(2025) 11 CAT CK 0056

Central Administrative Tribunal

Case No: Original Application No. 330, 01124 Of 2019

Ram Shanker Dubey	APPELLANT
Vs	
Union Of India & Ors	RESPONDENT

Date of Decision: Nov. 7, 2025

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19

Hon'ble Judges: Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench: Division Bench

Advocate: Anand Kumar, Shiv Kumar, M.K. Dhrubvanshi, P.K Rai

Final Decision: Allowed

Judgement

Om Prakash VII, Member (J)

1. The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"(i) The Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned order dated 30.08.2019 (Annexure A-1) issued by Sr. ADEN (Line) North Eastern Railway, Varanasi, impugned calculation chart of recovery of alleged excess payment of Rs. 2,07,278/- vide letter No. Misc.214/MBS dated 23.09.2019 issued by SSE (Works) NER Madho Singh (Annexure A-2) and impugned second time revised pay fixation chart of 07th Pay Commission and order passed on 10.10.2019 on proposal dated 30.08.2019 of Sr. ADEN (Line)/NER Varanasi (Annexure A-3) and direct the respondents to restore the pay fixation of 7th Pay Commission done earlier on 25.1.2017 being correct.

(ii) The Hon'ble Tribunal may further be pleased to direct the respondents to refund the recovery of alleged excess payment made @ Rs. 13819/- per month being made from the salary bill of September 2019 onward with 12% interest on recovered total amount.

(iii) Any other order or direction which is deemed fit and proper in circumstances of the case, maybe issued in favour of the applicant.

(iv) Award cost of original application in favour of the applicant".

2. The brief facts of the case are that The applicant was appointed as Khalasi on 20.05.1978 and was later promoted to Fitter Grade-III (Group 'C') in the pay grade of Rs. 1900/- on 06.07.2011. He retired from service on 31.12.2020 upon attaining the age of superannuation. The applicant's grievance is that the respondents, by order dated 30.08.2019, arbitrarily reduced his post and pay from Fitter Grade-III to Fitter Khalasi Helper on the plea of clerical error without issuing any show-cause notice or conducting any enquiry. His pay was reduced from Rs. 43,500/- to Rs.37,500/- w.e.f. 01.07.2016 and from Rs. 47,500/- to Rs. 41,000/- w.e.f. 01.07.2019. Despite his representations dated 07.09.2019 and 17.09.2019 and the direction of the Senior Section Engineer to hold an enquiry and continue full salary till its completion, the respondents issued a recovery statement dated 23.09.2019 for Rs.2,07,778/-, and started recovering Rs.13,819/- per month from his salary from September 2019. The applicant approached this Tribunal in O.A. No. 1124/2019, and the recovery was stayed vide order dated 01.11.2019. However, at the time of his retirement, his last pay was again reduced from Rs.48,900/- to Rs.42,200/-, and pensionary benefits were accordingly recalculated. A total sum of Rs.2,07,778/-, (and an additional Rs.30,000/-was recovered from his settlement dues vide letter dated 28.01.2021. The applicant contends that the said recovery is illegal, arbitrary, and in violation of the Tribunal's interim order and the law laid down by the Hon'ble Supreme Court in ***State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.*****, (2015) 4 SCC 334, and** ***Jagdish Prasad Singh v. State of Bihar & Ors.*****, Civil Appeal No. 1635 of 2013**, which prohibit recovery from Group 'C' and 'D' employees. Accordingly, the applicant seeks quashing of the impugned order, refund of the recovered amount of Rs.3,37,967/- with interest, and restoration of his correct pay fixation as per the 7th CPC dated 25.01.2017.

