CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.060/01262/2017 Orders pronounced on:09.10.2019
(Orders reserved on: 20.09.2019)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).**

Jagir Ram son of Shri Chanan Lal,

Age 63 years,

resident of Village Thowana,

Tehsil Garhshankar,

Hoshiarpur (PB)

(Group-D).

… Applicant

(**BY MR. D.R. SHARMA, ADVOCATE**).

Versus

1. Union of India through General Manager,

   Northern Railway,

   Baroda House,

   New Delhi.

2. The Sr. Divisional Personnel Officer,

   Northern Railway,

   Ferozpur Division, Ferozpur, Pb.

3. The Sr. Divisional Finance Manager

   Northern Railway,

   Ferozpur Division,

   Ferozpur (Pb).

(**BY MR. SURESH VERMA, ADVOCATE, WITH MR. JAI SINGH, DPO/FIROZPUR (RESPONDENT NO.2) & MR. KAPIL VATS-ADEB/LDH**).

O R D E R
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application (O.A) under section 19 of the Administrative Tribunals Act, 1985, to quash the impugned order dated 4.1.2017 (Annexure A-1) and for issuance of direction to the respondents to release him pensionary benefits w.e.f. 1.6.2014 including arrears of pension, commuted value of pension, gratuity, leave encashment along with interest.

2. The facts of the case, which led to filing of the instant O.A, are that the applicant joined Railway Service on 26.10.1984 as Gangman, which was re-designated as Trackman and after rendering 29 years and 9 months service, he retired on 31.5.2014. The applicant submits that due to medical problems, he could not attend the office for certain period for which he submitted medical certificates from time to time but period of 5,279 days, was treated as leave Without pay (LPW), which was treated as non qualifying service for pensionary benefits. However, he claims that no such order in that connection was passed or served upon him. The respondents vide letter dated 8.5.2014, verified qualifying service of applicant as 15 years, 1 month and 16 days only (out of 29 years, 7 months and 5 days). In response to representation, the respondents issued impugned order/letter dated 4.1.2017 (Annexure A-1), reducing qualifying service of applicant to 9 years, 4 months and 9 days, without any opportunity of hearing and ordered recovery to the tune of Rs.1,40,896/- and an amount of Rs.80,845/- against gratuity of applicant has been adjusted and he has also been directed to

deposit a sum of Rs.60,051/- in government account. This has been done in violation of principles of natural justice and in any case it is not permissible in view of law laid down in the case of **STATE OF PUNJAB & OTHERS VS. RAFIQUE MASIH (WASHERMAN) & OTHERS**, 2015 (1) SCT 195.

3. The applicant claims that respondents cannot change their stand time and again to the prejudice of the applicant. He claims that as per rule 47 of Railway Service (Pension) Rules, 1993, service after 25 years of service or 5 years before retirement is to be verified and once such verification has been done, then facts cannot be changed contrary to such verification. Under CCS (Pension) Rules, 1972, Extra Ordinary Leave granted on "medical certificate" qualifies for pension and appointing authority can pass such order if leave is granted to government servant. Such leave granted on other grounds is not countable for grant of pension. It is submitted that there is no entry or decision that EOL of applicant will be treated as non-qualifying service. Had it been done earlier, the applicant would have taken corrective steps in time. Thus, impugned order stands vitiated more so when it is in violation of principles of natural justice for which reliance is placed on **PRAKASH RATAN SINHA VS. STATE OF BIHAR & OTHERS**, 2009 (9) SCALE 529, **SHIV KUMAR GOYAL VS. STATE OF HARYANA & ANOTHER**, 2007 (1) SCT 739 and **B.D. GUPTA VS. STATE OF HARYANA**, 1973 (3) SCC 149.

4. Respondents have filed a reply opposing the claim of the applicant. They submit that factually, the qualifying service of applicant is 9 years, 4months and 9 days only. Total service rendered by him was 29 years, 7 months and 5 days. The non

qualifying service is 20 years, 2 months and 26 days due to remaining on leave without pay, absence from duty and as such his qualifying service is only for indicated period and as per rules, such period is treated as non qualifying service as per instructions, Annexure R-1.

