

(2024) 02 CAT CK 0009

Central Administrative Tribunal - Allahabad Bench, Allahabad

Case No: Original Application No. 532 Of 2019

Brijesh Pandey

APPELLANT

Vs

Union Of India Through General
Manager, Northern Railway,
Baroda House, New Delhi. & Ors.

RESPONDENT

Date of Decision: Feb. 6, 2024

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19

Hon'ble Judges: Dr. Sanjiv Kumar, Member (A)

Bench: Single Bench

Advocate: Indra Deo Maurya, Saurabh

Final Decision: Partly Allowed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. The instant OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking relief to quash the impugned orders dated 03.10.2018 and 11.01.2019 passed by respondent No. 4 by which he has withheld Rs. 1,20,947/- as alleged it has been paid excess to the applicant, and to direct the respondent authorities to release the amount of Rs. 1,20,947/- alongwith permissible interest, and to grant all consequential benefits, and issue any other order deemed fit and to award cost.

2. The brief facts of the applicant is that he is a Group 'C' retired employee of the respondents and retired on 31.01.2018. After retirement he received on 17.12.2018 some recovery bill and subsequently on 07.01.2019 the supplementary recovery bill, the reason being that he was imposed minor penalty vide order dated 5/6.02.2001 of withholding one increment for one year and the same was not incorporated in his service record and hence it was not implemented in time and only at the time of retirement when his retiral dues were being processed, the same was noticed and accordingly as the one increment was not withheld in time after the order dated 06.02.2001, and retrospectively the respondents have imposed the recovery on the applicant after his retirement.

3. The case of the applicant is that his case is covered by the Hon'ble Apex Court judgment in the case of **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** reported in **JT 2015 (1) SC 95**, and that Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training has circulated an office memorandum dated 02.03.2016, wherein in para No. 4 of the office memorandum, it is quoted below:-

"The Hon'ble Supreme Court while observing that 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 has summarized the following few situations, wherein recoveries by the employers would be impermissible in law:-

- (i) Recovery from employees belonging to Class-III and Class-I V 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."**

4. As the applicant is Group III employee and also retired employee and the cause of action is more than five years old. Hence, the first three stipulations of the said Hon'ble Apex Court order is squarely applicable to him i.e. (i) Recovery from employees belonging to Class-III and Class-I V service (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 and (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years as the respondent authorities are trying to implement their order of recovery after lapse of 18 years of time. He further says that no notice was issued to him and without hearing and giving opportunity, and following the principles of natural justice, the recovery has been ordered. Hence, in terms of the Hon'ble Apex Court order in the case of **Rafiq Masih** (supra) his OA should be allowed.

5. On notice the respondents have filed their counter affidavit wherein they do not dispute the basic case of the applicant and they agree that the applicant superannuated on 31.01.2018 as Chief Reservation Supervisor and during his service tenure he was awarded a minor penalty of stopping one increment for a period of one year vide order No. NIP No.VIG-C-LCS-2000-15 dated 05/06.02.2001 but due to mistake the aforesaid penalty as awarded has not been incorporated in the service record of the applicant till his superannuation and it came to notice when the department was preparing his retiral dues. Thereafter recalculation was made regarding excess payment to the applicant on account of wrong pay fixation and supplementary bill was prepared for recovery of Rs. 1,15,949/- and vide letter dated 23.01.2018 it was communicated to recover Rs. 5,000/- as commercial dues from the applicant and the same was recovered from the settlement dues of the applicant. The aforesaid dues of 1,15,949/- towards excess payment of salary and a sum of Rs. 5,000/- as commercial dues total Rs. 1,20,949/- has been deducted from the settlement dues of the applicant and remaining settlement dues have been released to the applicant. As the deduction has been made as per rules, hence, there is no merit in the claim of the applicant.

6. They further say that in this case the Hon'ble Apex Court judgment of **Rafiq Masih** (supra) quoted by the applicant does not apply as it is not a case of wrong fixation of

salary, but only non-implementation of the disciplinary order. Hence, they plead that there is no merit in the OA, the same should be dismissed.

7. Rejoinder affidavit has been filed by the applicant where he reiterated his stand as in the OA.

8. The case came up for final hearing on 30.01.2024. Shri Indradeo Maurya, learned counsel for the applicant and Shri Saurabh, learned counsel for the respondents were present and heard. I have gone through the records carefully and considered the rival contentions.

