

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 05.02.2019

Order Pronounced on: 14.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.VENUGOPAL
AND

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

W.P.No.22005 of 2017

C.Hamza

... Petitioner

Vs.

1.The Union of India

Represented by the General Manager
Southern Railway,
Park Town, Chennai 600 003.

2.The Financial Adviser & Chief Accounts Officer
Southern Railway, Park Town,
Chennai 600 003.

3.The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings,
Chennai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records relating to the third respondent/Tribunal's order made in O.A.No.1066 of 2016 dated 04.10.2016, to quash the same.

For Petitioner : Mr.L.Chandrakumar

For R1 and R2 : Mr.M.Vijay Anand

For R3 : Tribunal

O R D E R

P.RAJAMANICKAM.J.,

This writ petition has been filed to issue a writ of certiorari or any other appropriate writ or order or direction in the nature of writ calling for records relating to the third respondent/Tribunal's order made in O.A.No.1066 of 2016 dated 04.10.2016, to quash the same and pass such other further or

other order as this Court may deem fit and proper in the circumstances of the case.

2. The second respondent herein had issued the impugned order in O.O.No.G.179/Admn/Gaz/2016/034 on 20.06.2016, i.e., 10 days before retirement of the writ petitioner and thereby revised the pay of the writ petitioner to Rs.41,150/- in pay band Rs.37,400-67,000 with grade pay of Rs.8,700/- from 01.07.2006. To set aside the said order, the writ petitioner had filed O.A.No.1066 of 2016 before the third respondent/Central Administrative Tribunal, Chennai Bench, Chennai.

3. The third respondent/Central Administrative Tribunal, Chennai Bench, Chennai by the order dated 04.10.2016 had dismissed the said Original Application. Feeling aggrieved, the writ petitioner has filed the present writ petition.

4. According to the writ petitioner, he was initially appointed as Junior Accounts Officer in the Central Railway and based on his clear and unblemished record of service, he claimed the ladder of hierarchy as Financial Adviser and Chief Accounts Officer (Traffic Accounts). He was working in the Southern Railway at the time of his peaceful superannuation which took place on 30.06.2016. His further case is that in terms of Railway Board's circular in RBE.No.40/2012 vide letter PC-VI/2012/I/RSRP/1 dated 23.03.2012, railway employees who were due to get their annual increment between February and June during 2006 are eligible for one increment on 01.01.2006 in the pre-revised scale as a one time measure and thereafter will get the next increment in the revised pay structure on 01.07.2006 as per Rule 10 of Railway Services (Revised Pay) Rules 2008. On this basis, the writ petitioner was granted and extended with the revised pay as the increment fell due in April, which is between February and June as stipulated in the said Circular of Railway Board.

5. The petitioner's further case is that the authorities themselves in and by proceedings dated 21.12.2006 issued orders extending the benefit of selection grade effective from 01.01.2006. The petitioner has expressed his option for fixation of pay with effect from 01.04.2006 being the date of increment in the JA grade. Considering the aforesaid facts, the petitioner was granted with the benefit of fixation of one increment sequel to Selection Grade effect from 01.01.2006. When the petitioner has been made to avail the benefits which was extended and granted as per Railway Board's order, to his utter shock and surprise, even without recourse to any of the rudimentary requisite, in and by proceedings dated 20.06.2016, the petitioner was issued with an order and whereby for the first time it came to be informed that he was not eligible for increment granted in terms of the Railway Board's order referred

to supra, effective from 01.01.2006. In fact, the annual increment which was due for the petitioner was first April. Therefore, the due having fallen between February and June 2006 coupled with stipulation of relaxation as ordered by the President, the petitioner's pay came to be fixed and revised. Therefore, according to the petitioner, the alleged revision and re-fixation is impermissible at the instance of the respondents 1 and 2 as they suffer for want of jurisdiction. Hence, the petitioner filed O.A.No.1066 of 2016 under Section 19 of the Central Administrative Tribunals Act, 1985 before the third respondent/Central Administrative Tribunal, Chennai Bench, Chennai, to set aside the impugned order. The third respondent/Central Administrative Tribunal, has dismissed the said application by the order dated 04.10.2016. Challenging the said order, the present writ petition has been filed.