3. Per contra, the respondents, in their counter affidavit, have stated that the applicant was initially appointed as Khalasi on 20.05.1978, and his services were regularized on 12.09.1989 after he qualified the medical examination held on 08.08.1989. His pay was correctly fixed at Rs/7,920 + 1,900 = Rs. 9,820 w.e.f. 01.07.2007. As per rules, his pay should have been revised to Rs. 8,220 + 1,900 = Rs. 10,120 w.e.f. 01.07.2008 after a 3% increment. However, due to a clerical mistake, his pay was wrongly fixed at Rs.10,020 + 1,900 = Rs.11,920 from 01.07.2008 and consequently his pay under the 7th CPC was also wrongly fixed as Rs.42,200/- w.e.f. 01.01.2016 instead of Rs. 36,400/-, which was the correct figure. During scrutiny of his service records, this error came to light and accordingly the department issued the order dated 30.08.2019 correcting his pay fixation. The said correction was made by the competent authority as per rules and information of the same was duly communicated to the applicant. The respondents further submitted that recovery of the excess payment was started thereafter to prevent financial loss to the Railways, and such recovery was made in accordance with law after giving prior intimation to the applicant. The matter has also been referred to the Vigilance Department of the Headquarters, Gorakhpur for further examination. It has been emphasized that any clerical or factual error in pay fixation can be rectified by the competent authority at any stage to safeguard public revenue. Hence, the order dated 30.08.2019 is lawful, justified and free from any procedural irregularity. Therefore, the respondents submit that the present Original Application challenging the order dated 30.08.2019 and consequential recovery is devoid of merit and liable to be dismissed.

4. The applicant has filed Rejoinder Affidavit to the Counter Affidavit as filed by the respondents refuting the contentions made by the respondents in their Counter Affidavit while reiterating the averments made in the O.A. and nothing new has been added.

5. Heard heard Shri M.K Dhrubvanshi, learned counsel for the applicant and Shri P.K Rai, learned counsel for the respondents and perused the record as well as written submissions.

6. The submission of learned counsel for the applicant is that the impugned order dated 30.08.2019, by which the applicant's pay and post were reduced, which was passed without issuing any show-cause notice or providing any opportunity of hearing. Hence, the action of the respondents is arbitrary, illegal, and violative of the principles of natural justice. Learned counsel for the applicant further argued that the applicant was duly promoted as Fitter Grade-III (Group C) and worked on that post till his retirement. The respondents on the pretext of a clerical mistake illegally reduced his post and pay to that of Fitter Khalasi Helper, which amounts to reversion and reduction in rank, without following due process of law. The respondents have made recovery of Rs.2,07,778/-, from the applicant's retiral dues and pension without any inquiry, order, or authority of law. Such recovery is also in violation of the interim stay order dated

01.11.2019 passed by this Tribunal in O.A. No. 1124/2019. Learned counsel for the applicant also argued that despite the clear stay order restraining recovery, the respondents went ahead and deducted large amounts from the applicant's settlement dues and reduced his pension. This act amounts to wilful disobedience of the Tribunal's interim order and shows clear non-application of mind on the part of the authorities. Learned counsel for the applicant next argued that the applicant's last pay at the time of retirement was Rs.48,900/-, but the respondents illegally reduced it to Rs.42,200/- and calculated pension and other benefits accordingly. This arbitrary action has caused serious financial loss and mental harassment to the applicant. Learned counsel for the applicant again argued that even the Senior Section Engineer, N.E. Railway, Varanasi, had directed that an enquiry be made before taking any action and that full salary be paid till its completion. However, no such enquiry was ever conducted by the respondents, and they directly ordered recovery and reduction of pay, which is completely unjustified. Learned counsel placed reliance on the following judgments of the Hon'ble Supreme Court:- -

(i) ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors., (2015) 4 SCC 334, and***

(ii) **Jagdish Prasad Singh vs. State of Bihar & Ors.,** ***Civil Appeal No. 1635 of 2013 (decided on 08.08.2024)****, wherein it has been clearly held that no recovery can be made from Group 'C' and 'D' employees, particularly when the overpayment occurred due to no fault of the employee. The applicant, being a Group 'C' employee, squarely falls under this protection.*

On the basis of aforesaid arguments, learned counsel for the applicant prayed that the Original Application be allowed and the impugned order dated 30.08.2019 and subsequent recovery actions be set aside and quashed, and the respondents be directed to refund the recovered amount of Rs. 2,07,778/-with interest, to restore the applicant's pay fixation as per the 7th CPC order dated 25.01.2017 and to revise his pension and settlement dues accordingly.

