pensioners who had drawn lump sum amount on absorption in a PSU/Autonomous body and are in receipt of 1/3rd restored commuted portion of pension.

In terms of DOP&PW's about referred instructions, **Sh. Ashok Kumar Yadav** is not entitled to DR on pension; however, it has come to notice that he is in receipt of DR on pension.

You are requested to take necessary action in this regard in terms of the extant rules under advice to this office at the earliest.”

4. At this stage the applicant made a representation dated 22.04.2017 to AFA/Pension, Northern Railway. This representation reads as under:

“It is therefore, keeping in view the instructions of the RITES Ltd., before the dearness relief on my pension is permanently stopped paying to me, you are requested to look into the matter and review my case in reference to my representation submitted by me through proper channel of RITES LTD vide letter dated 05.11.2011 & 12.12.2011 respectively for grant of dearness relief, later dearness relief was paid by the FA&CAO/Pension through a fresh PPO to stop paying dearness relief on my pension as precautionary measure of making overpayment if any till the decision of entitlement of drawing dearness relief on my pension is concluded.”

5. This was forwarded by the Northern Railway to the pension paying bank vide their letter dated 02.05.2017 for necessary action.

At this stage, the pension paying bank worked out that the payment of dearness relief (DR) was not admissible in the instant case and accordingly, it was also worked out that certain excess payment has taken during the period 10.11.2011 to 30.04.2017 amounting to Rs.5,48,673/- and accordingly recovery was started in instalments.

6. Feeling aggrieved, the applicant made a representation to RITES on 30.05.2017 and to Northern Railway on 29.05.2017. This representation was forwarded by RITES to Northern Railway vide their letter dated 06.06.2017. The

matter was considered by the Northern Railway and vide their letter dated 15.06.2017 the representation was rejected. This letter reads as under:

“With reference to above it is stated that the recovery of DR instructions is issued to bank by Dy. G.M. (Pers.) RITES’s letter no. PERS/9/DR/Pension/Misc/2016 and it was forwarded to Bank of Baroda on 02.05.17 (copy enclosed).

The case is examined and it is observed that your case is not covered under the prescribed conditions of the instructions issued by the Railway Board’s letter no.F.No.2016/F/(E)II/6/3 dated 22.06.16.”

7. The applicant is aggrieved against the letter dated 19.04.2017 issued by RITES pleading that since the matter pertained to payment of pension, it was a matter between the Northern Railway and the pension paying bank and RITES being a 3rd party should not have issued such a letter (para-3 supra). The applicant pleads that the Northern Railway who is paying him pension, has not issued any instruction for recovery and as such RITES who are respondent no.3, have extended their brief to advise the pension paying bank.

The applicant is also aggrieved with Northern Railway letter dated 15.06.2017 and pleads that in his case dearness relief is payable since he was only getting 52% of DA as IDA whereas dearness relief was 58% at central DA (para-6 supra). Both these letters are impugned in the instant OA and relief has been sought to quash both these letters, quash the recovery and to restore payment of dearness relief.

8. The applicant had also made further representations dated 20.10.2017, 08.11.2017 and 15.12.2017. However, there has been no reply and hence the instant OA has been preferred.

9. Applicant also pleads that he has not misrepresented at any stage and when Northern Railway was aware that he is going to RITES on absorption, it was for them to ensure that 58% dearness relief is not indicated in the PPO issued on 10.11.2011.

10. The applicant has relied upon a judgment by the Hon'ble Apex Court in the case of **State of Punjab & Others v. Rafiq Masih (White Washer)**, [(2014) 8 SCC 883], wherein recoveries have been prohibited in certain circumstances which are claimed to be applicable in the instant case. In follow up of this judgment, DoPT have also issued an OM dated 02.03.2016, which was thereafter adopted by the Ministry of Railways also vide their letter issued under RBE No.72/16 dated 22.06.2016.

10.1 The applicant has also relied upon the following judgments:

i) **Babu Lal Jain v. State of M.P. & Ors.**, [(2007) 6 SCC 180, where the Hon'ble Apex Court held as under:

“We, however, are of the opinion that in a case of this nature, no recovery should be directed to be made. Appellant has discharged higher responsibilities. It is not

a case where he obtained higher salary on committing any fraud or misrepresentation. The mistake, if any, took place on a misconception of law...”

- ii) **S. Leikh Abdul Rashid & Ors. v. State of J&K**, [JT 2008 (1) SC 127].
- iii) **Union of India v. Narendra Singh**, [(2008) 1 SCC (L&S) 547].
- iv) **Duryodhan Lal Jatav v. State of UP & Anr.**, [2005 (3) ATJ 56].
- v) **Shyam Babu v. Union of India & Ors.**, [(1994) 2 SCC 521].
- vi) **State of Orissa v. Advail Charan Mohandty**, [1995 Supp. (1) SCC 470].
- vii) **Union of India v. Sita Ram Dheer**, [1994 SCC (L&S) 1445].
- viii) **Nand Kishore Sharma v. State of Bihar**, [1995 Supp. (3) SCC 722].
- ix) **State of Karnataka v. Mangalore University Non-Teaching Employees Assn.**, [2002 (3) SCC 302].

11. The respondents opposed the OA. It has been pleaded that the applicant is not entitled for dearness relief in terms of DoPT OM dated 02.07.1999. This OM was adopted by the Railways vide their letter dated RBE No.190/99 dated 05.08.1999. The relevant parts of DoPT OM dated 02.07.1999 are reproduced below:

“1. In paragraph 138.21 of their Report, the 5th Central Pay Commission had recommended that Dearness Relief should be paid to employed family pensioners anti re-employed pensioners in cases where their pay is fixed at the minimum of the pay scale of the post of re-employment ignoring the entire pension, and that, in other cases of re-employment, Dearness Relief shall be payable on pay plus the non ignorable portion of pension as was the case at present. The Commission had further recommended in paragraph 141.12 that, with a view to maintaining the original value of the pension, the payment of Dearness Relief should not be suspended where pay is fixed at the

minimum of the pay scale during employment/re-employment of a family pensioner/pensioner.

