

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

Original Application No. 020/0724/2019

Date of Order : 24.10.2019

Between :

K.Rambabu, Aged : 56 years,
S/o K.Bhavanarayana,
Section Engineer/Telecom/Renigunta,
Group 'C' (Retired),
Guntakal Division, South Central Railway,
AGM/RAIL TEL/SECUNDERABAD,
R/o 128-11-364, Amaravathi Road,
Gorantla, Guntur – 522 034. ... Applicant.

And

1. Union of India,
Rep. by the General Manager,
South Central Railway, Rail Nilayam,
Secunderabad – 500 025.
2. The Divisional Railway Manager,
South Central Railway,
Guntakal – 515 801.
3. The Senior Divisional Finance Manager,
South Central Railway,
Guntakal – 515 801.
4. The Senior Divisional Personnel Officer,
South Central Railway,
Guntakal – 515 801.
5. The General Manager,
Railtel Corporation of India Ltd.,
3rd Block, 2nd Floor, Rail Nilayam,
Secunderabad – 500 025.
6. The Chief Manager,
Central Pension Processing Centre,
State Bank of India, LHO, Bank Street, Koti,
Hyderabad – 500 095.

7. The Branch Manager,
State Bank of India,
Danavaipeta,
Rajahmundry – 533 103.

... Respondents.

Counsel for the Applicant ... Mr.M.Bhaskar, Advocate
Counsel for the Respondents ... Mrs.A.P.Lakshmi, SC for Rlys.

CORAM:

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

ORAL ORDER

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

The OA is filed against the recovery of over payment after a lapse of 9 years.

2. Brief facts are that the applicant joined the respondents organization in a Group 'C' post and thereafter went on deputation to Rail Tel Corporation as Assistant Manager from February 2003 to February 2007. Thereafter, applicant tendered technical resignation in February 2007 to the respondents organization and got absorbed in Rail Tel. After a lapse of 9 years, 3rd respondent advised the 6th respondent to recover an amount of Rs.5,99,799/- towards over payment of Dearness Relief and followed it up by subsequent letter dated 21.11.2016 to recover an amount of Rs.7,33,798/- towards over payment of Dearness Relief. Applicant submitted representations on 19.10.2016, 02.12.2016, 15.07.2017 and 31.12.2018 against the recovery. However, respondents went ahead with the recovery at the rate of Rs.7,000/- per month and also blocked the SB and PPF account including ATM of the applicant, besides stopped payment of monthly pension without any authority from 27.07.2018.

3. It is the contention of the applicant that the pension of Rs.14,722/- was last credited on 26.07.2018. The action of the respondents to order recovery of Rs.7,33,798/- is in gross violation of the Hon'ble Supreme Court directions in case of ***State of Punjab Vs. Rafiq Masih in Civil Appeal No.11527/2014 dated 18.12.2014.***

4. Respondents opposed the contentions of the applicant and submitted that the DA arrears paid to the applicant w.e.f. 22.07.2007 to 31.10.2016 is Rs.7,33,798/- vide letter No.A/PEN/GTL/Rlys/Tech.Resgn, dated 21.11.2016. Further CPPC/SC has worked out the DA arrears amount from 22.02.2007 till 31.12.2015 as Rs.5,99,799 and started recovering the same from November 2016 onwards at the rate of Rs.7,141/- vide letter dated 22.11.2016. Regarding blocking of account, respondents state that the actual position has to be ascertained from the payee branch of SBI, Rajahmundry. As the applicant has tendered technical resignation, he is not eligible for the relief as per the Railway Board letter dated 05.08.1999. Therefore, the recovery has to be ordered in view of his ineligibility to be paid dearness relief, since he was re-employed in RCIL at a higher pay than the minimum of the scale in which he was absorbed. Consequently, 6th respondent was directed to recover the over payment of the amount cited. The applicant is re-employed in Rail Tel and therefore the recovery ordered will not cause any hardship. Applicant is only questioning the recovery of over payment, but he is not disputing the fact that he is not eligible for Dearness Relief. Hon'ble Supreme Court's case cited is not applicable to the present case. Therefore, the action of the respondents is proper and appropriate.

5. Heard Mr.M.Bhaskar, learned counsel for the applicant and Mrs.A.P.Lakshmi, learned standing counsel for the respondents and perused the pleadings on record.

6. The applicant after working in the respondents organization tendered technical resignation and got absorbed in Rail Tel Corporation. Applicant was paid Dearness Relief inadvertently by the respondents. On detecting the same, they have ordered for recovery by directing the 6th respondent - Branch Manager, SBI to adjust the same from pension due to the applicant vide letter dated 07.10.2016 and through another letter dated 21.11.2016 addressed to the General Manager, Rail Tel Corporation requesting to recover the amount of Rs.7,33,798/- from the applicant. Respondents claim that the action is in tune with the Railway Board order dated 05.08.1999. However, the action of the respondents is not as per the law laid down by the Hon'ble Supreme Court in Rafiq Masih case. The relevant portion is extracted herein :

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.

7. As seen from the above the applicant is a Group 'C' employee and the recovery has been effected against the clauses from (i) to (iii). Applicant has not misrepresented or misguided the respondents in seeking the Dearness Relief in question. The respondents who granted the Dearness Relief and on detecting the same they have ordered recovery. The action of the respondents not being in consonance with the judgements of the Hon'ble Supreme Court cited above, recovery ordered has to be termed as illegal.

8. Even the Railway Board has issued instructions not to recover excess payment, if certain conditions are satisfied as per letter No. F.No.2016/F(E)II/6/3, dated 22.06.2016. The case of the applicant is also covered by the observations of the Tribunal in OA. 133/2017, OA.977/2019 and OA.723/2019. Therefore, in sum and substance, the case of the applicant is fully covered by the judgement of the Hon'ble Supreme Court (supra) and also by the cited OAs, as well as by the Railway Board orders referred.

9. Consequently, OA succeeds. The impugned orders dated 07.10.2016 and 21.11.2016 are set aside. Respondents are directed to consider as under :

(i) No further recovery shall be made.

(ii) To refund of the amount recovered so far from the applicant towards excess payment of Dearness Relief for the period 22.07.2007 to 31.10.2016 from the monthly pension of the applicant.

(iii) Time calendered to implement the order is three months from the date of receipt of a copy of this order.

(iv) Ensure that the pension account of the applicant is unblocked by directing the Banker appropriately.

(v) With the above directions, OA is allowed. There shall be no order as to costs.

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

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