

(2019) 07 CAT CK 0019

In the Central Administrative Tribunal

Case No : Original Application No. 1653 Of 2018

Satyendra Kumar

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 17-07-2019

Acts Referred:

Citation : (2019) 07 CAT CK 0019

Hon'ble Judges : Mohd. Jamshed, Member (A)

Bench : Single Bench

Advocate : P.S. Khare, S.M. Arif

Final Decision : Allowed

Judgement

Mohd. Jamshed, Member (A)

1. The applicant was an employee of Indian Railways and served in Delhi Division of Northern Railway. In the year 2005-2006, the applicant left the

Railways and went on deputation to Rail Tel Corporation. The applicant sought permanent absorption with Rail Tel and submitted his technical

resignation from Railways, which was accepted by the Railways w.e.f. 16.01.2009. During the period 2009-2013, the applicant worked with Rail Tel

Corporation, drawing his salary and Dearness Relief (DR). He retired on 31.01.2013 on attaining the age of superannuation from Rail Tel and was

granted extension of two years till 31.01.2015. It is submitted by the applicant that on 01.03.2018 without issuing any show cause notice, the

respondents issued the impugned order, advising the bank that no DR should be paid to the applicant and the DR already paid since 16.01.2019 should

be recovered from him, under intimation to the office.

2. The applicant submitted a representation against this order dated 06.04.2018

but the same has not yet been considered by the respondents.

Aggrieved by this action of the respondents, the applicant has filed the present O.A. seeking the following relief(s):-

8.1 to allow the OA and quash and set aside the impugned order dated 01.03.2018 (Ann. A-1) with all consequential benefits and direct the

respondents to continue his dearness relief on pension as usual; and

8.2 to grant any other or further appropriate relief as deemed just and proper by this Honâble Tribunal as per facts and circumstances of the case,

besides cost and expenses of the present litigation;

9.1. to stay the operation of impugned order dated 01.03.2018 (Ann. A-1) forthwith and restrain the respondents from making recovery of DR from

his pension; and

9.2 to command the respondents not to discontinue his dearness relief as usual, pending disposal of the present OA; and

9.2 to issue any such other or further order or directions as deemed just and proper as per facts and circumstances of the case, protecting right and

interest of the petitioner.â

3. The applicant sought interim relief in terms of staying the operation of impugned order dated 1.03.2018, restraining the respondents from making

recovery of DR from his pension. This Tribunal stayed the operation of the impugned order dated 01.03.2018 vide order dated 25.04.2018. This stay

has continued since then and the recovery is not being made. Facts of the case indicate that the applicant joined the Delhi Division of Northern

Railway in the Signal Department as Junior Engineer. He went on deputation to Rail Tel on 06.07.2004 and thereafter sought permanent absorption.

Accordingly, he took retirement from Railway service w.e.f. 15.01.2009 and was granted pension w.e.f. 16.01.2009. Subsequently, he retired from

Rail Tel also in 2013 and was granted re-employment for two years till February, 2015. It is stated that the impugned order has been issued after a

lapse of more than seven years from grant of pension by the Railway and without issuing any show cause notice, which is in violation of

DOP&Tâs O.M. dated 02.03.2016 and Railway Boardâs circular dated 22.06.2016. The learned counsel for the applicant reiterated that the

applicant is a retired Group â Railway employee and the recovery of overpayment is quite impermissible in view of the above mentioned

DOP&T's O.M. and Railway Board's circular.

4. The respondents in their counter reply stated that the impugned order has been issued after receipt of instructions from the Vigilance Department of

Northern Railway to stop the DR payment, which is not admissible to the applicant. It is also submitted by the respondents that the DOP&T's

O.M. dated 02.03.2016 is in connection with the recovery of wrongful/excess payment made to government servant which is not applicable in this

matter payment of DR given on pension to the applicant and no pension amount has been reduced.

