

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/630/2019

Date of Order: 24.09.2019

Between:

1. V. Venkateshwar Rao
S/o Late V. Venkatesh
Age 61 years
Occupation: Superintendent (Retired)
Resident of H.No.1-8-701/A
Padma Colony, Nallakunta
Hyderabad – 500 044.
2. A. Sudharshanam
S/o Late A. Bhoopathi
Age: 61 years
Occupation: Superintendent (Retired)
Resident of Flat No.303, Jayashekara Nivas
Nallakunta, Hyderabad – 500 044.
3. V. Ramanujulu
S/o Late V. Gopalam
Age: 62 Years
Occupation: Superintendent (Retired)
Resident of C/109, Sachivalaya Nagar
Vanasthalipuram, Hyderabad – 500 070.
4. P. Yadagiri Rao
S/o Late P. Nagabhusanam
Age: 62 years
Occupation: Superintendent (Retired)
Resident of Flat No.111, MAPLE
Heights, Saketh Road
Kapra, Hyderabad – 500 062.
5. B. Satyanarayana
S/o B. Ramaiah

Age: 62 years
Occupation: Superintendent (Retired)
Resident of H.No.4-19/31, Laxmi Nagar
Phase-II, Dhammaiguda, Hyderabad – 500 083.

6. G. Sudarsan
S/o Late Sridhara Char
Age: 60 years
Occupation: Superintendent (Retired)
Resident of Plot no.102, Indraprastha 1
Hasthinapur Central, Hyderabad – 500 079.
7. T. Subramanyam
S/o T. Venkata Rao
Age: 63 years
Occupation: Assistant Director (Retired)
Resident of H.No.1-6-18/3, 3rd Bus Stop
Chaitanyapuri, Hyderabad – 500 060.
8. P. Ashok
S/o P. Shankaraiah
Age: 60 years
Occupation: MTS (Retired)
Resident of EWSH-36, IIInd Floor
New Santhosh Nagar Colony
Hyderabad – 500 059.
9. T. Narsimha
S/o T. Shankaraiah
Age 60 years
Occupation: Assistant (Retired)
Resident of H.No.6-73, Brundavan Colony
Bandlaguda Jagir,
Rajinder Nagar, R.R.District.
10. T.L.Sandhya Rani
D/o Jaipal
Age: 60 years
Occupation: Superintendent (Retired)
Resident of H.No.11-5-44, ABCD

Bazarghat, Red Hills, Hyderabad – 500 004.

11. O.K.Chandra Shekhar
S/o O. Krishna Murty
Age: 61 years
Occupation: Superintendent (Retired)
Resident of H.No.10-6-59, Plot No.106
Road no.7, Brundavan Colony, Hyderabad – 500 035.
12. V.V. Kondanda Rao
S/o Late V. Venkateswarlu
Age: 62 years
Occupation: Superintendent (Retired)
Resident of Flat No.106, Sri Jaya Habitat
Road No.3, Nizampet
Hyderabad – 500 090. ... Applicants

AND

1. Union of India, represented by the Principal Secretary
Ministry of Employment and Training
Govt. of India, Shramshakti Bhavan, New Delhi.
2. The Regional Director
ESI Corporation, Regional Office
5-9-23, Hill Fort Road
Adarshnagar, Hyderabad – 500 063.
3. The Dy. Director (Fin.)
ESI Corporation
Regional Office
5-9-23, Hill Fort Road
Adarshnagar, Hyderabad – 500 063. ... Respondents

Counsel for the Applicant ... Mr. P.S.Ramachandra Murthy
Counsel for the Respondents ... Mr. N. Srinivasa Rao, SC for ESIC

CORAM:

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

ORAL ORDER

2. The OA is filed in regard to recovery of Leave Encashment granted to the applicants when they were in service but ordered to be recovered after retirement.

3. Brief facts of the case are that the applicants have retired from the respondents' organisation as Group B/C employees in the period from 31.5.2016 to 31.08.2018. The respondents, vide their order dated 15.03.2019, have ordered recovery of Leave Encashment of the applicants after they retired from service. The applicants represented against such recovery citing the Judgement of the Hon'ble Supreme Court in **State of Punjab & Ors. v. Rafiq Masih (White Washer)**, (Civil Appeal No.11527 of 2014, decided on 18.12.2014) case. However, as the request for not to recover the amount was not conceded to, the OA has been filed.

4. The contentions of the applicants are that the recovery amount ranges from Rs.2500/- to Rs.3000/- per month and, hence, it is a burden on the applicants. The Leave Encashment was sanctioned by the competent authority as per the prevailing norms of the respondents' organization. There was no fraud committed in applying for the leave encashment. Recoveries are bad in law in view of the Hon'ble Supreme Court Judgement in Rafiq Masih case (supra).

