

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT NAGPUR.

O.A.211/00037/2018

Dated this Tuesday the 24th day of September, 2019

Coram: Dr.Bhagwan Sahai, Member (Administrative)

P. Mohanan Nair,
Retired Tech-I,
SEC Railway,
R/o.Plot No.90, Summed Nagar,
Uppalwadi P.O. Meshram Lay out,
Nari Road, Nagpur - 440 026.

O/o the South East Central Railway,
Nagpur - 440 001. .. Applicant.

(By Advocate Shri S.K. Verma).

Versus

1. Union of India, through
its Chairman,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi - 110 001.
2. The Divisional Railway Manager,
South East Central Railways,
Kingsway, Station Road,
Nagpur - 440 001.
3. The Senior Divisional Personnel
Officer, South East Central
Railways, Kingsway,
Station Road, Nagpur - 440 001.
4. The Senior Divisional Finance
Manager, South East Central
Railways, Kingsway,
Station Road,
Nagpur - 440 001. .. Respondents.

(By Advocate Shri N.P. Lambat).

Order reserved on : 21.08.2019

Order delivered on : 24.09.2019.

O R D E R

Shri P. Mohanan Nair has filed this O.A. on 08.02.2018 seeking quashing and setting aside of order dated 08.12.2017 (Annex-A-1). issued by respondent no.3 i.e. Sr. Divisional Personnel Officer, South East Central Railway, Station Road, Nagpur rejecting his representation dated 11.10.2017 and order for immediate refund of Rs.1,19,880/- recovered from his D.C.R.G. payment by alleged wrong pay fixation under Modified Assured Career Progression (MACP) Scheme in year 2011 with 18% interest.

2. Summarised facts:

2(a). The applicant has stated that he was appointed as Peon with South East Central Railway, Nagpur on 01.09.1977 and posted as Shed Khalasi from 15.01.1981. Then he was promoted as Technician Grade-3, 2 and 1. He retired on 30.11.2016 while working as Technician-1. A copy of the Pension Payment Order issued to him along with statement of his service particulars given by the respondents as per Memo dated 28.09.2016 are at Annex-A-2.

2(b). As per promotion order dated 16.07.2011 issued by respondent no.3, the applicant was promoted as Technician-1 Fitter in Pay Band-II

with grade pay of Rs.2800/-. He was also granted MACP 2 and 3 simultaneously with effect from 01.09.2008 in the pay band of Rs.5000-20200/- with grade pay of Rs.2400/- and on promotion as Technician-1. While two financial upgradations were allowed under ACP Scheme during entire service career in absence of any promotion in the normal course, under the MACP Scheme issued by DOPT OM dated 19.05.2009, three financial upgradations have been allowed at intervals of 10, 20 and 30 years of continuous regular service. However, in the copy of settlement dues and payment of pensionary benefits received by the applicant, it was mentioned that there had been over payment of Rs.1,19,880/- and Rs.1,58,055/- were deducted from his D.C.R.G. entitlement. Thus he received D.C.R.G. payment of only Rs.4,83,168/-.

2(c). Aggrieved by this, the applicant made two representations on the same date i.e. 11.10.2017 for refixation of his pension at the rate of Rs.40,400/- as his last drawn pay and against the recovery made from his D.C.R.G. (Annex-A-5). But they were rejected by the respondents vide impugned order dated 08.12.2017 (Annex-A-1) stating that there had been over payment of

Rs.1,18,569/- when the applicant's pay was refixed on promotion as Technician-2 vide order dated 14.11.2008, grant of 2nd MACP benefit from 01.09.2008 and grant of further promotion as Technician-1 vide order of 16.07.2011.

2(d). The applicant claims that before this reply of the respondents, he had never been informed earlier about wrong fixation of his pay in 2011 and after more than 5 years the amount of Rs.1,19,880/- was recovered from his pensionary benefits i.e. D.C.R.G. This action of the respondents is violative of Article 14 of the Constitution. The respondents failed to quote any rule of MACP Scheme under which he had been granted the benefit of MACP-2 and 3 on the same date i.e. from 01.09.2008 with the same grade pay of Rs.2400/-.

2(e). About these details the applicant was informed only through the order of 18.12.2017 without giving any reason for deduction for the alleged wrong pay fixation done for him 5-6 years earlier. Therefore, this O.A. has been filed.

