

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2417 of 2020**

1. Union of India - Through the Secretary, Railway Board, Rail Bhawan, Rafi Marg, New Delhi-110001
2. General Manager, South East Central Railway, New GM Building, Bilaspur (C.G.) 495004
3. Senior Divisional Personnel Officer, South East Central Railway, Divisional Office, Personnel Branch, Raipur (C.G.) 492008
4. Assistant Personnel Officer, South East Central Railway, Divisional Office, Personnel Branch, Raipur (C.G.) 492008

Petitioners**versus**

Puran Chandra Mandi Red. Lab Assistant, S/o Mohan Chandra Mandi, presently residing at C/o K.L. Das, House No. 237/3, Sector 3, Behind 30-Block, Balaji Nagar, Shivanand Nagar, Raipur (C.G.) 492008

Respondents

For Petitioners	:	Mr. R.K. Gupta, Advocate
For Respondent	:	Mr. A.V. Shridhar, Advocate
Date of hearing	:	11.11.2021
Date of Judgment	:	10.12.2021

Hon'ble Shri Arup Kumar Goswami, Chief Justice**Hon'ble Shri Goutam Bhaduri, Judge****CAV JUDGMENT****Per Arup Kumar Goswami, Chief Justice**

Heard Mr. R.K. Gupta, learned counsel for the petitioners as well as Mr. A.V. Shridhar, learned counsel appearing for the respondent.

2. By filing this writ petition, the petitioners challenge the order dated 03.01.2020 passed by the learned Central Administrative Tribunal (for short, 'CAT') Bench Jabalpur, Circuit Sitting : Bilaspur in Original Application No.203/00717/2015, whereby, the learned CAT directed refund of recovered amount to the applicant before it. The relief prayed for in the Original

Application filed before the learned CAT is as follows :

"8. Relief Sought :-

8.1. That, the learned Tribunal may kindly be pleased to quash the order no E/PB/R/COU/2015/06 dated 13.07.2015 to the extent it justifies the whereby recovery made from the DCRG of the applicant and directs further recovery of Rs.40963/- from the pension of the applicant. Annexure A-1.

8.2 That, the Hon'ble Tribunal may kindly be pleased to direct the respondents to refund the amount of Rs.390575/- recovered from the applicant with an interest of at the rate of 18% p.a.

8.3 Cost of the Original application.

8.4. Any other relief which the learned Tribunal deems fit and proper may be awarded."

3. For the sake of convenience, the respondent in the present writ petition shall be referred to as the applicant and the respondents before the learned CAT shall be referred to as the petitioners.

4. The applicant was appointed as Khalasi in Kharagpur workshop under the South Eastern Central Railway on 10.10.1981. He was promoted to the post of Lab Attendant with effect from 23.07.1987. He was promoted to the post of Lab Assistant by an order dated 12.11.1988. However, the petitioners issued an order dated 01.04.2020, reverting the applicant to the post of Lab Attendant, on the ground that the applicant was not holding the requisite minimum qualification.

5. Since the chronology of events, as recorded by the learned CAT, is not disputed by learned counsel for the parties, it will be appropriate to reproduce paragraphs 14, 15 and 16 of the order of the learned CAT, as under :

"14. From the pleadings itself there is no dispute to the fact that the applicant was appointed as Khalasi in Khargpur workshop on 10.10.1981. Thereafter, the applicant was promoted as Lab Attendant on 23.07.1987 and further promoted as Lab Assistant on 05.11.1987. It is also admitted fact by the parties that the respondents issued order reverting the applicant to the post of Lab Attendant on 01.04.2020 and the applicant aggrieved by that order had filed Original Application before the Central Administrative Tribunal, Calcutta Bench and on 26.04.2020, stay order was granted in Original Application No.443/2000. Ultimately, the Original Application was dismissed by the Co-ordinate Bench at Calcutta on 01.03.2006 holding that applicant did not have requisite qualification.

