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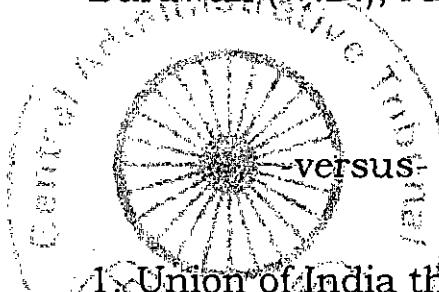
OA. 350/1353/2017
MA.350/855/2017

Date of Order: 25.09.2019

Present :Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Subhas Hansda, son of late Gopi Nath Hansda, aged about 59 years, working as Accounts Assistant (A.A.) office of the Financial Officer, Chittaranjan Locomotive Works, Chittaranjan, Dist- Burdwan, Pin- 713 331, West Bengal, residing at Street No. 9, Qtr. No. 7B, Hill Colony at & PO- Chittaranjan, Dist.- Burdwan (W.B.), Pin- 713 331.

.....Applicant.



1. Union of India through the General Manager, Chittaranjan Locomotive Works, Chittaranjan, Dist- Burdwan, West Bengal- 713 331.
2. The Chief Personnel Officer, Chittaranjan Locomotive Works, Chittaranjan, Dist- Burdwan, West Bengal, Pin- 713 331.
3. The Financial Advisor & Chief Accounts Officer, Chittaranjan Locomotive Works, Chittaranjan, Dist - Burdwan, West Bengal, Pin- 713 331.

.....Respondents.

For the Applicant : Mr. S. K. Dutta, Counsel
For the Respondents : Mr. K. Sarkar, Counsel

O R D E R (Oral)

Per Ms. Bidisha Banerjee, JM:

The applicant in this OA has sought for following reliefs:

"8.(a) An order holding that the decision of recovery from the salary of the applicant as contained in Office Order dated 4.5.2017 is bad in law.

(b) An order quashing and/or setting aside the decision of recovery/direction for recovery as contained in the Office Order dated 4.5.2017 and the communication dated 14.9.2017 and directing the respondents to refund the amount already recovered from the salary of the applicant pursuant to such direction for recovery.

(c) An order holding that the applicant was entitled to the 2nd MACP benefits in the Grade Pay of Rs. 4600/- in PB-2 with effect from 1.9.2008 even after rectification and not the 3rd MACP and accordingly, directing the respondents to grant the same with all consequential benefits.

(d) An order directing the respondents to grant the benefits of 3rd MACP to the applicant in the Grade Pay of Rs. 4800/- in PB-2 with effect from 3.9.2016 with all consequential benefits.

(e) An order directing the respondents to extend all consequential monetary benefits to the applicant.

(f) An order directing the respondents to produce/cause production of all relevant records.

(g) Any other order or order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. We heard ld. Counsel for both sides and perused the materials placed on record.

3. The admitted facts that emerged from the pleadings of the parties, are as follows:

According to the respondents Shri Subhas Hansda who joined Railway Service on 03.09.1986 as Clerk Gr. I (subsequently redesignated as Junior Accounts Assistant in GP Rs. 2800/-) was promoted to Accounts Assistant in the year 1989 in Grade Pay Rs.

4200/- and got 2nd financial upgradation under MACP in Grade Pay 4600/- w.e.f. 01.09.2008 in terms of office order having no. 13141 dated 13.11.2009 issued by FA & CAO/CLW, his 3rd financial upgradation under MACP to Grade Pay Rs. 4800/- was due in 2016 i.e. after completion of 30 years of regular service from the date of joining of the post of Junior Accounts Assistant (03.09.1986).