3. Contentions of the parties:

In the O.A., rejoinder and response to sur-rejoinder of the respondents and during arguments by his counsel on 21.08.2019, the

applicant has contended that -

3(a). he had no knowledge that the payment received by him from 2011 as per pay fixation under MACP Scheme was erroneous and in excess of what was due to him. Therefore, the order of recovery is liable to be set aside;

3(b). the excess amount of emoluments/allowances of Rs.1,19,880/- claimed by the respondents stated to have been paid on fixation of his pay under MACP-3 in the year 2011 and thus recovered from his DCRG after his superannuation in 2016 without giving him prior notice or information was not on account of misrepresentation or fraud committed by him. The alleged wrong/irregular amount paid to him as a result of wrong pay fixation should have been detected by the respondents immediately within a short period of time and, therefore, the impugned order should be set aside;

3(c). since the applicant's case is similarly situated with those covered under the above Apex Court decisions in case of **Syed Abdul Qadir and others Vs. State of Bihar and others, (2009) 1 SCC (L&S) 744** and in case of **State of Punjab and others Vs. Rafiq Masih and others, (2015) 2 SCC 334** as well as DOPT OM dated 02.03.2016, the

impugned order of the respondents dated 08.12.2017 should be set aside;

3(d) . the respondents have failed to cite any rule under the MACP Scheme under which his last pay drawn i.e. Rs.40,400/- has been refixed as Rs.38,100/- to justify the recovery of Rs.1,19,880/-. The contention of the respondents that while fixing the pay of the applicant on his promotion as per earlier order dated 14.11.2008 there was an error in granting one more increment is misleading and incorrect and, therefore, the recovery of Rs.1,19,880/- is wrong;

3(e) . even if there was a mistake in fixation of his pay on grant of MACP benefit in the year 2008, subsequent recovery of Rs.1,19,880/- from DCRG of the applicant on his retirement is not permissible as per the Apex Court decision in State of Punjab & others Vs. Rafiq Masih & others, because the applicant was a lower grade employee at the time of superannuation and the recovery made from him has caused hardship to him;

3(f) . the respondents have suppressed the fact that the undertaking given by the applicant is in respect of payment of pension to be made by the Syndicate Bank, Nagpur. A common format of undertaking for every pensioner is to be filled up

before payment of pension to the Bank. At the time of his promotion during 2008 and 2011, the applicant had not given any undertaking for refund of over payment if detected in future and, therefore, the O.A. should be allowed.

In their reply, sur-rejoinder and during the arguments the respondents have contended that-

3(g). at the time of superannuation of the applicant, his last pay drawn was Rs.40,400/- but on final checking of his service record in terms of Para 1013-B of Indian Railway Establishment Manual (IREM) Vol.I (1989 Edition) and of Administration and Finance Code/IRFC Chapter, in (Para 1228 to 1235), reference to the DOPT OM is irrelevant. The applicant had never been granted any benefit under ACP Scheme and, therefore, the question of limitation of 5 years period for recovery is unjustified;

3(h). while fixing his pay on promotion as Technician Grade-2 as per order dated 14.11.2008, erroneously one more increment was granted to him but with grant of MACP benefit, the increment got nullified but still the applicant continued to enjoy the undue benefit of that erroneous pay fixation;

3(i). in the deduction of Rs.1,58,055/-, other

recoveries were also included along with the overpayment of Rs.1,19,880/-. The representation of the applicant dated 11.10.2017 was correctly decided by the competent authority after considering his full service record according to which his last pay worked out as Rs.38,100/- and pension of Rs.19,050/- and DCRG net payable amount Rs.4,83,168/-. For the applicant the above payments along with amount of commuted pension, leave encashment, and CGEGIS were released to the Syndicate Bank, Kamptee Road, Nagpur along with details of over payment recovered from the settlement dues;

3(j). as observed by the associate accounts during final review of his pension papers, the applicant's pay had to be refixed on his promotion as Technician-2 vide order dated 14.11.2008 and as per Railway Board guidelines, he was granted two MACP benefits with grade pay of Rs.2000/- and Rs.2400/- from 01.09.2008. He was also granted promotion as Technician Grade-1 as per order dated 16.07.2011 and his pay was accordingly revised with grade pay of Rs.2800/-. From these details it is evident that the benefit of pay fixation was granted to the applicant twice i.e. once on account of benefit of MACP and then on actual

promotion which resulted in overpayment of Rs.1,19,880/-;

3(k). the applicant had submitted an undertaking on 05.11.2016 to the Syndicate Bank, Nagpur that he would refund or made good any amount to which he was not entitled or any amount which may be credited to his account in excess of the amount to which he was or would be entitled. Therefore, as per his undertaking the overpayment made to him has been recovered and the O.A. should be dismissed.