6. The respondents 1 and 2 opposed the O.A.No.1066 of 2016 before the Central Administrative Tribunal by filing reply statement. In this writ petition also the respondents 1 and 2 filed counter affidavit opposing the petitioner's claim. It is the case of the respondents 1 and 2 that the petitioner has submitted the pension papers only on 06.06.2016 and he was placed on sick list from 06.06.2016 and joined duty on 27.06.2016. The review of his service particulars was undertaken after submission of pension papers wherein it was noticed that he was erroneously given one increment during the year 2012. The papers were processed for approval to refix his pay. However, the show cause notice could not be issued till 27.06.2016 as the petitioner was placed on sick list and joined duty only on 27.06.2016 i.e., three days prior to his retirement. Further in terms of Rule No.15(4) (ii) of Railway Service Pension Rules-1993, for recovery of Government dues, consent of railway servant is not necessary. It is their further case that the petitioner was placed in Selection Grade on non-functional basis with effect from 01.01.2006 and hence, his pay should have been fixed as per Rule 1313 (I) (a) (2) of Indian Railway Establishment Code, Volume II with effect from 01.01.2006 at a stage next above his pay in respect of the old post held by him and the next increment will be granted on completion of one year, but as per the request made by the petitioner, the pay was fixed as per Rule 1313 (I) (a) (1) of Indian Railway Establishment Code, Volume II, for which he is not eligible. Since the petitioner was placed in Selection Grade on non-functional basis with effect from 01.01.2006, his next increment was due only from 01.01.2007 and not on 01.04.2006 as was drawn.

7. It is their further case that as per Rule 10 of the Railway Services (Revised Pay) Rules, 2008, read in conjunction with 1313 (I) (a) (2) of Indian Railway Establishment Code, Volume II, the date of next increment after fixation of pay on

01.01.2006 consequent to placement in higher grade in the revised pay structure will be 01.07.2006, whereas as per RBE.No.40/2012 only those employees who were to get their annual increment between February to June, 2006 were granted one increment on 01.01.2006 as a one time measure and therefore, the RBE.No.40/2012 will not apply to the petitioner. It is their further case that since the petitioner is not eligible for option of fixation of pay in April 2006 and RBE.No.40/2012 is not applicable in his case, the second respondent had issued the impugned order in O.O.No.G.179 /Admn/Gaz/2016/034 re-fixing the pay of the petitioner. It is their further case that the third respondent/Central Administrative Tribunal, Chennai Bench, Chennai, after considering the materials placed before it and hearing both sides, dismissed the application filed by the petitioner in O.A.No.1066 of 2016 by the order dated 04.10.2016 and therefore, they prayed for dismissal of the writ petition.

8. Heard, Mr.L.Chandrakumar, the learned counsel for the writ petitioner and Mr.M.Vijay Anand, the learned counsel for the respondents 1 and 2.

9. The learned counsel for the petitioner has submitted that the authorities themselves in and by proceedings dated 21.12.2006 issued orders extending the benefit of Selection Grade with effect from 01.01.2006 and thereafter, taking into consideration the option given by the petitioner, the pay has been fixed with effect from 01.04.2006 being the date of increment in the JA grade. He further submitted that the Railway Board had issued a circular in RBE.No.40/2012 vide letter No.PC-VI/2012/I/RSRP/1 dated 23.03.2012 and as per the said circular, those railway employees who were due to get their annual increment between February and June during 2006 are eligible for one increment on 01.01.2006, in the pre-revised pay scale as a one time measure and thereafter, will get the next increment in the revised pay structure on 01.07.2006 as per Rule 10 of Railway Services (Revised Pay) Rules, 2008. He further submitted that since the petitioner was awarded Selection Grade with effect from 01.01.2006, as per the option given by him, the pay was fixed from 01.04.2006 being the date of increment in the JA grade, the annual increment due having fallen between February and June 2006 coupled with stipulation and relaxation as ordered by the President, the petitioner's pay came to be fixed and revised. He further submitted that subsequently, without giving an opportunity to the petitioner to put forth his case, the second respondent unilaterally passed the impugned order in O.O.No.G.179/Admn/Gaz/2016/034 on 20.06.2016 and thereby revised the petitioner's pay with effect from 01.01.2006 and consequential retention of the alleged payment from the retiral benefits working out to a tune of Rs.3,00,000/- (Rupees Three Lakhs Only) from the retirement benefits if the petitioner. He further submitted that the petitioner was granted and extended

with the benefit of such fixation way back in 2006 was proceeded towards the alleged excess payment just 10 days prior to his superannuation and the same is against the dictum of the Honble Supreme Court in State of Punjab & others Vs. Rafiq Masih (White Washers) etc., AIR 2015 SC 696. He further submitted that the third respondent/Central Administrative Tribunal approached the issue on an erroneous view of law and facts and the misrepresentation as well as that of misinterpretation of the fixation and accepted the case of the respondents 1 and 2 and rejected the petitioner's application and therefore, he prayed to quash the order passed by the third respondent/Central Administrative Tribunal in O.A.No.1066/2016 dated 04.10.2016 and also the impugned order passed by the second respondent in O.O.No.G.179/ Admn/Gaz/ 2016 /034 dated 20.06.2016.