5. Heard learned counsel for both sides at length and examined the material on file, with their able assistance.

6. The learned counsel for the applicant submitted that the qualifying service of the applicant has been arbitrarily reduced in violation of principles of natural justice and as such action of respondents is illegal and arbitrary and in any case, the amount recovered from the DCRG of applicant and further demand made by respondents is in violation of law laid down in **RAFIQ MASIH (WHITE WASHER) ETC.**, (supra).

7. On the other hand, learned counsel for the respondents emphatically argued that the applicant was very well aware about the fact of his absence from service and leave without pay and in such like cases, no notice was required to be served to him as entry is made about facts of leave in service book. Thus, he is not entitled to any relief.

8. I have considered the submissions on both sides minutely.

9. The facts are not in dispute at all. It is admitted at all hands and there is documentary evidence including leave account of the applicant to show that he had been on leave or absent from duties for a whopping 20 years, 2 months and 26 days which is non-qualifying service. This figure is based on entries made in the service book of the applicant, which has been produced for perusal of the Court, in original. A perusal of the record does

support the stand taken by the respondents. Just because in the past, if by mistake or over sight, respondents had mentioned that applicant had some more qualifying service, would not make any difference as he does not acquire a right on the basis of a mistake of fact. As per 1998 (2) ATJ, P-286 (**JAGDISH PRAJAPAT VS. THE STATE OF RAJASTHAN & OTHERS**), factual mistake can be rectified by the departmental authorities. In 2005 (4) RSJ, 749 (**ANAND PRAKASH VS. STATE OF PUNJAB**) and 1992 (1) SCT, 129, **RAJ KUMAR BATRA VS. STATE OF HARYANA**, it has been held that as and when a mistake is detected, the employer is within its right to rectify it. In (2005) 13 (**G. SRINIVAS VS. GOVT. OF A.P. & ORS**.) it has been held that an order passed by mistake or ignorance of relevant fact can be reviewed by the authority. In that view of the matter, I find that the respondents have not committed any error in correcting an error.

10. The plea taken by the learned counsel for the applicant that the department has not followed the principles of natural justice and as such impugned action cannot be approved, is of little help to the applicant. Admittedly, there are enumerable cases where Courts discard principles of natural justice after satisfying that the outcome of the case could not make any difference even if natural justice is fully observed. It is based on 'Useless formality' theory, as on the admitted facts only one conclusion is possible, so the Court would not insist on the observance of the principles of natural justice because it would be futile to order its observance. In the case reported as 2007 (4) SCC 54, **ASHOK KUMAR SONKAR VS. UNION OF INDIA & ORS**, the Hon'ble Supreme Court held that principles of natural justice cannot be applied in a

vacuum. They cannot be put in any straitjacket formula. It may not be applicable in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise. A court of law does not insist on compliance with useless formality. It will not issue any such direction where the result would remain the same, in view of the fact situation prevailing or in terms of the legal consequences. Similar issue was considered by a co-ordinate Bench of this Tribunal in O.A. No. 060/00157/2018 titled **PROF. C.S GAUTAM & ANOTHER VS. U.T. CHANDIGARH ETC**. decided on 21.04.2015 in which it was held, inter-alia, that earlier the theory of empty/useless formality was discarded on the premise that violation of the rules of natural justice is itself a prejudice. This trend has decisively changed in the recent years and, as of now, it is settled law that violation of the rules of natural justice is not sufficient to invalidate the quasi-judicial and administrative orders unless the applicant/petitioner pleads and prima facie shows that his cause has been prejudiced. Thus, the applicant cannot derive any benefit on this principle relied upon by him as he has failed to show any prejudiced having caused to him.