4. Analysis and conclusions:

I have perused the OA memo and its annexes, rejoinder of the applicant, reply and sur-rejoinder filed by the respondents as well as arguments advanced by both counsels on 21.08.2019. On their careful consideration and analysis, the clear position emerges as follows:

4(a). The O.A. reveals that the applicant has wrongly joined Chairman, Railway Board as respondent no.1. In fact, instead of him, the applicant should have impleaded Secretary to Railway Board as respondent no.1. The applicant has wrongly mentioned recovery of Rs.1,58,055/- as of overpayment. As per details submitted by the respondents in their reply, this total amount was

not of recovery of the overpayment. In fact the recovery of overpayment has been made only of Rs.1,19,880/- and rest of the amounts were recovery of other dues such as Identity Card, RELHS, etc. This reveals lack of clarity in the applicant's mind about details of deductions from his DCRG.

4 (b) . As per details of service record of the applicant submitted by him (Annex-A-3, page 11), he was regularised in service as Shed Khalasi (in the pay scale of Rs.196-232) from 20.07.1984, then he got promoted as Khalasi Helper from 21.06.1988 (in pay scale of Rs.800-1150 i.e. 1st promotion). Then he was again promoted as Technician Grade-3 from 16.12.2005 in the pay scale of Rs.5200-20200 (2nd promotion). Then he was granted benefit of MACP 2 and 3 from 01.09.2008 with the grade pay of Rs.2000/- and Rs.2400/-. Then he was also given regular promotion as Technician Grade-2 from 14.11.2008 (third promotion) and further promoted as Technician Grade-1 from 16.07.2011 with grade pay of Rs.2800/- (fourth promotion).

4 (c) . The above details reveal that from 1984 onwards the applicant got three promotions as Khalasi Helper, Technician Grade-3, Technician Grade-2 and Technician Grade-1. Even if his

service is counted from 01.09.1977 till 31.08.2008 and the earlier two promotions were ignored, at the most on completion of 30 years of service he would have been given benefit of only one financial upgradation under the MACP Scheme. Therefore, grant of benefit of two MACP upgradations from 01.09.2008 was not correct. Then he also got the third promotion from 14.11.2008.

4(d). While the applicant has attempted to benefit from the Apex Court decision in the case of State of Punjab and others Vs. Rafiq Masih and DOPT OM dated 02.03.2016 issued thereafter, it is important to note in the above Apex Court decision the third situation i.e. recovery from the employees is not permissible when the excess payment has been made for a period in excess of five years before the order of recovery is issued. Since the recovery from the applicant has been made from his pensionary benefits (DCRG) at the time of his retirement on 30.11.2016, the amount received by the applicant in excess of what was due to him during the period of five years preceding 30.11.2016 is recoverable.

4(e). Moreover, besides the above Apex Court decision, it is important to note that as

explained by the respondents, before his retirement on 30.11.2016, the applicant himself had submitted a clear undertaking on 05.11.2016 (page 64) that he would refund or make good any amount to which he was not entitled or any amount which may be credited to his account, in excess of what he was or would be entitled. Therefore, he is bound to honour his own undertaking. Consequently he is bound to refund or repay any excess payment made to him over and above what was lawfully due to him. This is as per the Apex Court decision in **High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh, 2016 AIR (SCW) 3523 decided on 29.07.2016.**

4(f). In this context, it is also to be kept in mind the Apex Court decision in case of **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors., 2012(7) Scale 376, decided on 17.08.2012**, which (in Para 15) held that except for few instances pointed out in Syed Abdul Qadir case and in Col. B.J. Akkara case, the excess payment made due to wrong or irregular pay fixation can always be recovered.

4(g). As per the relevant instructions, before the retiral benefits are released to a retiring employee, based on scrutiny of his/her whole

service record, if any overpayment is detected, it is to be recovered from him or her as per the law and the above Apex Court decisions. Thus the action taken by the respondents in the present case based on re-examination of the applicant's service record which revealed overpayment made to the applicant because of incorrect fixation of pay at the time of grant of MACP upgradations and promotion in 2008 is correct in recovering the over paid amount from his DCRG.

4 (h). On careful analysis of the above facts of the case as well as the view taken in the Apex Court decisions in Jagdev Singh and Chandi Prasad Uniyal cases, the action of the respondents in recovering Rs.1,19,880/- from DCRG of the applicant was justified. The O.A., therefore, has failed in making out the case against their action and the impugned order. Hence it fails.

5. Decision:

The O.A. is dismissed. No costs.

(Dr.Bhagwan Sahai)
Member (A).

H.

5/19