10. Per contra, the learned counsel for the respondents 1 and 2 has submitted that the petitioner was placed in Selection Grade on non-functional basis with effect from 01.01.2006 vide Railway Board's letter No.W/M No.E(O) III-2006/PM/27 dated 21.11.2006. He further submitted that since the petitioner was placed in Selection Grade on non-functional basis, which does not involve assumption of duties and responsibilities of greater importance, his pay should have been fixed as per Rule 1313 (FR22) (I) (a) (2) and if the pay is fixed under the said Rule, his next increment would fall only on 01.01.2007 but as per the requisition made by the petitioner, the pay was fixed in terms of Rule 1313 (FR22) (I) (a) (1) of Indian Railway Establishment Code, Volume-II with effect from 01.04.2006. He further submitted that as per the Railway Board's circular in RBE.No.40/2012 dated 23.03.2012, those railway employees who were due to get their annual increment between February to June, 2006 are eligible to get one increment on 01.01.2006 in the pre-revised pay scale as a one time measure and thereafter, will get the next increment in the revised pay structure on 01.07.2006 as per Rule 10 of RS (RP) Rules, 2008, but since the petitioner was placed in Selection Grade on non-functional basis, his pay should have been fixed as per Rule 1313 (I) (a) (2) of Indian Railway Establishment Code, Volume-II, with effect from 01.01.2006, his next increment would fall due only from 01.01.2007 and therefore, the petitioner is not entitled to avail the benefits granted in Railway Board's circular in RBE.No.40/2012 dated 23.03.2012.

11. The learned counsel for the respondents 1 and 2 further submitted that the aforesaid mistake was noticed only at the time of scrutinizing the pension papers and hence, the said mistake has been rectified and the order in O.O.No.G.179/Admn/Gaz/2016/034 dated 20.06.2016 was issued refixing the pay of the petitioner. He further submitted that since the petitioner has submitted the pension papers only on 06.06.2016 and he was placed on sick list from 06.06.2016 and

joined duty on 27.06.2016, i.e., just 3 days prior to his retirement, show cause notice could not be issued. He further submitted that even otherwise, as per Rule 15(4) (ii) of Railway Services Pension Rule, 1993, it is permissible to make recovery of Government dues from the retirement benefits even without obtaining the consent of the railway servant. He further submitted that the petitioner is one of the heads of the Accounts Department and as such he cannot claim relief citing the aforesaid decision of the Hon'ble Supreme Court. He further submitted that taking into consideration of all the aforesaid facts, the third respondent/Central Administrative Tribunal, Chennai Bench, Chennai has rightly rejected the claim of the petitioner and in the said findings, this Court may not interfere and therefore, he prayed to dismiss the writ petition.

12. It is an admitted fact that the writ petitioner was initially appointed as JA grade in the Central Railway and claimed the ladder of hierarchy and retired as Financial Adviser and Chief Accounts Officer (Traffic Accounts) on superannuation on 30.06.2016. It is also an admitted fact that at the time of his retirement, he was working in the Southern Railway.

13. It is also an admitted fact that the petitioner was awarded Selection Grade with effect from 01.01.2006. It is also an admitted fact that as per the option given by the petitioner, the pay was fixed with effect from 01.04.2006 being the date of increment in the JA grade. According to the petitioner, since the pay was fixed with effect from 01.04.2006 in the cadre of Selection Grade, he is entitled to avail the benefits of the circular of the Railway Board's in RBE.No.40/2012 vide letter No.PC-VI/2012/I/RSRP/1 dated 23.03.2012 and hence, the pay has been fixed properly but subsequently without giving any opportunity to him, the second respondent has unilaterally passed the impugned order in O.O.No.G.179/Admn/Gaz/2016/034 and revised the pay and caused a loss to the tune of Rs.3,00,000/- to him.