7. Learned counsel for the respondents referring to the counter affidavit argued that the applicant's pay was wrongly fixed due to a clerical mistake committed in 2008, which led to an excess payment to the applicant for several years. When the error was noticed during scrutiny of service records, the department rightly corrected it by issuing the order dated 30.08.2019. Learned counsel for the respondents further argued that it is well settled that any clerical or factual mistake in pay fixation can be corrected at any stage by the competent authority in order to safeguard public revenue. The correction made in the present case was therefore lawful, proper, and within the competence of the authority concerned. Learned counsel for the respondents also argued that the correction of pay was carried out strictly in accordance with rules and after approval of the competent authority. The applicant was duly informed about the correction and the consequential recovery. Hence, there was no violation of principles of natural justice or any procedural irregularity in the process. Learned counsel for the respondents contended that the overpayment was detected during departmental scrutiny and recovery was initiated only to protect government funds and to prevent further financial loss to the Railways. The action of recovery, therefore, cannot be termed as arbitrary or illegal. It was argued that the error in pay fixation occurred inadvertently due to a clerical lapse and was not intentional. Once detected, the department was duty-bound to correct it as per rules. Therefore, the subsequent correction order dated 30.08.2019 was just, proper, and bona fide. Learned counsel for the respondents next argued that the matter has been referred to the Vigilance Department, Headquarters, Gorakhpur for detailed examination, which shows that the department acted transparently and followed due process. It is submitted that recovery of excess payment was made only after due intimation to the applicant and as per established rules. The applicant has no legal right to retain the amount which he was not entitled to in law. The respondents clarified that there was no deliberate disobedience of any order of this Tribunal and that all actions were taken in good faith and within the framework of law. Therefore, learned counsel for the respondents next argued that the Original Application filed by the applicant be dismissed as devoid of merit, since the impugned order dated 30.08.2019 was lawfully passed to rectify a genuine error and protect public money. Learned counsel for the respondents placed reliance on the following case laws:-

(i) M.P Medical Officers Association Vs. The State of Madhya Pradesh and others reported in 2022 Supreme (SC) 858;

(ii) Col (Retd) BJ Akkara Vs. Government of India reported in 2006 LawSuit (SC) 837;

8. We have carefully considered the rival submissions advanced by learned counsel for the parties and perused the material available on record and also the written submissions filed by the parties.

9. From the admitted facts, it is clear that the applicant was duly promoted to the post of Fitter Grade-III (Group 'C') in the grade pay of Rs.1900/- and continued to work on that post till his retirement on 31.12.2020. The respondents have not disputed that no show-cause notice or opportunity of hearing was given to the applicant before issuing the impugned order dated 30.08.2019, which reduced his pay and post on the pretext of correcting a clerical error. It is a settled principle of law that any order having civil consequences such as reduction in rank or pay cannot be passed without following principles of natural justice. Even if there was a genuine mistake in pay fixation, the employee should have been put to notice and given an opportunity to explain his case before any adverse action was taken. Hence, the impugned action of the respondents in reducing the applicant's pay and post without notice or enquiry is arbitrary, violative of natural justice, and cannot be sustained in law.

10. It is an admitted position that the applicant belongs to Group 'C' service and that the alleged excess payment resulted from a clerical error made by the department itself. The respondents have not alleged any misrepresentation or fraud on the part of the applicant.

11. The relevant portion of the judgment of Hon'ble Supreme Court in the case of Jagdish Prasad Singh (supra), has held as under:-

"21. We firmly believe that any decision taken by the State Government to reduce an employee's pay scale and recover the excess amount cannot be applied retrospectively and that too after a long time gap. In the case of Syed Abdul Qadir and Others v. State of Bihar and Others, this Court held that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. The relevant paras of the Syed Abdul Qadir(supra) are extracted hereinbelow: -

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counteraffidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

(emphasis supplied)

22. Similarly, this Court in ITC Limited v. State of Uttar Pradesh and Others, held as under:

"108. We may give an example from service jurisprudence, where a principle of equity is frequently invoked to give relief to an employee in somewhat similar circumstances. Where the pay or other emoluments due to an employee is determined and paid by the employer, and subsequently the employer finds, (usually on audit verification) that on account of wrong understanding of the applicable rules by the officers implementing the rules, excess payment is made, courts have recognised the need to give limited relief in regard to recovery of past excess payments, to reduce hardship to the innocent employees, who benefited from such wrong interpretation."

(emphasis supplied)

23. In the case of State of Punjab and Others v. Rafiq Masih (White Washer) and Others, this Court held as under: -

"18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

(emphasis supplied)

24. Recently, this Court in Thomas Daniel v. State of Kerala and Others , held that the State cannot recover excess amount paid to the ex-employee after the delay of 10 years.

