(2023) 12 CAT CK 0023

In the Central Administrative Tribunal

Case No : Original Application No. 237 Of 2021

Chandra Bali Sharma APPELLANT

Vs

Union Of India Through General Manager, East Central Railway, Mugalsarai. & Ors. RESPONDENT

Date of Decision : 20-12-2023

Acts Referred:
Administrative Tribunals Act, 1985 — Section 19

Citation : (2023) 12 CAT CK 0023

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

Bench : Single Bench

Advocate : Ekta Kaur, Atul Kumar Sharma

Final Decision : Allowed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 claiming the relief to issue orders quashing the impugned order dated 14.08.2020 and to direct the respondents for fixation of pension, retiral benefit or settlement of dues on the basis of the last pay drawn by the applicant that is Rs. 35080 and to issue direction regarding recovery of excess payment drawn and any other relief deemed fit and to award cost.

2. The facts of the Original Application are that the applicant was appointed as trainee chargeman on a stipend of Rs. 380/- per month on 31.03.1980. Subsequently, he got an ad-hoc promotion to the post of Electrical Foreman w.e.f. 03.09.1986 with scale of Rs. 700-900 which was revised to the scale of Rs. 2000-3200. Then, he got regular promotion as Electric Foreman in the scale of Rs. 2000-3200 vide order dated 31.07.1990 and an ad hoc promotion to the post of Electric Foreman in the scale of Rs.2000-3200 w.e.f. 03.09.1986 and he had continuously worked on the post of Electric Foreman till he was regularly promoted on 31.07.1990 and was drawing continuously pay scale of Rs.

2000-3200. He was neither returned to the substantive post nor has any such kind of order or information communicated to the applicant.

3. As per the letter of the respondent No. 3 dated 17.04.1989 the applicant was continuously working on promoted post of Electrical Foreman w.e.f. 03.09.1986 and then he was found suitable for the post of Senior Section Engineer and promoted to the said post on 21.01.2000 with pay scale of Rs. 7450-11500 and respondent No. 2 had issued a letter on 23.03.2000 stating therein that on examination it has been noticed that the applicant had been given excess payment of one increment of 4th pay scale from 03.09.1986 continuously due to wrong fixation of pay scale and according, a communication was sent on 23.03.2000 re-fixing his pay and directing recovery of excess sum.

4. The applicant gave a reply on 08.04.2000 stating therein that if some excess amount has been paid to the applicant through regular salary, then it is requested to deduct excess paid amount in 46 installment of Rs. 500/- per month from his salary. Then, respondent authority started to deduct Rs. 500 regularly from May 2000 onward for 53 months.

5. The applicant contends that they recovered Rs. 26,500/- from the salary of the applicant and the applicant superannuated on 31.10.2015 and before his superannuation the respondents gave him a show cause notice on 16.10.2015 which is just four days before the date of superannuation. The applicant submitted his reply on 10.12.2015 stating therein that respondent authority has already deducted the excess payment in compliance of the letter dated 08.04.2000. But without considering the application dated 10.12.2015 the respondents deducted a sum of Rs. 554,765/- (Rs. 365,930/- as over payment salary and Rs.188,835/- as over payment of dearness allowance) on dated 04.11.2015 from his retiral benefit. This deduction was illegal and against the Apex Court order, and the applicant was entitled to get it back.

6. The applicant retired on 31.10.2015 and retiral benefit dues were wrongly fixed on the pay scale of Rs.32,670/- instead of Rs. 35,080/-.

7. The applicant filed O.A. No 364 of 2016 wherein Hon. Tribunal vide its order dated 25.05.2018 directed the respondents to decide the representation of the applicant by reasoned and speaking order. Pursuant to that the same, respondents passed a fresh order on 05.09.2018 without considering the relevant facts and the contention raised by the applicant, and holding that the pay fixation was not erroneous.

