

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

**Original Application No.21/278/2018**

**Date of Order: 23.07.2019**

Between:

T. Balaram Reddy  
S/o Late T. Chinna Subba Reddy  
Group C employee  
Occ: Retd. Chief Catering Inspector/IRCTC/SC  
R/o G-1, Sai Durga Land Arcade  
Chandragiri Colony, Safilguda, Hyderabad-500 056. .... Applicant

AND

1. Union of India rep. by  
The General Manager  
South Central Railway  
Rail Nilayam, III Floor  
Secunderabad – 500 071.
2. The Chief Personnel Officer  
South Central Railway  
Rail Nilayam, IV Floor  
Secunderabad – 500 071.
3. The Financial Advisor & Chief Accounts Officer  
South Central Railway  
Rail Nilayam, III Floor  
Secunderabad – 500 071.
4. The Senior Divisional Financial Manager  
III Floor, Sanchalan Bhavan  
Secunderabad Division  
S.C.Railway, Secunderabad – 500 071.
5. The Manager  
Syndicate Bank, Centralized Pension Processing Cell  
Mukramjahi Road, Nampally  
Hyderabad.

6. The Branch Manager  
Syndicate Bank, Rail Nilayam Branch (3046)  
S.C.Railway headquarters  
Secunderabad – 500 071. .. Respondents

Counsel for the Applicant ... Mr. Mohd. Osman.  
Counsel for the Respondents ... Mrs. A.P.Lakshmi, SC for Railways

**CORAM:**

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

**ORAL ORDER**

2. The OA is filed against the orders of recovery of a sum of Rs.4,27,657/- from the applicant.

3. Applicant joined the catering department of the respondents organisation in 1977 and while working in the said department of the respondents organisation as Chief Catering Inspector, respondents took a decision to hand over the cited Department to IRCTC. The applicant along with others was forcibly sent on deemed deputation to IRCTC from Jan 2004 to Feb 2005. Later in 2006 applicant tendered technical resignation to the post he held in the respondents organization/IRCTC and joined IRCTC. After joining IRCTC, respondents directed the banker to recover an amount of Rs.4,27,657/- towards excess payment of Dearness relief paid to the applicant, vide letters dated 16.8.2017 and 12.2.2018. Aggrieved over the same, OA has been filed. At the

admission stage, an interim stay of recovery was ordered on 13.6.2018 by this Tribunal.

4. The contentions of the applicant are that the applicant was not given any notice before ordering recovery thereby violating Principles of Natural Justice. His case is fully covered by **Rafiq Masih** case as well as by the Serial Circular No.75/2016 dated 19.7.2016, issued by the respondents.

5. Respondents oppose the contentions of the applicant by stating that as the pay of the applicant on being absorbed in IRCTC was fixed at a stage more than the minimum of pay scale in which he was absorbed in IRCTC, dearness relief on pension is not admissible in accordance with Railway Board letter dated 5.8.1999. The applicant was given double DA for which he is not eligible and that the applicant is well placed on being re-employed in Public Sector Undertaking (PSU). On review ordered by Director Finance of the respondents organisation, the discrepancy of excess payment came to light. Accordingly, Banker was directed to recover the excess amount paid.

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

7. I) Primarily respondents have not issued a notice before ordering recovery. This is clear violation of the Principle of Natural

Justice. One should be heard before any action is taken detrimental to his interests.

II) Applicant after technically resigning from the respondents organisation joined IRCTC in 2006. Hence, from the date on which applicant tendered the technical resignation, applicant assumes the status as a pensioner. Respondents have made excess payment to the applicant by wrongly allowing Dearness relief on pension and ordered recovery of the same as late as in 2017/2018. Applicant being a pensioner of the respondents organisation in Group C cadre any recovery of excess payment made to him is covered by the direction of the Hon'ble Supreme Court in **State of Punjab & Others v. Rafiq Masih** (Civil Appeal No.11527 of 2014, decided on 18.12.2014), the relevant portion of which is extracted here 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.*

(III) The applicant is a Class III retired employee and the excess payment has been made for a period in excess of five years, before the order of recovery was issued. Therefore Clauses (i) to (iii) cited supra fully cover the case of the applicant.

(IV) Besides, it is not out of place to state that the applicant neither misrepresented nor misguided the respondents to avail the excess payment. He also did not commit any fraud to obtain the excess payments. It was the mistake of the respondents and they should not penalise the applicant for their folly. Instead they should look within and improve the system so that the said folly does not repeat itself in future.

(V) Besides, it is open to respondents to fix responsibility on those who caused excess payment and recover it so that the respondents organisation is not put to loss. If such an action is taken a proper signal

will go down the line and costly mistakes of the one in question would not recur.

(VI) Further, respondents have issued Serial Circular No.75/2016 dated 19.7.2016, where in based on **Rafiq Masih** case (supra) instructions have been issued in regard to excess payments. The same are in favour of the applicant. Hence, it is surprising that respondents are acting against their own instructions contained in the cited circular.

(VII) Therefore, based on the above, action of the respondents is arbitrary, against rules and contrary to the law laid down by the Hon'ble Supreme Court in the judgment cited supra. Consequently impugned orders cited 16.8.2017 and 12.2.2018 are set aside. As a result, the interim stay granted by this Tribunal on 13.6.2018 is made absolute.

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

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

Dated, the 23<sup>rd</sup> day of July, 2019

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