25. The Government Resolution dated 8th February, 1999 to be specific, the highlighted portion supra is amenable to the interpretation that it protects the status and pay of those employees who had received their time bound promotions prior to 31st December, 1995. As a consequence, the Secretary concerned, while rejecting the representation clearly misinterpreted and misapplied the said Resolution to the detriment of the appellant.

26. The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he had been promoted as an ADSO, while drawing the pay scale of Rs.6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be

sustained.

27. The order dated 8th October, 2009 passed by the State Government directing reduction in the pay scale of the appellant from Rs.6500-10500 to Rs.5500-9000 w.e.f. 1st January, 1996 and directing recovery of the excess amount from him is grossly illegal and arbitrary and is hereby quashed and set aside. The impugned order dated 27th August, 2012 passed by the Division Bench of the High Court does not stand to scrutiny and is hereby quashed. Therefore, the appellant shall continue to receive the pension in accordance with the pay scale of Rs.6500-10500.

28. In case, if any reduction in pension and consequential recovery was effected on account of the impugned orders, the appellant shall be entitled to the restoration/reimbursement thereof with interest as applicable.

29. The appeal is allowed in these terms. No order as to costs.

30. Pending application(s), if any, shall stand disposed of".

12. As far as the case laws relied upon by the learned counsel for the respondents are concerned, in all those cases, the recovery of overpayment or excess payment made to the employee concerned was quashed on the ground that there was no fault or misrepresentation on the part of the employee. However, in the aforesaid cases, the refixation of pay was upheld.

13. In the present case also in light of the case laws relied upon by both the learned counsel for the applicants and the respondents, the recovery initiated against the applicant is not sustainable for the reasons discussed hereinabove. As regards refixation of pay, it is observed that before effecting any such refixation, a show cause notice should have been issued to the applicant, affording him an opportunity of hearing to present his case. Only thereafter, if any mistake was found the refixation could have been carried out.

14. In the present case, despite the clear legal position and the interim stay order dated 01.11.2019 passed by this Tribunal in O.A. No. 1124/2019, the respondents proceeded to recover a total sum of Rs.2,07,778/-, from the applicant's settlement dues and further reduced his pension. Such action is not only contrary to the above judgments but also amounts to wilful disobedience of this Tribunal's interim order. Thus, the recovery made by the respondents is illegal, arbitrary, and unsustainable in law.

15. The record clearly shows that the Senior Section Engineer, N.E. Railway, Varanasi, had directed that an enquiry be conducted before taking any decision and that the applicant should continue to receive full salary till the enquiry was completed. However, no such enquiry was ever conducted. The respondents directly proceeded to pass the order of pay reduction and recovery. This conduct reflects non-application of mind and disregard of their own superior's direction. Hence, the action of the respondents is procedurally defective and cannot be justified.

16. It is also pertinent to mention here that while it is true that the government or competent authority has the power to correct clerical or factual errors in pay fixation, such correction cannot result in adverse consequences to an employee who is not at fault, without following due process of law. In this case, the so-called correction has not only reduced the applicant's pay but also changed his designation, which amounts to reversion or reduction in rank. Therefore, the plea of "clerical error" cannot be accepted to justify such a major adverse change, especially when the applicant had been working and drawing salary on the promoted post for several years without objection.

17. It is also seen that the respondents, while finalizing the applicant's pension and other retirement benefits, unilaterally reduced his last pay from Rs.48,900/- to Rs.42,200/- and recalculated pension and other dues on the reduced figure. This has caused financial loss and undue hardship to the applicant, who had retired after more than four decades of service. Such action was taken without any authority of law and in violation of interim protection and same cannot be sustained.

18. In view of the above observations and findings, the Original Application is allowed. The impugned order dated 30.08.2019 and consequential recovery orders are set aside and quashed. The respondents are directed to refund to the applicant the recovered amount of Rs. 2,07,778/- with interest at the rate of 6% per annum from the date of recovery till payment. The aforesaid exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order. It is made clear that the respondents shall, however, be at liberty to rectify any clerical error, if any, in accordance with law, provided that due notice and opportunity of hearing are afforded to the employee concerned and such correction does not result in any unlawful recovery or reduction in rank. No order as to costs. All associated M.As. stand disposed of. No order as to costs. All associated MAs are disposed of.