Accordingly, the 3rd financial upgradation under MACP (in Grade Pay Rs. 4800/-) granted to Subhas Hansda from 01.03.2011 provisionally was revised in terms of Railway Board's Letter No. PC-V/2009/ACP/2 dated 27.6.2014, PC-V/2009/ACP/2 dated 29.12.2011, CVO/CLW's Letter No. 14/VO/8A/CLW/CON/09 dated 20.10.2014, granting 3rd financial upgradation under MACP from 03.09.2016 i.e. on completion of 10 years regular service from the 2nd promotion/financial upgradation (01.09.2008) or on completion of 30 years of regular service from the date of joining of the post of Junior Accounts Assistant (03.09.1986) whichever was earlier. Re-fixation of pay was done in respect of other similarly placed Accounts Assistants of the department who were identically granted 3rd MACP on provisional basis and that recovery of the excess payment was continuing. As Railway Board had issued direction to the Ministries/Department to deal with the issue of wrongful/excess payment through RBE 72/2016 based on Hon'ble Supreme Court's judgment in Chandi Prasad Uniyal & Ors. Vs. State of Uttrakhand & ors. Reported on 2012 AIR SCW 474 (2012) that the relevant portion of the said directions are as under:

"(1) In all cases where the excess payment on account of wrong fixation, grant of scale without the approval, promotions without following the procedure, or in excess of entitlement etc. came to notice, immediately corrective action must be taken.

(2) In a case like this where the authorities decide to rectify an incorrect order, a show cause notice may be issued to the concerned employee informing him of the decision to rectify the order which has resulted in the over payment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee to re present against the same. Speaking orders may thereafter be passed after consideration of representations, if any made by the employee.

(3) Whenever any excess payment has been made on account of fraud, misrepresentation, collusion, negligence, carelessness etc. Rules of those responsible for over payment in such cases and the employees who benefitted from such actions should be identified and departmental criminal action should be considered in appropriate cases.

(4) Recovery should be made in all cases of over payment barring few exception of extreme hardship. No waiver of recovery may be allowed without the approval of Department of Expenditure.

According to the respondents the question of hardship does not arise, in the case of applicant as his pay slip for the month of September, 2017 indicated a monthly voluntary PF deduction of Rs. 24,000/- from his salary and his monthly pay slip for January, 2017 and February, 2017 indicated his yearly income of Rs. 9,98, 189.00 and payment of Income Tax Rs. 96,983/- for the financial year 2016-17 and PF balance of Rs. 10,01,770/- as on 01.10.2017.

Further, in terms of the decision:

"(5) while ordering recovery, all the circumstances of the case should be taken into account. In appropriate cases, the concerned employee may be allowed to refund the money in suitable instalments with approval of Secretary in the Ministry, in consultation with the FA.

(6) Where ever the relevant rules provide for payment of interest on amounts retained by the employee beyond the stipulated period etc. As in the case of TA interest would continue to be recovered from the employee as hereto force."

According to the respondents the 3rd financial upgradation under MACP (in Grade Pay Rs. 4800/-) granted to Subhas Hansda from 01.03.2011 provisionally was revised in terms of Railway Board's Letter No. PC-V/2009/ACP/2 dated 27.6.2014, PC-V/2009/ACP/2 dated 29.12.2014 and CVO/CLW's Letter No. 14/VO/8A/CLW/CON/09 dated 20.10.2014 granting 3rd financial upgradation under MACP from 03.09.2016 i.e. on completion of 10 years regular service from the 2nd promotion/financial upgradation (01.01.2008) or on completion of 30 years of regular service from the date of joining of the post of Junior Accounts Assistant (03.09.19886) whichever was earlier and that refixation was done due to excess payment on account of wrong pay fixation done without following the procedure i.e. issue of formal office orders.

Due to such revision on 04.05.2017 an Office order was issued which is as under:

Office Order

On review of the 3rd Financial upgradation granted under MACP on provisional basis to Sri Subhas Hansda, Accounts Assistant, Employee No. 381202, Bill Unit No. 821 in Grade Pay Rs. 4800/- is hereby revised in terms of Railway Board's letter No. PC-V/2009/ACP/2 dated 27.6.2014, CVO/CLWs letter no. 14/VO/8A/CLW/CON/109 dated 20.10.2014, Board's letter no. PC-V/2009/ACP/2 dated 29.12.2011 & CPO/CLW's letter No. GMA/Rulling/ 453 dated 03.11.2014 and accordingly his pay is re-fixed as under:

Pay as drawn on account of granting of 3 rd financial upgradation on provisional basis. (Rs. 9300-348000/- + 4800/-)			Pay as drawn on account of granting of 3 rd financial upgradation on provisional basis. (Rs. 9300-348000/- + 4800/-)		
Date Rs.	Date Rs.	Band Pay Rs.	Grade Pay Rs.	Band Pay Rs.	Grade Pay Rs.

