

(2024) 11 CAT CK 0031

Central Administrative Tribunal Cuttack Bench, Cuttack**Case No:** Original Application No. 492 Of 2022

Pravati Behera

APPELLANT

Vs

Union Of India, Represented
Through General Manager, East
Coast Railway, E.Co.R. Sadan,
Chandrasekharapur,
Bhubaneswar, Dist. ✦ Khurda ✦
752017 & Ors

RESPONDENT

Date of Decision: Nov. 30, 2024**Acts Referred:**

- Railway Services Pension Rule, 1993 - Rule 15, 87

Hon'ble Judges: Pramod Kumar Das, Member (A)**Bench:** Single Bench**Advocate:** N.R. Routray, A. Mishra**Final Decision:** Allowed

Judgement

Pramod Kumar Das, Member (A)

1. The applicant was initially appointed under the Railways on 29.11.1985 and retired from service w.e.f. 28.2.2023 on attaining the age of superannuation. At the time of retirement, the DCRG of the applicant has been assessed as Ra.6,72,543/- and an amount of Rs.1,15,000/- has been recovered by the department without issuing any show cause notice. Since the applicant did not know the reason for recovery, she could not challenge the recovery immediately by filing representation. After becoming aware she submitted a representation dated 11.1.2024 to the respondent No.3. When nothing yielded, she approached this Tribunal in the present OA praying for a direction upon the respondents to refund Rs.1,15,000/- with 12% interest for the retention period.

2. Learned counsel for the applicant has submitted that recovery of Rs.1,15,000/- from the DCRG without issuing any show cause is violative of principle of natural justice and hence the applicant is entitled to interest as per Rule 87 of the Railway Services Pension Rule 1993. He has relied on the judgment of Hon'ble Apex Court in the cases of **State of Punjab & Others vs Rafiq Masih (White Washer) & others [2015 (4) SCC 334]** and **Thomas Daniel Vs. State of Kerala, C.A.No. 7115/2010**.

3. The respondents have filed their counter inter alia stating therein that the applicant while working as Peon retired on superannuation w.e.f. 28.02.2023. At the time of retirement on verification of Service Sheet, it was found that her annual increments have not been drawn correctly from 01.07.2016 onwards. Therefore on further progression of revised pay from 01.07.2016 onwards, the applicant's last pay was correctly fixed at Rs.36,100/- in place of Rs.37,200/-. The recasting of pay from 1.7.2016 to 31.01.2023 resulted an amount of Rs.95,042/- towards over payment of pay and allowances, which has been recovered from the DCRG of the employee as per Rule 15 of Railway Services (Pension) Rules, 1993. It is further submitted that prior to retirement the applicant has also submitted declaration in Form No.8 for recovery of over payment dues from Gratuity/DCRG/SRPF/Pension, if found recoverable from him in future. The respondents have further submitted that the DCRG amount has been certified at Rs.6,72,543/- out of which over payment amounting Rs.95,042/- (not Rs.1,15,000/-) has been recovered and net amount of Rs.5,77,501/- towards DCRG has been passed for payment and credited to her bank account. It is also submitted by the respondents that the judgments cited by the applicant are not applicable in her case since those judgments are in 'personem' and not 'in rem'. Hence the respondents have prayed for dismissal of the present OA being devoid of any merit.

4. Heard learned counsel for both the parties and perused the materials available on record.

5. The applicant was wrongly granted annual increments from 1.7.2016 onwards thereby drawal of excess amount of Rs. 95,042/-. This fact has not been disputed by the applicant either in his representation dated 11.1.2024, which he had submitted before the authority nor in this OA or in course of argument. Therefore, there is no necessity for this Tribunal to go into details relating to the amount of annual increment and fixation of pension after rectification of the mistake. Hence, the rectification made by the authority is acceptable in view of the decisions relied on by the respondents.

6. Now the question that arises for consideration as to how far recovery of the excess payment of Rs. 95,042/- from the DCRG amount of the applicant is justified? According to the applicant, the recovery from the DCRG amount has caused her undue hardship especially she being a Group-C employee of the railway and after retirement the pension and pensionary dues/DCRG is the only means of her livelihood and, therefore, as per the decision of the Hon'ble Apex Court in the case

of Rafiq Masih based on which OM was issued by the DoP&T, which was circulated by the Railway Board vide RBE No. 72/2016 to be adhered insofar as the Railway employees are concerned, recovery is unjustified. In this connection, it is worthwhile to put on record the relevant portion of the decision of the Hon'ble Apex Court in the case of Rafiq Masih, which is asunder:

"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."

7. On the basis of the aforesaid judgment the DOPT had issued the Office Memorandum No. 18/03/2015-Estt. (Pay-I) dated 02.03.2016 on the subject of "Recovery of wrongful/excess payments made to Government servants". The conditions stipulated in the aforesaid OM was directed to be followed by the Railway Board mutatis mutandis vide RBE No. 72/2016. Relevant Paragraph of the OM is quoted below:-

"4. 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-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.

5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries / Departments are advised to deal with the issue of wrongful / excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014."

8. Admittedly in the present case the applicant is a Group D employee. The recovery that is pertained to be made is for a mistake committed by the respondents while fixing her increment back in the year 2016. It is also seen that recovery is sought to be made from the DCRG of the applicant after retirement. From both the judgment of Hon'ble Apex Court in Rafiq Masih (supra) and RBE No. 72/2016 it is seen that the case of the applicant is covered under point (i) (ii) & (iii).

9. Viewed the matter from any angle, be it non application of mind while considering the grievance of the applicant or conditions stipulated in decision of Hon'ble Supreme Court which has been reiterated by DOPT and adopted by Railway Board, the conclusion would be that injustice has been caused to the applicant, thereby causing financial hardship, he being a Group D retired employee and the amount sought to be recovered pertaining to more than five years. Hence the impugned order is quashed and the respondents are directed to refund the amount of withheld from his DCRG amount within a period of 30 days from date of receipt of copy of this order. At the same time it may be recorded that as the recovery was done by withholding the same from DCRG was not intentional or deliberate, this Tribunal is not inclined to award interest as prayed by the applicant.

10. In the result this OA stands allowed to the extent stated above. No costs.