

(2020) 03 CAT CK 0055

In the Central Administrative Tribunal

Case No : Original Application No. 2856 Of 2017

Raj Pal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Citation : (2020) 03 CAT CK 0055

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : Meenu Mainee, Shailendra Tiwary

Final Decision : Partly Allowed

Judgement

Aradhana Johri, Member (A)

1. The applicant Sh. Raj Pal was an employee of the respondents' organization. He was appointed as Safai Wala on 28.11.1979 in the scale of Rs.196-232. Subsequently he was promoted as H/Khalasi in the scale of Rs.800-1150 w.e.f. 21.01.29189. He was further as PED Gr. III in the scale of Rs.950-1500 (3050-4590) w.e.f. 27.05.1996. As per letter No.3-E/26/MPP-Adj. dated 20.02.1999, the cadre of PED, along with some other categories, was merged with/as Tech under C&W with the consent of both recognized Unions. The applicant and other staff were redeployed as Tech-III in the cadre of C&C/ Mechanical Department. Subsequently, the applicant was promoted as Tech.II in the scale of Rs.4000-6000 in April, 2000. He was also granted the benefit of promotion to the post of Tech.I in the scale of Rs.5200-20200+2800 w.e.f. 10.03.2008 and he continued to draw salary and allowances of his pay in the same scale till his retirement on 30.06.2016.

2. In 1999 the applicant along with others filed OA No.860/1999 which was decided on 12.04.2001 by which the merger of the cadre of PED, along with other categories, was set aside, and all candidates were rolled back to their original cadre i.e. PED. However, the action of assigning seniority in the cadre of

PED remained undecided and the applicant continued to get financial benefits as per the promotions granted to him. In 2010, on realizing their mistake, the respondents gave a notice to the applicant vide office letter No.758-E/239-IIIP-5 dated 28.05.2010 for withdrawing the promotions and financial benefits given to him. The applicant represented/replied on 21.12.2010, 20.11.2013 and 20.03.2014 through recognized Union. A decision was taken vide letter No.758-E/239/-III/P-5 dated 02.02.2011 to roll back the benefits given to the applicant. Thereafter, the respondents issued the impugned order no.2/6E/C&W/Retirement/ANVT/2016 dated 07.06.2016, which reads as under:-

"Office of Coaching Depot Officer

Anand Vihar

No.2/6E/C&W/Retirement/ANVT/2016

Dr.07/06/2016

To

The DPO(Settlement)

Office of DRM

Northern Railway

New Delhi

Subject: Raj Pal s/o Shri Bhagwan Singh (PF

No.02853668),Tech.I/C&W/ANVT, Ticket

No.3-regarding recovery.

Reference: L.No.725E/09/3519/P-5, dt.06/2016.

Shri Raj Pal s/o Shri Bhagwan Singh, Tech-I/C&W/Anand Vihar is going to retire on 30th June, 2016. According to the above letter, re-fixation of the pay of the applicant has been done where a recovery of an amount of Rs.326513.00 is due. Therefore, the aforesaid amount may be recovered from him.

Sd/-

Sr SE (C&W)

Anand Vihar"

3. It is the contention of the applicant that he has been duly promoted at various levels till he reached the level of Tech-I. Despite that he was served with a Show Cause Notice dated 28.05.2010 to the effect that he was wrongly promoted to the grade of Tech.I and the error was sought to be rectified by virtue of re-fixation and recovery. He sent representations to the said notice but they do not seem to have been considered and a very huge amount of Rs.3,26,513/- is

sought to be recovered from his retirement benefits. He has further contended that the order for recovery was passed on 07.06.2016 just before his retirement on superannuation on 30.06.2016. He has sought the following specific reliefs:-

"8.1 That the Hon'ble Tribunal may be graciously be pleased to allow the OA and quash the Impugned order No.2/6E/C&W/Retirement/Anvt/2016 dt.7-6-2016 passed by Sr Section Engineer, Northern Railway, Anand Vihar, New Delhi directing the respondents to refund the amount which has been recovered from his gratuity with interest @ 12% per annum.

8.2 The Hon'ble Tribunal may be further please to direct the respondents to recalculate the retirement benefits of the applicant like pension, DCRG, Leave Encashment, Insurance etc. on the last pay drawn as per rules and pay the different with interest @ 12% per annum from the date the amount was due till the date of actual payment.

8.3 That the Hon'ble Tribunal may further be please to pass any other or further order as may be deemed fit and proper on the facts and circumstances of the case.

8.4 That the Hon'ble Tribunal may further be graciously pleased to grant costs against the respondents and in favour of the applicant. "

4. The applicant has also stated that the order for recovery passed after so many years i.e. just before his retirement is in violation of the law laid down by the Hon'ble Apex Court in State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc. [2014 (8) SCALE 613].

5. The respondents have denied the claim of the applicant. They have stated that they duly issued a Show Cause Notice in 2010 and promotion of the applicant was rolled back along with others to the parent cadre of PED after the Tribunal's orders passed in OA No.860/1999 in 2001. They have also stated that since rolling back was done in accordance with the Tribunal's orders, the judgment of Rafiq Masih's case (supra) is not applicable to the present case.

6. Heard Mrs. Meenu Mainee, learned counsel for the applicant and Sh. Shailendra Tiwary, learned counsel for the respondents.

7. It has been accepted by both sides that rolling back of promotion followed the orders of this Tribunal in OA No.860/1999 by which merger of various categories with that of PED was set aside. Therefore, naturally re-fixation of all the affected persons will be done. The applicant has not made a plea of any bias against him that others have been promoted and he is not. Therefore, it clearly emerges that rolling back of promotion of the applicant was done as a consequence of the order of the Tribunal and appears to have been done for all affected persons.

8. As far as the matter of recovery from the applicant is concerned, it is seen that the orders of this Tribunal were passed in the year 2001 but the Show Cause Notice was issued as late as in 2010 and recovery was effected in the year 2016,

just before the retirement of the applicant.

9. In Rafiq Masia's case (supra), the Hon'ble Apex Court has held that no recovery can be made from an employee in the following circumstances:-

"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, summaries 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."

10. I am of the view that the case of the applicant is squarely covered by the decision of the Hon'ble Apex Court in Rafiq Masih's case (supra) considering that there is delay of 15 years after the decision of this Tribunal and recovery made from the applicant. The other factor to be considered is that the applicant was on the verge of retirement when the recovery was made.

11. In light of the aforesaid discussion, this OA is partly allowed and as per the decision of the Hon'ble Apex Court in Rafiq Masia's case (supra), no recovery is to be effected from the applicant for payments already made to him. Accordingly the order dated 07.06.2016 pertaining to recovery from the applicant, is set aside. However, the respondents are free to go ahead with fixation of pay/pension as per rules. There shall be no order as to costs.