8. Then the applicant filed O.A. No. 330/01185 of 2018 challenging the impugned order dated 05.09.2018 and 26.10.2015 of Hon’ble C.A.T. praying to set aside the impugned order dated 05.09.2018 and 26.10.2015 and directed to dispose of the matter afresh and pass a reasoned and speaking order within a period of two months vide its order dated 29.01.2020. Then the applicant gave a representation on 10.02.2020 before the respondents

9. Then a Contempt Petition was filed and respondent passed another order on 14.08.2020 without considering the relevant facts and holding that no erroneous fixation of pay was there. Hence, against the said order the applicant has come here to get it set aside. Hence, the applicant seeks to allow his prayers.

10. The respondents have filed their counter reply, wherein they say that the impugned order dated 14.08.2020 by the competent authority is just, proper and in accordance with rules and that the brief fact of the case is that the applicant was appointed as Trainee Chargeman on a Stipend of Rs. 380/- per month vide letter dated 31.03.1980 and he was made Electric Chargeman on 14.04.1981 in the grade of Rs. 425-700/- which has been absorbed against the working post as ELCB on pay of Rs. 425/- in scale of Rs. 425-700/- with effect from 01.04.1981 and posted at Electric Shed/Mughalsarai. On being declared suitable for the post of Electric loco Chargeman 'A' he has been allowed to officiate as Electric 'A' in scale of Rs. 550-750 vide order dated 10.12.1984 and his pay was fixed at Rs. 550/- w.e.f. 22.12.1984 and next increment raised to Rs. 570/- w.e.f. 01.12.1985 and after 4th Pay Commission his pay was fixed on Rs. 1700/- in the scale of Rs. 1600-2600 and he was engaged to officiate as ad-hoc Electric Foreman for two months w.e.f. 03.09.1986 vide pay scale of Rs. 700-900 on pay of Rs. 2060/- and later returned to his substantive post as Electric 'A' after completion of two months. But the applicant was drawing continuous pay of Electric Foreman post in the scale of Rs. 2000-3200/- wrongly.

11. Although, subsequently, he was promoted as Electrical Foreman in the scale of Rs. 2000-3200 vide order dated 31.07.1990 after that on being found suitable for the post of Senior Section Engineer in scale of Rs. 7450-11500 vide order dated 27.01.2000 he was upgraded and as per record rectification in his pay was done vide the office letter dated 23.03.2000 and consequent, upon anomaly in the pay fixation subsequent MACP fixation was also wrongly done and applicant retired from service on 31.10.2015 and then rectification letter was issued on 26.10.2015 regarding recovery of excess pay drawn and given four days' time limit to show cause but no reply was given within the time limit. Accordingly, excess paid amount of Rs. 3,65,930/- and Rs. 188,835/- of D.A. has been recovered from his settlement dues and he had filed earlier OA. No. 364/2017 where order on 25.05.2018 was passed, pursuant to which a reasoned and speaking order which was issued on 24.08.2018 by the competent authority, and against which O.A. No. 1185/2018 was filed and Hon'ble Tribunal on 04.02.2020 directed to respondents to dispose of the matter afresh and to pass a reasoned and speaking order within a period of two months, and pursuant to that reasoned and speaking order dated 14.08.2020 was issued and the same is as per existing rules. Hence, there is no merit in the case of the applicant So, the O.A. should be dismissed

12. The applicants have filed the rejoinder wherein they reiterated their stand as in the O.A. and they request to allow their O.A. and grant the relief sought. The case came up for final hearing on 01.12.2023, Ms. Ekta Kaur, counsel for the