9. From the record it is evident that issues to be decided is: (a) Whether the respondents were right in implementing the order of the Disciplinary Authority imposing the penalty of withholding of one increment for one year in the year 2001, after a lapse of 18 years in the year 2018 when the applicant had already retired, and consequently arriving at that Rs. 1,15,949/- was paid excess to the applicant, ordering for recovery, and whether such delayed recovery due to inordinately delayed implementation of the order of penalty issued in the Disciplinary Inquiry is covered by the Hon'ble Apex Court judgment in the **Rafiq Masih's** case (supra), (b) Whether the respondents were justified in imposing another Rs. 5,000/- commercial dues and recovering the same from retiral dues.

10. The applicant has cited many cases in his favour from various Hon'ble Court, but they do not appear to be relevant for following reasons:-

i. In case **Service Single No. 1088/2011 – Smt. Usha Singh vs State of UP** the recovery order was against a dead person and that is not the case in the present case.

ii. In **Writ (A) No. 10699 of 2020 – Sarojabala Pandey vs. State of UP and 3 others** dated 07.01.2021 the case does not relate to a disciplinary inquiry related to recovery.

iii. In **Writ (A) No. 19789 of 2010 – Raghunath Bharti vs. State of UP and others** is also not related to disciplinary inquiry related to recovery.

iv. In **Service Bench No. 994 of 2011 – Arun Kumar Das vs. State of UP through Prin. Secy. Deptt of Dairy Devp and others** also not related to disciplinary inquiry rated to recovery, hence not relevant.

v. Similarly the **Service Single No. 24022 of 2018 – Kapil Dev Chaturvedi vs. State of UP thru. Prin. Secy, Finance and others** is also not related to recovery order in disciplinary inquiry. Hence, these cases are not relevant as far as the present case is concerned.

11. The respondents have filed in their support a citation of coordinate Bench in **OA No. 60 of 2019 – Virandra Singh Azad vs. Union of India and others** decided on 21.04.2023. In which there is some similarities between the present case and the said case as in that OA 60/2019 also there was a penalty order against the applicant, and penalty of withholding increment for five years was initially imposed by the Disciplinary Authority with cumulative effect from 20.01.2016 and on appeal it was reduced by the Appellate Authority to withholding increments for three years vide order dated 08.06.2016 and a recovery of 1,75,096/- in 29 instalments of 8,720/- was ordered. During the service period of the applicant therein and the authorities went ahead to implement the punishment order w.e.f. October 2018 and the coordinate Bench based on the fact of the case that notices were issued to the applicant therein and only there was slight delay in starting the implementation of the imposed penalty order. Based on which it was concluded that it does not come within the purview of the Hon'ble Apex Court's order as in **Rafiq Masih's** (supra) case and it was held that the department

cannot be liable for any mistake. The applicant was transferred from one establishment to another establishment. The appellate order was effected from 01.07.2016 to 30.06.2019. During this period the recovery was started from the month of November paid December, 2018. During the aforesaid period the recovery has been started and the applicant was very well aware of the fact that the punishment order should be implemented but he kept silent. After the recovery order was received from the earlier department, the recovery was started. The applicant enjoyed the money which was excess paid to him but, the same was public money, therefore, the applicant was liable to refund the aforesaid money and the OA was dismissed.

12. From that case to the present case there is some difference as in the present case the applicant has already retired as well as there has been more than 18 years of delay in authorities getting ready to implement their own order of 2001, which they have now implemented in the year 2018 after the retirement of the applicant.

13. From the facts of the case it is evident that balance of convenience in the present case remains with the applicant and the Hon'ble Apex Court order squarely covers the case as all the first three criteria laid down therein are relevant in this case as the recovery is from Group 'C' and 'D' employees, further the employee is already retired and recovery so proposed when the excess payment has been made for period in excess of five years before the order of recovery is issued.

14. However, I do not find any clear indication of the year to which the commercial dues of Rs. 5,000/- pertains to, so I have no ground to set it aside.

15. Considering these I find merit in the OA and hence, I pass following order:-

"The OA is partly allowed. The impugned orders dated 03.10.2018 and 11.01.2019 are partly set aside. The withheld amount due to delayed imposition of penalty of Rs. 1,15,949/-may be released to the applicant alongwith 6% simple interest from the date of recovery till the date of actual payment, within a period of three months from the date of receipt of a certified copy of this order.

16. All associated MAs also stand disposed of accordingly. No costs.