11. At last, learned counsel for the applicant placed reliance upon decision in the case **RAFIQ MASIH ETC**. (supra), to argue that if recovery is going to cause hardship to certain category of employees, it should not be made more so when there is no concealment of fact on the part of the applicant.

12. It is not in dispute, that after the aforesaid decision, the Hon'ble Apex Court in the case of **HIGH COURT OF PUNJAB & HARYANA & OTHERS VS. JAGDEV SINGH** reported in (2016)

14 SCC 267 has held that recovery is permissible. In this case, the court held that "The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking." Thus, it is not totally impermissible to make recovery and principle has to be applied on case to case basis.

13. Last of all, the issue as raised in this case, was considered in O.A. No. 060/00471/2017 titled **TIKA RAM VS. UNION OF INDIA & OTHERS**, decided on 1.8.2018, elaborately and court is not required to delve over the issue all over again. The relevant part of the order is reproduced as under:-

> "9. We have given thoughtful consideration to the entire matter. The only question that arises here for our consideration is whether the respondents can effect recovery of the excess amount paid to the applicant, or not?
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> 10. The answer to the above poser lies in Rule 15 of the Railway Rules, 1993. Therefore, the same reads as under for better appreciation.
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> "Rules, 1993 (hereinafter the "Pension Rules") read as follows:
>
> "15. Recovery and adjustment of Government or railway dues from pensionary benefits-
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> (1) It shall be the duty of the Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.
>
> (2)The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the amount of the retirement gratuity or death gratuity or terminal gratuity and recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).
>
> (3) For the purposes of this rule, the expression "railway or Government dues" includes-
>
> (a) dues pertaining to railway or Government accommodation including arrears of license fee, as well as damages (for the occupation of the Railway or Government accommodation beyond the permissible period

after the date of retirement of allottee) if any; (Authority: Railway Board letter No. F(E)III/2010/PNl/4 dated 28.03.12)

(b) xxx xxx xxx

(4) (i) A claim against the railway servant may be on account of all or any of the following:

-(a) xxx

(b**) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance**,

(c) xxx

(ii) Recovery of losses specified sub-clause (a) of clause (i) of this sub-rule shall be made subject to the conditions laid down in rule 8 being satisfied from recurring pensions and also commuted value thereof, which are governed by the Pension Act, 1871 (23 of 1871). A recovery on account of item (a) of sub-para (i) which cannot be made in terms of rule 8, and any recovery on account of sub-clauses items (b) and (c) of clause (i) that cannot be made from these even with the consent of the railway servant, the same shall be recovered from retirement, death, terminal or service gratuity, which are not subject to the pensions Act, 1871 (23 of 1871). **It is permissible to make recovery of Government dues from the retirement, death terminal or service gratuity even without obtaining his consent, or without obtaining the consent of the member of his family in the case of a deceased railway servant**.

(iii) Sanction to pensionary benefits shall not be delayed pending recovery of any outstanding Government dues. If at the time of sanction, any dues remain un-assessed or unrealised the following courses should be adopted:

-(a) In respect of the dues as mentioned in sub-clause (a) of clause (i) of this sub-rule. A suitable cash deposit may be taken from the railway servant or only such portion of the gratuity as may be considered sufficient, may be held over till the outstanding dues are assessed and adjusted.

(b) In respect if the dues as mentioned in sub-clause (b) of clause (i) of this sub-rule-(1) The retiring railway servant may be asked to furnish a surety of a suitable permanent railway servant. If the surety furnished by him is found acceptable, the payment of his pension or gratuity or his last claim for pay, etc. should not be withheld and the surety shall sign a bond in Form 2.

(2) If the retiring railway servant is unable or nor willing to furnish a surety, then action shall be taken as specified in sub-clause (a) of sub-clause (iii).

(3)The authority-sanctioning pension in each case shall be competent to accept the surety bond in Form 2 on behalf of the President.

