IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.20/723/2019

Date of Order: 16.08.2019

Between:

B. Sanjeeva Rao, aged 56 years,
S/o. B.V.L. Narasimha Rao,
WTM Grade II Signal and Telecom/ Guntur,
Group C (Retired), Guntur Division,
South Central Railway,
Manager/ RAIL TEL/Secunderabad/ Guntur,
R/o. Flat No. 315, Kanchan Towers,
Pattabipuram, Guntur – 522 034.

… Applicant

And

1. Union of India,
   Represented by the General Manager,
   South Central Railway,
   Rail Nilayam, Secunderabad – 500 025.

2. The Divisional Railway Manager,
   South Central Railway, Guntur – 522006.

3. The Senior Divisional Finance Manager,
   South Central Railway, Guntur – 522006.

4. The Senior Divisional Personnel Officer,
   South Central Railway, Guntur – 522006.

5. The Manager,
   Rail Tel Corporation of India Ltd,
   2nd Floor, Rail Nilayam,
   Secunderabad – 500 025.

… Respondents

Counsel for the Applicant … Mr. M. Bhaskar,

Counsel for the Respondents … Mrs. A.P. Lakshmi, SC for Rlys

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER
{As per B.V. Sudhakar, Member (Admn.) }

2. The OA is filed for recovery of overpayment of an amount of Rs.4,32,449/- from the SB pension account of the applicant.

3. Brief facts of the case are that the applicant was appointed as Casual Labour on 1.02.1987 in the respondents organisation and thereafter granted temporary status on 6.2.1988. Applicant went on deputation to RAILTEL Corporation as Section Supervisor from 2003 to 2009 and later got absorbed in the said Corporation with effect from 8.5.2009 as Asst. Manager by rendering technical resignation to the respondents organization i.e. South Central Railway. Presently, applicant is working as Manager in the 5th respondent Corporation. After a period of 7 years, respondents have ordered recovery of Rs.4,32,449/- as overpayment of dearness relief. Applicant made several representations from 2016 onwards and the last one being 31.1.2019 in regard to recovery of excess payment @ Rs.6000 per month. However, there being no relief, applicant has filed the OA.

4. The contention of the applicant is that the recovery of the excess amount paid after a lapse of 7 years is against the law laid down by the Hon'ble Supreme Court in the State of Punjab Vs. Rafiq Masih.

5. Heard both the counsel and perused the pleadings on record.

6. I) The applicant after tendering technical resignation from the respondents organisation has joined RAIL TEL Corporation and is presently working as Manager. Applicant was granted pension and while paying the pension, respondents have wrongly drawn Dearness Relief more than the eligibility and paid to the applicant. Respondents after a lapse of 7 years ordered recovery of the excess amount paid to the applicant at the rate of Rs.6000 per month. Such a decision of the respondents is against the law laid down by the Hon'ble Apex Court in Rafiq Masih case, as under:

> *"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."*

The case of the applicant is fully covered by the clauses (i) to (iii) of the above judgment since the applicant has retired from the respondents organisation in Group C cadre and that the order of recovery was issued after retirement and that too, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

II) Besides, identical cases were dealt by the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Writ Petition No.27152 of 2018 and batch involving the respondents. The operative portion reads as under:

> *"In the light of this authoritative pronouncement by the Supreme Court, it is not open to the petitioners to resort to recovering the excess pension amount paid by them to the retired respondents-applicants over a long period of time on the ground that they had been wrongly extended dearness relief. Similarly, it is also not open to the petitioners to seek to recover the excess amounts paid, be it towards service pension or family pension, owing to the wrong fixation by the authorities themselves, from the railway servant's widow, the first respondent in W.P. No. 32357 of 2018.*
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> *Be it noted, at the cost of repetition, that in so far as the SCR was concerned, the re-employed respondents-applicants attained the status of retirement from its service long back and therefore, the recoveries sought to be made from such 'retired employees' more than five years later clearly fall foul of Clause (ii) set out in RAFIQ MASIH[1] supra.*
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> *That apart, it is not disputed by Sri. C.V. Rajeeva Reddy, learned counsel, that most of the respondents-applicants belong to Group 'C' service or Group 'D' service and they satisfy Clause (i) of RAFIQ MASIH[1] also and therefore, recoveries from them is impermissible. Further, as the excess pension amounts have been paid to all the respondents-applicants for over a decade in most of these cases and, in any event, for more than five years, Clause (iii) of RAFIQ MASIH[1], set out supra, is also attracted.*
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> *Thus, three of the situations recognized by the Supreme Court, as ones where recoveries by employers would be impermissible in law, are squarely made out presently as the cases on hand unmistakably fall within Clauses (i), (ii) and (iii), set out supra, in RAFIQ MASIH[1].*

Further, going by the observations made in CHANDI PRASAD UNIYAL[6], relying on SYED ABDUL QADIR[5] and COL.B.J. AKKARA[4], we find no merit in the contention of Sri. C.V. Rajeeva Reddy, learned counsel, that there is any scope for drawing a distinction between RAFIQ MASIH[1] and the earlier decisions of the Supreme Court, referred to supra, whereby the cases of the respondents-applicants can be dealt with differently.

On the above analysis, this Court finds that the contentions urged by Sri. C.V. Rajeeva Reddy, learned counsel, are devoid of merit. The orders passed by the Tribunal do not warrant interference either on facts or in law and are therefore confirmed.

The writ petitions fail and are accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs."

III) Therefore the case on hand is fully covered by the above verdict of the Hon'ble High Court. Yet the ld. respondents counsel insisting that they would like file a reply statement is surprising. The law once well settled has to be adhered to. In fact respondents have themselves issued memo RBE 72/2016 dated 22.06.2016 based on the judgement of the Hon'ble Supreme Court in Rafiq Masih case. Keeping the above memo in view, this Tribunal did issue an order dt. 28.09.2018 in OA Nos. 80/2017 & batch, directing the respondents as to not drive employees to the Tribunal, but to examine the issue as per the provisions of the said memo and law for resolving the issue themselves. Yet, cases of this nature surfacing will cause wastage of National resources in terms of money, manpower and the precious time of the respondents as well as of this Tribunal. First Respondent may like to take note of the same and direct the lower formations accordingly.

IV) Nevertheless, reverting to the issue on hand, respondents are therefore directed to dispose of the representations made by the applicant

in the light of the observations of the Hon'ble Supreme Court and the Hon'ble High Court cited supra as well as the memo referred to by issuing a speaking and a well reasoned order within a period of 8 weeks from the date of receipt of this order. Till the representations are disposed there shall be no recovery of the excess paid amount.

V) With the above directions the OA is disposed of at the admission stage with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 16th day of August, 2019

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