14. Since the petitioner is claiming that he is entitled to avail the benefits of the circular of the Railway Board in circular RBE.No.40/2012, it is relevant to refer clause (3) of the said circular which reads as follows:-

"3. On further consideration and in exercise of the powers available under Rs(RP) Rules, 2008, the president is pleased to decide that in relaxation of stipulation under Rule 10 of these Rules, those railway employees who were due to get their annual increment between February to June during 2006 may be granted one increment on 01.01.2006 in the pre-revised pay scale as a one time measure and thereafter will get the next increment in the revised pay

structure on 01.07.2006 as per Rule 10 of RS(RP) Rules, 2008. The pay of the eligible employees may be refixed accordingly."

15. A plain reading of the aforesaid Clause (3) of the Railway Board's circular would show that those railway employees who were due to get their annual increment between February to June during 2006 are eligible to get one increment on 01.01.2006 in the pre-revised pay scale as a one time measure and thereafter will get the next increment in the revised pay structure on 01.07.2006 as per Rule 10 of the RS(RP) Rules, 2008.

16. According to the petitioner, he was entitled to get annual increment between February to June during 2006 and eligible to get increment on 01.01.2006 in the pre-revised pay scale as a one time measure and thereafter he will get the next increment in the revised pay structure on 01.07.2006 as per Rule 10 of RS(RP) Rules, 2008.

17. The case of the respondents 1 and 2 is that though the petitioner was awarded Selection Grade, with effect from 01.01.2006, he was placed on non functional basis with effect from 01.01.2006 vide Railway Board's letter No.W/M.No.E(O)III-2006/PM/27 dated 21.11.2006 and hence, his pay should have been fixed as per Rule 1313 (I) (a) (2) of Indian Railway Establishment Code, Volume-II with effect from 01.01.2006 and if the pay is fixed in terms of Rule 1313 (I) (a) (2), his next increment will become due only on 01.01.2007. Their further case is that based on the requisition submitted by the petitioner, the pay has been wrongly fixed in terms of Rule 1313 (I) (a) (1) of Indian Railway Establishment Code, Volume-II and the said mistake was noticed only at the time of scrutinizing the petitioner's pension papers and accordingly the petitioner's pay has been refixed and revised proceedings has been issued vide impugned order in O.O.No.G.179Admn/Gaz/2016/034 dated 20.06.2016.

18. In the impugned order in O.O.No.G.179/Admn/Gaz/ 2016/034 dated 20.06.2016, the second respondent ha stated as follows:

"The pay of Shri.C.Hamza, FA & CAO/T/ MAS is revised w.e.f. 01.01.2006, as it is seen that the officer was not eligible for increment granted in terms of RBE.No.40/2012, for officers whose annual increment fell between February and June, 2016."

19. A plain reading of the aforesaid order would show that the second respondent has not stated any reason as to why the petitioner was not eligible for increment granted in terms of RBE.No.40/2012. Only in the reply statement filed before the

third respondent/Central Administrative Tribunal, for the first time it was stated that the petitioner was placed in Selection Grade on non-functional basis with effect from 01.01.2006 vide Railway Board's circular RBE.No.40/2012, letter No.PC-VI/2012/I/RSRP/1 dated 23.03.2012. Further in the said reply statement it was stated that since the petitioner was placed in Selection Grade on non-functional basis with effect from 01.01.2006, his pay should have been fixed as per Rule 1313 (I) (a) (2) of Indian Railway Establishment Code, Volume-II with effect from 01.01.2006 and his next increment would fall on 01.01.2007 but as per the requisition submitted by the petitioner, the pay has been fixed wrongly in terms of Rule 1313 (I) (a) (1) of Indian Railway Establishment Code, Volume-II with effect from 01.04.2006 and hence, the petitioner is not entitled to avail the benefits of Railway Board's circular RBE.No.40/2012. The aforesaid reasons were not at all stated in the impugned order passed by the second respondent in O.O.No.G.179 /Admn/Gaz/ 2016/034 dated 20.06.2016.

20. It is also to be pointed out that admittedly the petitioner's pay has been fixed in the cadre of Selection Grade even in the year 2006 itself with effect from 01.04.2006 in terms of 1313 (I) (a) (1) of Indian Railway Establishment Code, Volume-II and subsequently following the Railway Board's circular in RBE.No.40/2012, the petitioner's pay has been fixed vide proceedings No.O.O.No.G.179 /Admn /Gaz/2016/034, 10.04.2012. But, suddenly on 20.06.2016, i.e., just 10 days prior to his retirement, the second respondent has issued the impugned order in O.O.No. G.179/ Admn/Gaz/2016/034 without giving any opportunity to the petitioner to put forth his case.