5. In the rejoinder submitted by the applicant, it is reiterated that the order for recovery has been passed after more than seven years from grant of

pension by Railway without issuing any show cause notice by the respondents. Therefore, the same is in violation of DOP&T's O.M. and

Railway Board's circular. It is also submitted that no fraud has been committed by the applicant in terms of receiving double payment of DR/DA

both on pension and salary as the PPO was prepared by the respondents and if there was any case of double payment, the same should have been

corrected by the respondents. Learned counsel for the applicant also relied upon the judgment of Hon'ble Apex Court in State of Punjab & Ors vs

Rafiq Masih (White Washer) in CA No. 11527 of 2014 (Arising out of SLP (C) No. 11684 of 2012) wherein the Hon'ble Apex Court has held

that:-

“seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with in cases where such recovery would result in

a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover”.

6. Based on the Hon'ble Apex Court Judgment in the aforesaid case, the DOP&T issued an O.M. dated 2. 03.2016. The Railway Board vide its

circular dated 22. 06.2016 has also addressed the subject of wrongful/excess payment made to government servant directing that the instructions of

the DOP&T's O.M. would also be applicable to the Railway employee. The learned counsel for the applicant argued that in view of the

Hon'ble Apex Court Judgment in State of Punjab & Ors vs Rafiq Masih (White Washer), the DOP&T's O.M. 02.03.2016 and Railway

Board's circular dated 22.06.2016, the recovery as has been ordered vide

impugned order is impermissible under the law and the same should be stopped. It was also reiterated that the representation made by the applicant dated 06.04.2018 has not been considered by the respondents. The learned counsel for the respondents referred to the counter submitted by them indicating that this is a case of recovery of double payment of DR/DA which was received by the applicant both on pension and salary and as an employee is only entitled for only one of the DR/DA payment, the payment made to the applicant was incorrectly done and it has been therefore decided to recover the same.

7. Heard Mr. P. S. Khare, learned counsel for the applicant and Mr. S. M. Arif, learned counsel for the respondents and perused the records.

8. It is obvious from the facts of the case that the applicant worked with the Railway and, thereafter, went on deputation to Rail Tel Corporation. He

later submitted his technical resignation and sought permanent absorption in Rail Tel w.e.f. 2009. With this the applicant was entitled for drawing

pension with DR from Railway from 2009 onwards, which was paid to him in terms of PPO issued. It appears that during this period the applicant

was also receiving salary and DR from Rail Tel Corporation. Later as indicated in the impugned order dated 01.03.2018, it was on the advise of the

Vigilance Department of the Railway that the concerned bank was advised to stop payment of DR on pension of the applicant and for recovery of the

DR amount already paid since 16.01.2009. The applicant, it is obvious, has not indicated this fact of double payment of DR/DA on pension and his

salary in the O.A. At the same time, this aspect has also not been clarified in the counter reply submitted by the respondents and during the arguments

by the arguing counsel. Certain reference has, however, been made in the counter reply regarding both payment of DR/DA and also the denial by the

applicant in his rejoinder indicating that no such fraud has been committed by him, whereas there was no such allegations mentioned anywhere by the

respondents.

9. The facts of this case are largely covered under the DOP&T's O.M. 02.03.2016 and the Railway Board's circular dated 22.06.2016.

However, as it appears this is not exactly a matter of overpayment and recovery of the same after a lapse of many years. In this case, there was an

element of double payment of DR, both on pension and salary at the same time,

which was detected by the Vigilance Department of the Railway and based on its advise, the respondents have issued the impugned order dated 01.03.2018. This Tribunal vide order dated 25.04.2018 has also granted interim Relief to the applicant staying the execution of the impugned order dated 01.03.2018. From the above mentioned, it is evident that the respondents have failed to issue show cause notice before issuing the impugned order dated 01.03.2018 and have also not considered the representation given by the applicant.

10. In view of these facts, the impugned order dated 1.03.2018 is quashed and set aside. The respondents are directed to issue a show cause notice to the applicant within a period of one month from the receipt of the copy of this order and, thereafter, pass reasoned and speaking order in terms of extant rules on payment of two DR/DA to the applicant on his pension and salary within a period of two months. It is also directed that time in terms of DOP&Tâ??s O.M. dated 02.03.2016, Railway Boardâ??s circular dated 22.06.2016 and the Apex Court judgment in State of Punjab & Ors vs Rafiq Masih (White Washer), no recovery of excess amount already paid to the applicant shall be made.

11. With the above directions, the O.A. is allowed. There shall be no order as to costs.