01/03/2011 18440/- 4800/- 6th CPC 01/03/2011 17760/- 4600/- 6th CPC
 01/07/2011 19140/- 4800/- 6th CPC 01/07/2011 18430/- 4600/- 6th CPC
 01/07/2012 19860/- 4800/- 6th CPC 01/07/2012 19120/- 4600/- 6th CPC
 01/07/2013 20600/- 4800/- 6th CPC 01/07/2013 19840/- 4600/- 6th CPC
 01/07/2014 21370/- 4800/- 6th CPC 01/07/2014 20580/- 4600/- 6th CPC
 01/07/2015 22160/- 4800/- 6th CPC 01/07/2015 21340/- 4600/- 6th CPC
 01/01/2016 70000/- 7th CPC 01/07/2016 70000/- 7th CPC
 01/07/2016 72100/- 7th CPC 03/09/2016 72100/- 7th CPC

Overpayment involved due to granting of 3rd financial upgradation under MACP on provisional basis may be recovered from the salary bill of the employee concerned."

4. According to the applicant since it specifically spelt out that over payment in future due to grant of 3rd financial upgradation under MACP on provisional basis would be recovered from the salary bill, the applicant preferred representation on 21.06.2017 citing the decision of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.** reported in **(2015) 4 SCC 334** where the Hon'ble Apex Court postulated as under:

".....following few situation, wherein recoveries by the employers would be impermissible in law:-

- (i) Recovery from employee 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 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 discharged duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against and 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 for outweigh the equitable of the employer's right to recover."

Pursuant thereto, the applicant specifically pleaded in his representation why he should not be saddled with recovery, that :

"(a) I am employed in group -C service

(b) I am on the verge of retirement. My leftover service is one year few months.

(c) I have been awarded by 3rd MACP in the month/year 3/2011, on the date of receiving the letter of recovery it was passed about 6 years and 2 months.

(c) Since awarding 3rd MACP in the month/year 03/2011, I have been discharging duty of higher responsibility."

Aggrieved due to non-consideration of such representation he has come up with this OA.

5. At hearing, 1d. Counsel for respondents would vociferously oppose the prayer for refund of recovered amount on the ground that the applicant had agreed to revision of the financial benefits granted to him earlier and recovery of any over payment, and therefore, in view of the law laid down by **Chandi Prasad Uniwal** reported in **2012 AIR SCW 474**, recovery was permissible.

6. Per contra, 1d. Counsel for applicant would submit that although the authorities have been given liberty to revise benefits granted erroneously, it ought not to recover the over payments due to such re-fixation, in view of the law laid down in the subsequent decision of **Rafiq Masih (supra)**.

7. Having given our anxious consideration on the materials on record, in our considered opinion since the applicant is a retired employee and had no role to play in securing the MACP benefits ahead of his time, paragraph 2, & 3 of the decision of **Rafiq Masih** would straightway come to his aid and therefore we dispose of the OA with a direction upon the respondent authority to work out and issue an appropriate orders detailing therein the date on which the ^{fell} 2nd MACP and 3rd MACP became due, refix his pay accordingly, revise his last pay drawn and refix his pension.

8. While doing so, respondents shall keep in mind the decision of **Rafiq Masih** and shall refund any amount they have recovered due to alleged over payment made earlier.

9. The entire exercise shall be completed within 3 months from the date of receipt of copy of this order.

10. The OA shall accordingly stand disposed of. No costs.

Consequently, the MA also stands disposed of.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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