applicant and Shri Ram Chandra Sahu, counsel for the respondents were present and heard. I have gone through the records carefully and considered the rival contentions. From the pleadings of both the parties it is evident that the applicant is claiming two different and distinct reliefs in this O.A. One relates to quashing of the impugned order which is more related to the recovery of the excess pay drawn but along with that the applicant is also asking a new relief to issue order or direction in the nature of mandamus commanding the respondents for fixation of pension/ retiral benefits or settlement of dues on the basis of last pay drawn by the applicant that is Rs.35,080/-. But the pleadings do not shed much light on this point, hence, I am not coming to any conclusion on this and leave the issue open, and as it is unrelated issue the applicant may be at liberty to file fresh case for the same if he so desired. However, as far as the other issue is there it is clear from the pleadings of either side that there was wrong fixation of pay of the applicant and it was detected sometimes on 23.03.2000 that excess payment has been given since 03.09.1986 and recovery was directed and applicant agreed for the said recovery in 46 installment of Rs. 500/- each and recovery also started in May 2000 and recovery went up to February 2002, but after that abruptly why recovery was discontinued is not explained by the respondents.

13. As the service records are kept with the respondents they must show under what circumstances once recovery had started it was stopped midway and full recovery was not made. And why only at the time of retirement of the applicant again the authorities woke up and detected that certain excess payment had been there and which remained unrecovered, and the authority belatedly went ahead to give a show cause notice on 26.10.2015 to the applicant, just four days before his retirement; to which the applicant had replied, but the authority in their impugned order say that they have not received the reply within time limit given in the show cause notice and accordingly, excess paid amount of Rs. 3,65,930/- of pay and Rs. 1,88,835/- of D.A. was ordered to be recovered from his settlement dues for which he was not entitled. Hence, the respondents assert that the recovery of such amount is legal, just and as per due procedure.

14. The applicant contends that this is the same order which was set aside earlier by the Tribunal and the authorities in the guise of pursuant to the order dated 29.01.2020 passed by Hon’ble C.A.T in O.A. 1185/2018. The authority repeated the same order reiterating the same terms and reasons rejected the contention of the applicant and ordered recovery.

15. In their favor the authorities have cited the case of Chandi Prasad Uniyal Vs. State of Uttarakhand of the apex court in civil appeal No. 5899/2012 dated 17.08.2012, wherein the court had observed following:

“16. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.

18. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012. The appeal stands dismissed with no order as to costs. IA Nos.2 and 3 are disposed of."

16. Whereas the applicant has cited the case of Ram Babu Verma Vs. Union of India judgment dated 08.02.1994 of Hon'ble Supreme Court in which the Court had ruled following:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to 1 (1993) 1 SCC 539: 1993 SCC (L&S) 221: (1993) 23 ATC 657 the fault of the respondents, the petitioners being in no way responsible for the same."

17. But there is another leading citation on the subject of recovery of dues from retired or retiring employees of the government i.e. in the case of State of Punjab and others Vs. Rafiq Masih and others reported in (2015) 2 Supreme Court Cases (L&S) dated 18.12.2014; where the Hon'ble Supreme Court has

been pleased to observe as 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.”

18. As this order is a Division Bench order delivered dated 18.12.2014, whereas the ruling cited by the applicant is of the year 2012 (Chandi Prasad Uniyal Vs. State of Uttarakhand dated 17.08.2012); hence, Rafiq Masih ruling takes precedence. As this judgment (State of Punjab & Ors. Vs. Rafiq Masih, dated 18.12.2014). is very clear from retiring or retired employees if they are not at fault for excess payment and payment has been made long back as in this case it is before the year 2000. At the time of retirement such recovery cannot be made, and within one year of being eligible for retirement also it cannot be made. So, in this case such recovery for the excess payments made long back, and that also without any fault or fraud on the part of the said employee. The authorities have failed to place before me any material which can substantiate that the applicant was in any way responsible for any fraud, commission or omission for the alleged excess payment. Hence, clearly the recovery order impugned was not right from the retiral dues.

19. Considering the same in the impugned order being not in consonance with the ruling of the Hon’ble Apex court in Rafiq Masih case (supra), Hence the impugned order is liable to be interfered with, and accordingly it is set aside to that effect and the respondents are directed to give back the amount so recovered from the applicant with 6% simple interest. In terms of this direction O.A. is allowed and the respondenst are directed to comply with the same in three months’ time.

20. And accordingly, all MAs pending are disposed of. And as to the cost the parties shall bear their own cost.