2. These recommendations have been considered and accepted by the Government. The President is accordingly pleased to decide as follows:

(a) In so far as re-employed pensioners are concerned, the entire pension admissible is to be ignored at present only in the case of those civilian pensioners who held posts below Group 'A' and those ex-servicemen who held posts below the ranks of Commissioned Officers at the time of their retirement. Their pay, on re-employment, is to be fixed at the minimum of the pay scale of the post in which they are re-employed. Such civilian pensioners will consequently be entitled to Dearness Relief on their pension in terms of the recommendations of the 6th Central Pay Commission at the rates applicable from time to time."

12. It was pleaded that certain complaints were received by the Vigilance Directorate of the Railway Board under Public Interest Disclosure and Protection of Informers (PIDPI) from Central Vigilance Commission that some railway officials, on their permanent absorption after technical resignation from railway service, had irregularly and in violation of rules drawn dearness relief on pension. In turn, the matter was taken up with Accounts Directorate of the Railway Board also whereupon certain instructions were issued on 11.04.2016.

The same read as under:

"Please refer to Board letter no.F(E)III/99/PN1/21 DATED 05.08.1999 and no.F(E)III/2005/PN1/23 dated 29.09.2009 regarding admissibility of Dearness Relief to re-employed pensioners and employed family pensioners. However, instances have been brought to the notice of Vigilance Directorate by one of the PSUs wherein Dearness Relief on pension is being paid to certain re-employed pensioners not eligible to draw the same as per these instructions as no endorsement towards non-admissibility of DR was made on their PPOs.

Kindly review the position prevailing on your Railway/PO streamlining to ensure that instances of irregular drawl of Dearness Relief on pension by re-employed pensioners/ employed family pensioners is avoided.”

13. The respondents pleaded that the instant case is also one such case where dearness relief was incorrectly paid and when it came to notice, the recoveries have been ordered and with a view to reduce the financial impact on the applicant, the same is being made in easy instalments.

14. The respondent-Railway also made following averments in their counter-reply:

“8. It is respectfully submitted that the applicant, Sh. Ashok Kumar Yadav knowingly misrepresented the fact before the Pension disbursing Bank and falsely submitted a non-employment certificate. Payment of Dearness Relief to the applicant due to misrepresentation of the Facts before the PDA.”

15. The Railway also pleaded that the applicant belongs to Accounts Department who is expected to be well aware of the relevant rules in question which clearly indicate the circumstances when dearness relief can be drawn. Since the applicant was given absorption by RITES in a higher scale and his salary was fixed at Rs.26310/- per month in IDA scale Rs.20600-46500 which is higher than the minimum of this pay scale, drawl of the dearness relief was not permissible in the instant case as per the rules in force.

The respondents also drew attention to the Life Certificates submitted by the applicant to the pension paying bank on 05.12.2012, 09.11.2013, 01.11.2014 and 06.11.2015. The Life Certificate has a particular column to give the certificate about non-employment. It was brought out that in all these four Life Certificates, this column was either left blank or it was scored out or it was marked dash (-). This means incomplete information since he was employed in RITES at that time. This also implies that the information in respect of his employment with RITES was repeatedly hidden by him from the pension paying bank.

16. In view of the foregoing, the respondents pleaded that the dearness relief was not admissible as per rules to the applicant because of his re-employment and the applicant had hidden the position in respect of his employment to the pension paying bank and accordingly wrong and excess payment took place. With a view to avoid loss to the Public Exchequer these amounts are required to be recovered. However, with a view to reduce the financial impact, recovery is being made in easy instalments. Accordingly, the OA is without merit and needs to be dismissed.

17. The matter has been heard at length. Shri Yogesh Sharma, learned counsel represented the case of the

applicant. Shri Shailendra Tiwari, learned counsel represented the case of the respondents.

18. The facts of this case are not in doubt. Admittedly, the applicant had offered technical resignation from the Railways before being absorbed in RITES. The scale in which he was absorbed in RITES is IDA scale Rs.20600-40500. The starting salary was fixed at Rs.26310./- which is higher than the minimum of the scale. With reference to DoPT OM dated 02.07.1999, under such conditions the dearness relief is not admissible (para-11 supra).

The applicant was himself a Accounts Service staff and as such is expected to have been well aware of this aspect. But still he took no action when wrong payments continued.

19. Moreover, the Life Certificates submitted by the applicant to the pension paying bank for four years consecutively, i.e. 2012, 2013, 2014 and 2015 have not indicated anything about his re-employment and thus this crucial information was hidden.

The judgment of the Hon'ble Apex Court in the case of **Rafiq Masih (White Washer)** supra, is under the circumstances when there is no misrepresentation whatsoever on the part of the applicant. In view of the incomplete information on life certificates, for four consecutive years, which tantamounts to hiding of the

information, this condition of no misrepresentation, does not come true in respect of the applicant. Accordingly, the ratio of **Rafiq Masih** (supra) judgment is not attracted in this case.

20. In view of the above, the ratio of other judgments relied upon by the applicant are also not attracted.

21. In view of the foregoing, the contention of the applicant is not finding acceptability. The recoveries are held to be in order. Accordingly, the OA is dismissed being devoid of merit.

No order as to costs.

(Pradeep Kumar)
Member (A)

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