(c) xxx

(iv) In all cases referred to in sub-clauses (a) and (b) of clause (i) of this sub-rule, the amounts which the retiring railway servants are required to deposit or those which are withheld from the gratuity payable to them shall not be disproportionately large and that such amount are not withheld or the sureties furnished are not bound over for unduly long periods. To achieve this, the following principles should be observed by all the concerned authorities:-

(a)The cash deposit to be taken or the amount of gratuity to be withheld should not exceed the estimated amount of the outstanding dues plus twenty-five per centum thereof.

(b) Dues mentioned in clause (I) of this sub-rule should be assessed and adjusted within a period of three months from the date of retirement of the railway servant concerned.

(c) Steps should be taken to see that there is no loss to Government on account of negligence on the part of the officials concerned while intimating and processing of a demand. The officials concerned shall be liable to disciplinary action in not assessing the Government dues in time and the question whether the recovery of the irrecoverable amount shall be waived or the recovery made from the officials held responsible for not assessing the Government dues in time should be considered on merits.

(d) As soon as proceeding of the nature referred to in rule 8 are instituted, the authority which instituted the proceedings should without delay intimate the fact to the Account Officer."

11. Rule 15 of Railway Rules, 1993 is very clear on this subject. It empowers the respondents to effect recovery and make adjustment of government dues such as over payment on account of pay and allowances or other dues like house rent, Post Office or Life Insurance Premia or outstanding advance, from the retirement, death terminal or service gratuity of its employees, even without obtaining his consent. It is not a matter of dispute that the applicant is not entitled to grant of grade pay of Rs.5400/-w.e.f. 01.07.2009, under the MACP Scheme, and it was erroneously granted to him. The action of the respondents in withdrawing that benefit while rectifying their mistake of overpayment has already been upheld by this Tribunal, while dismissing the O.A. filed by the applicant, vide its order dated 03.11.2015. Since at that time, there was no order of recovery, therefore, no finding was recorded by this Court qua that. Since the applicant was not entitled to the grade pay of Rs. 5400/-, which was erroneously granted to him, therefore, the action of respondents in effecting recovery in terms of Rule 15 of Railway Rules, 1993, cannot be held to be illegal.

12. We have minutely gone through the judgment cited in the case of Rafiq Masih (supra) and find that Lordships have passed that order, in general, that no recovery can be effected from low paid employees like Group C and D, as it will cause hardship to them. But, here in the present case, though the applicant is a Group C employee, but he was drawing grade pay of Rs. 5400 at the time of retirement, so he cannot be said to be a low-paid employee. Therefore, to our mind, the indicated judgment will not render any assistance to the applicant herein. 13.At this juncture, we would like to and place reliance upon the ratio laid down in the case of High Court of Punjab & Haryana Vs. Jagdev Singh and Others,2016 (14) SCC267, where lordship after considering the case of Rafiq Masih (supra) have held that if there was a condition stipulated at the time of granting some extra benefit of a higher post, that in future, if any infirmity is found, the excess amount may be adjusted/recovered, it is liable to be refunded and the same is accepted by the employee, then in that eventuality, the authority exercising that option could not be faulted and the such recovery is permissible. In the present case, Rule 15 of Railway Rules, 1993 is very clear, and it empowers the respondents to recover the amount of over-payment, therefore, no fault can be found in the impugned recovery. Moreover this rule has not been declared illegal or invalid.

14. In view of the discussion above and the judicial pronouncements rendered on the subject, we find no reason to interfere with the order of recovery. The O.A. is accordingly dismissed with no order as to costs."

14. I find that the point of law laid down in the aforesaid case of Tika Ram (supra) applies on all fours to the present case. Admittedly, indicated rule 15 empowers the Railway Authorities to effect recovery and make adjustment of government dues such as over payment on account of pay and allowances or other dues

like house rent, Post Office or Life Insurance Premia or outstanding advance, from the retirement, death terminal or service gratuity of its employees, even without obtaining consent of an employee/retiree.

15. In the wake of the above discussion, Court finds that present OA is devoid of any merit and is dismissed accordingly, leaving the parties to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH.
DATED: 09.10.2019

HC*