21. According to the respondents 1 and 2, the petitioner had submitted his pension papers only on 06.06.2006 and he was placed on sick list from 06.06.2006 and joined duty only on 27.06.2016 i.e., just three days prior to his retirement and hence, show cause notice could not be issued. The said reason is not an acceptable one. Since the respondents 1 and 2 are having service particulars of the petitioner, they could have verified the said particulars and after giving an opportunity to the petitioner, pass an appropriate order as to whether any amount is due to be recovered from the petitioner, well in advance, prior to his retirement. But they have not done so.

22. In state of Punjab & others Vs. Rafiq Masih (White Washers) etc., (supra) the Hon'ble Supreme Court after referring to several decisions, as a ready reference, summarise the following few situations, wherein recoveries by the employees, 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 employee's right to recover."

23. In Union Territory, Chandigarh and others Vs. Gurcharan Singh and another (2014) 13 SCC 598 the Hon'ble Supreme Court in para-13 has observed as follows:-

" 13. Though a submission had been made on behalf of the respondent that no amount should be recovered from the salary paid to the respondent, the said submission cannot be accepted because if any amount had been paid due to mistake, the mistake must be rectified and the amount so paid in pursuance of the mistake must be recovered. It might also happen that the employer might have to pay some amount to the respondent as a result of some mistake and in such an event, even the appellant might have to pay to the respondent. Be that as it may, upon settlement of the account, whatever amount has to be paid to the respondent employee or to the appellant employer shall be paid and the account shall be adjusted accordingly."

24. From the aforesaid decision it is clear that if any amount had been paid due to mistake, the said mistake must be rectified and the amount so paid in pursuance of the mistake must be recovered. Similarly, if the employer might have to pay any amount to the employee as a result of some mistake, the employee is entitled to claim the same. In this case, the main grievance of the petitioner is that before reducing the pay, no opportunity was given to him to put forth his case.

25. No doubt, as per Rule 15 (4) (ii), it is permissible to make recovery of Government dues from the retirement, death,

terminal or service gratuity even without obtaining the consent of the railway servants, but that it does not mean that the pay can be revised and reduced without giving an opportunity to the railway servant. Fixation of pay and recovery of dues are totally different processes. Fixation of pay is adjudication process; where as recovery of dues is execution process. If pay is revised and reduced after giving proper opportunity to the railway servant, then, in view of the aforesaid provision, the respondents 1 and 2 can recover the same even without obtaining the consent of the railway servant. But in this case, the second respondent has suddenly, altered the earlier proceedings which was issued on 10.04.2012 fixing the pay in terms of the Railway Board's circular in RBE.No.40/2012 and issued revised proceedings vide impugned order on 20.06.2016 and thereby reduced the petitioner's pay. Therefore, this Court is of the view that the said impugned order is not sustainable and the same is liable to be set aside. The third respondent/Central Administrative Tribunal has not appreciated the aforesaid facts in proper perspective. Accordingly, the order passed by the third respondent/Central Administrative Tribunal in OA.No.1066 of 2016 dated 04.10.2016 and order passed by the second respondent in O.O.No.G.179/Admn/Gaz/2016/034, dated 20.06.2016 are liable to be set aside.

26. In the result, this writ petition is allowed. No costs. The order passed by the third respondent/Central Administrative Tribunal and the second respondent/impugned order O.O.No.G.179/Admn/Gaz/2016/034, dated 20.06.2016 are set aside. It is open to the second respondent to pass fresh order by giving proper reasons, after giving an opportunity to the petitioner to put forth his case (since the matter relates to 'civil consequences') and adhere to the principles of natural justice, within a period of four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dna

To

1.The General Manager

Southern Railway,

Park Town, Chennai 600 003.

2.The Financial Adviser & Chief Accounts Officer

Southern Railway, Park Town,

Chennai 600 003.

WEB COPY

3.The Registrar,
Central Administrative Tribunal,
City Civil Court Buildings,
Chennai.

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.13727
+1cc to Mr.M.Vijay Anand, Advocate, S.R.No.14024

W.P.No.22005 of 2017

VBA (CO)

rrs 08/03/2019



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