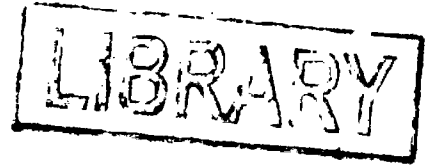


CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 350/00499/2014

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr.K.M.Srivastava, Administrative Member

MRINAL KANTI NAG

VS

UNION OF INDIA & ORS.

For the applicant : Mr.A.P.Deb, counsel

For the respondents : Mr.M.K.Bandyopadhyay, counsel

Order on : 30.5.16

O R D E R

Ms.Bidisha Banerjee, J.M.

Heard both the Id. Counsels and perused the materials on record.

2. The applicant a retired Railway servant would be aggrieved as 10 days prior to his retirement he received a notice on 19/20.9.13 in regard to release of DCRG settlement payment, stating that he adopted two sons at a time which was "adverse of Hindu Maintenance Adoption Act", on account of the pass and medical privilege availed in favour of two adopted sons and till the clarification asked for is received from the Senior Law Office, Kolkata, DCRG would be withheld.

3. Id. Counsel for the applicant would vociferously submit that the employee took adoption of two children by separate deed of adoption executed on 30.7.98 which was duly submitted before the authorities and acted upon in order to grant pass and other privileges in favour of such sons.

4. The reply filed by the respondents would also reveal and demonstrate that the applicant had submitted a letter on 21.8.98 informing that his wife expired long ago, that he was childless and so he adopted two children who were his nephews. He prayed for inclusion of their names in the pass

declaration. He duly submitted copies of birth certificates of the two children and deed of declaration of adoption. With the permission of the competent authority the names of such adopted sons were even included in the pass declaration and medical identity cards were issued to him.

Therefore the position that stood settled way back in 1998 was sought to be re-opened at the verge of retirement to deny DCRG to the applicant.

5. In our considered opinion the Railway Authorities having allowed the applicant to avail pass in favour of two adopted sons since 1998 would not be allowed to turn around to deny the benefit or take away value of such travel cost from the retiral benefits of the applicant, in absence of any fraud, inducement or suppression of any material fact on the part of the applicant.

6. In ***State of Punjab & Ors. -vs- Rafiq Masih (White Washer) [AIR 2015 SC 696]*** the law laid down is 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 hereinabove, 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."

that too //

Therefore recovery from the applicant ^{that too //} from his retiral dues or denial of DCRG to realise the dues was highly improper.

7. That apart, it could be noted that the Railways neither have the mechanism nor the power to declare the adoptions invalid. Therefore they were not justified in withholding the DCRG amount of the applicant upon

questioning the legality of the adoptions without getting them nullified by a competent Court of Law.

8. In such view of the matter the OA is allowed. The respondents are directed to release the withheld DCRG amount with interest @ 8% within one month from the date of communication of this order

9. Accordingly the OA would stand disposed of. No order is passed as to costs.

(K.N. SRIVASTAVA)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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