(2024) 02 CAT CK 0034

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00472 Of 2023

Hakim Khan APPELLANT

Vs

Union Of India, Represented Through The General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.-Khurda-752017 & Ors. RESPONDENT

Date of Decision : 19-02-2024

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 15(4)(ii)

Citation : (2024) 02 CAT CK 0034

Hon'ble Judges : Pramod Kumar Das, Member (A)

Bench : Single Bench

Advocate : N.R. Routray, D.P. Mohapatra

Final Decision : Allowed

Judgement

Pramod Kumar Das, Member (A)

1. Succinctly, the case of the applicant is that he had joined the Railways on 01.09.1981. While working as Track Maintainer-I, on attaining the age of superannuation he retired from service w.e.f. 28.02.2018. The grievance of the applicant is that just before his retirement, alleging wrong fixation and overpayment from 24.08.2002 to 31.01.2018, his pay was refixed and, consequently, an amount of Rs. 1,37,758/- has been recovered. It is submitted by Ld. Counsel for the applicant that recovery from the retiral dues of the applicant is highly illegal since he is in no way responsible even if it is held that the amount was not due to him but paid to him by the respondents-department. Placing reliance on the decision of the Hon’ble Apex Court in the case of State of Punjab Vs. Rafiq Masih & Ors., (2015) 4 SCC 334, and Thomas Daniel Vs. State of Kerala, CA No. 7115/2010, he has prayed to direct the respondents to refund the recovery amount of Rs. 1,37,758/- with interest by quashing the speaking order dated 27.07.2023 (A/5). It is submitted by the Ld. Counsel for the applicant that this Tribunal has already decided similar issues in OA No.

577/2022 also.

2. Respondents filed their counter contesting the case of the applicant. It is submitted by Ld. Counsel for the respondents, that the applicant while working as TM-I under SSE/P. Way/BHC retired from service w.e.f. 28.02.2018. Prior to his retirement, applicant's Service Record was reviewed by Associate Accounts/ KUR where overpayment of Rs. 1,37,758/- was detected on account of wrong fixation of pay/drawl of increment from the month of August-2002 to January-2018. In terms of Rule 15 (4)(ii) of the Railway Services (Pension) Rules, 1993, the over-payment on account of pay and allowances are recoverable from the retirement gratuity (DCRG) even without obtaining the employee's consent. In the instant case, the applicant gave representation on 03.07.2018 to the Respondent No.2 requesting to deduct the over payment of Rs.1,33,758/- from his DCRG. Accordingly, his pay was recast and the overpayment to the tune of Rs.1,33,758/- has been deducted from his D.C.R.G. It is submitted by the Ld. Counsel for the applicant that in pursuance of the order of this Tribunal dated 07.07.2023 passed in the earlier OA No. 369/2023 filed by the applicant, the representation of the applicant was considered and reasoned and speaking order has been passed on 27.07.2023, copy of which has also been communicated to the applicant. It is submitted that in terms of Rule 15(4)(ii) of Railway Service (Pension) Rules, 1993 (R/4), overpayment on account of pay and allowances are recoverable from the DCRG even without obtaining the employee’s consent. It is submitted by Ld. Counsel for the respondents that since recovery do not cause any hardship to the applicant, the OA needs to be dismissed.

3. We have heard Ld. Counsel for both the parties and have gone through the pleadings and records. From the averments made by the Ld. Counsel for the respondents as well as the pleadings, it is quite clear that excess payment was made to the applicant due to wrong fixation of pay/drawl of increment from the month of August-2002, i.e. almost more than one and a half decade before the retirement of the applicant on 28.02.2018, and the same was allowed to be perpetuated unnoticed. When the same was detected just before the retirement of the applicant, it was recovered from applicant’s retirement dues. The applicant was a Group-C employee and retired from service on 28.02.2018 and the alleged excess payment was made over a period of more than fifteen years. It is not the case of the respondents that the applicant was in any manner was responsible for such over payment due to wrong fixation of pay. Nothing is forthcoming from the records whether any action is taken by the respondents against the officers/ official, who is responsible for such wrong payment/allowing the wrong payment to carry for over a period of 15 years and, therefore, this Tribunal do not find any plausible justification for recovering the said amount from the applicant, that too from his retirement dues, which is the solace means of maintaining the livelihood after retirement of an employee concerned. The Hon’ble Apex Court in the case of Rafiq Masih (supra), have categorically made it clear 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 and, accordingly, summarised 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.”

4. Putting the instant case within the periphery of the above decision of the Hon’ble Apex Court, this Tribunal is satisfied that the present case qualifies the conditions stipulated under (i) to (iii) and, thus, recovery caused the applicant financial hardship is sine qua non. This Tribunal is not impressed on the submission of the respondents that the recovery being effected based on Rule 15(4)(ii) of Railway Service (Pension) Rules, 1993 cannot be interfered with since the recovery itself, in the discussed circumstances, is held to be not permissible under law, obviously, the same cannot be taken as an outstanding dues on the applicant so as to be recovered. Similarly, this Tribunal is not satisfied on the argument of the Ld. Counsel for the applicant for payment of interest because it is seen that withholding/recovery of the amount was not intentional or deliberate but for the reason of the excess payment made to him, which is now held to be impermissible under law. In view of the discussions made above, the order of withholding/recovery of an amount of Rs. 1,37,758/- is hereby quashed and the respondents are directed to sanction and pay the said amount to the applicant within a period of 90 days from the date of receipt of a copy of this order.

5. In the result, the OA stands allowed to the extent stated above. Parties to bear their own costs.