5. Respondents in their reply statement opposed the contentions of the applicants by stating that the recovery was made from the Dearness Relief and not from the pension. Amount of recovery has also been reduced than the amount indicated by the applicants. The applicants are not put to any hardships because the total amount of recovery is less than Rs.10000/- in respect of 5 petitioners and less than Rs.40,000 in respect of 7 petitioners. The amount of recovery ordered is small and in comparison with the retirement benefits granted to the applicants. The respondents have a right to recover the amount which have been wrongly paid. Further, applicants have been paid arrears of 7th CPC and the amount proposed is less than the arrears paid to them. Hon'ble Chennai Bench of this Tribunal has dealt with a similar case filed by the ESIC Employees Federation and dismissed the OA on the ground that it is misconceived. The recovery ordered is neither harsh nor arbitrary. The retirement benefits of the applicants are Rs.20 to Rs.30 lakhs and in this context, recovery ordered should not cause any strain to the applicants. Respondents also cited the Hon'ble Supreme Court observations that "No individual should benefit at the cost of exchequer" and in the instant case the applicants are claiming for unjust enrichment at the cost of the Public Exchequer, which should be discouraged. When the petitioners were entitled for arrears of pay from 01.01.2016

they also have the responsibility to refund the amount as a part of package that came into effect from 01.01.2016.

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

7. (I) The applicants have retired from the respondents organization during the period 31.05.2017 to 31.08.2018. While they were in service, the applicants have been paid certain amount as Leave Encashment by following the rules of the respondents organization. Leave Encashment was duly sanctioned by the competent authority. Later, due to the revision of the 7th CPC, the respondents state that they had to recover the amount which have been sanctioned as per the rules prevailing at the time of the sanction of the Leave Encashment. In this regard, the law is well settled as per the Hon'ble Supreme Court in the **Rafiq Masih** case (supra) as under:

“12. 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 Clause (ii) above applies to the applicants since they are retired employees. It should also be noted that applicants have neither misguided, misrepresented nor committed any fraud in order to secure the amounts as granted by the respondents. Therefore, it is not the mistake of the applicants. Respondents on their own volition granted the amount of Leave Encashment following the rules of the respondents organization. Ordering pensioners to deposit the alleged excess amount is improper. Respondents could have granted the leave encashment with a conditional clause, as they were aware that the 7th CPC recommendations were round the corner. Hence, it was an error on their part. Therefore, for the mistake of the respondents, applicants

should not be penalized as observed by Hon'ble Apex Court in catena of the Judgements referred to hereunder:

(a) **A.K. Lakshmi**pathy v. **Rai Saheb Pannalal H. Lahoti Charitable Trust**, (2010) 1 SCC 287

“they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents.”

(b) **Rekha Mukherjee** v. **Ashis Kumar Das**, (2005) 3 SCC 427 :

“36. The respondents herein cannot take advantage of their own mistake.”

(c) The Apex Court in a recent case decided on 14.12.2007 (**Union of India** vs. **Sadhana Khanna** (C.A. No. 8208/01) held that the mistake of the department cannot be recoiled on employees.

(d) In yet another recent case of **M.V. Thimmaiah** vs. **UPSC** (C.A. No. 5883-5991 of 2007 decided on 13.12.2007), it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.

(e) It has been held in the case of **Nirmal Chandra Bhattacharjee** v. **Union of India**, 1991 Supp (2) SCC 363 wherein

the Apex Court has held “The mistake or delay on the part of the department should not be permitted to recoil on the appellants.”

Therefore, based on the observations of the Hon’ble Supreme Court cited above, the recovery ordered from the applicants is arbitrary and illegal.

(II) Respondents have also cited the observations of the Hon’ble Chennai Bench of this Tribunal, wherein a similar case pertaining to serving employees has been adjudicated and dismissed, on the ground that the OA is misconceived. The Hon’ble Chennai Bench dealt with an issue pertaining to serving employees. There is a distinction between serving employee and pensioner. The pensioner receives half of the pay on his retirement, on which he depends to live the rest of his life. There will be no other source of income to depend upon. Usually pensioners buy/construct houses at the fag end of their service and have to pay monthly instalments towards the loan taken for buying/constructing the houses. Some of them have to discharge the responsibility of marrying of their wards and as a result, the retirement benefits received are mostly used up. Hence, their dependence on pension becomes acute. Applicants are no different as per the averments made in the rejoinder. Any recovery from the pension would, therefore, subject them to severe financial strain.

(IV) Therefore, the contentions of the respondents that the applicants would not be subject to any difficulty by ordering the recovery, is not sustainable. Moreover, the verdict of Chennai Bench of this Tribunal in OA No.425/2019 (**Vijay S. Tate & Others** v. **Union of India & Anr.**, decided on 27.03.2019) was in regard to serving employees and not in respect of pensioners. Hence, the said judgement is not relevant.

(V) Nevertheless, respondents organisation, being a public institution, it is open to them to examine as to why a decision was taken in haste to allow leave encashment, without awaiting for the latest orders on the subject. If there is a loss caused to the respondents, then those responsible for causing the loss need to be made accountable. Respondents may examine as is deemed fit.

(VI) Thus, from the aforesaid, it is abundantly clear that the action of the respondents was against the observations of the Hon'ble Supreme Court cited supra. Therefore, impugned order to the extent of the applicants is set aside. Consequently, respondents are directed to refund the amount already recovered within a period of three months from the date of receipt of a copy of this order and not to make any

further recovery from the applicants. Accordingly, the Interim Order issued on 01.07.2019 is made absolute.

With the above directions the OA is allowed with no order as to costs.

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

Dated, the 24th day of September, 2019

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