15. It is also admitted fact that the applicant filed Writ Petition No.250/2006 before the Hon'ble High Court of Kolkata and the Hon'ble High Court 16.11.2006 was pleased to dispose of the Writ Petition with a direction to the respondents to pass appropriate orders. It is also admitted fact by the parties that the applicant continued to perform the duties of Lab Assistant and draw salary for the same. In December 2006 the applicant obtained the requisite qualification and submitted the certificates to the

respondents for consideration and the requisite certificate was submitted in March 2007. Thereafter the applicant preferred representation for his regularization. It is also admitted fact by the parties that the applicant again preferred Original Application No.558/2012 before the Co-ordinate Bench at Calcutta and directed the respondents to decide the representation of the applicant. Ultimately, the respondents has rejected the representation of the applicant on 25.08.2013. On 15/16.07.2014 the respondents passed orders of recovery from the DCRG of the applicant on account of excess payment granted to him vide Annexure A-2. The applicant made representation against the said recovery order on 22.07.2014 (Annexure A-3) and ultimately the applicant superannuated on 31.07.2014.

16. It is also admitted fact that the applicant again filed Original Application No.203/00114/2015 before this Tribunal and vide order dated 12.05.2015 the Original Application was disposed of with a direction to consider the pending representation of the applicant. Ultimately, vide impugned order dated 13.07.2015 the respondents have rejected the representation of the applicant."

6. The learned CAT at paragraphs 21, 22, 23 and 24 recorded as follows :

"21. Admittedly the applicant was reverted from the post of Lab Assistant to Lab Attendant on 01.04.2000 and the applicant has filed the Original Application before the Co-

ordinate Bench at Kolkata in O.A. No.443/2000 and the stay was granted by the Bench. Ultimately, the Original Application was dismissed on 01.03.2006. Though the applicant has preferred a Writ Petition No.250/2006 before the Hon'ble High Court of Kolkata and the Hon'ble Court on 16.11.2006, till date there was no recovery order from the respondent department.

22. In the instant case legal proposition has arisen. Firstly the applicant has worked on the strength of the interim order by the Co-ordinate Bench of CAT and as per judgment passed by the High Court of Allahabad in the matters of Surya Deo Mishra (**Supra**), it has been held that the payment made to the incumbent on the strength of interim order in a particular circumstance can not be recovered. So in the instant case also the case of the applicant is fully covered by the above judgement and no recovery is to be made in view of the ratio laid down by the Hon'ble High Court of Allahabad in the matter of Surya Deo Mishra (**Supra**), subsequently, the recovery order was passed on 22.07.2014 and the applicant had retired on 31.07.2014. As per law settled by the Hon'ble Apex Court in the matters of Rafiq Masih (**Supra**) has summarized the legal position regarding recovery from retiring person and in the instant case, the applicant fall within the parameters of the above judgment.

23. The applicant is a Group 'C' official and has retired on 31.07.2014 whereas the recovery order has been passed

on 22.07.2014 (Annexure A-3). So in view of the law laid down by the Hon'ble Apex Court in the matters of Rafiq Masih (**Supra**) the case of the applicant is fully covered by this judgment.

24. In view of the above, this Original Application is allowed and the recovery order dated 13.07.2015 is quashed and set aside and the respondents are directed to refund the amount of Rs.3,90,575/- already recovered from the applicant within a period of 60 days from the date of receipt of a certified copy of this order. No order as to costs."

7. A perusal of the judgment of the learned CAT would go to show that in support of the case presented by the applicant, reliance was placed on the decision of the High Court of Allahabad in the case of *Surya Deo Mishra v. State of U.P.*, reported in *2006 2 LLJ 583* and the decision of the Hon'ble Supreme Court in the case of *State of Punjab and Others v. Rafiq Masih (White Washer) and Others*, reported in *(2015) 4 SCC 334*.

8. Mr. R. K. Gupta, learned counsel for the petitioners submits that recovery was sought to be made due to re-fixation of pay on reversion of the applicant and such action is justified in view of the judgment of the Hon'ble Supreme Court in the case of *Chandi Prasad Uniyal and Others v. State of Uttrakhand and Others*, reported in *(2012) 8 SCC 417*. It is also submitted that *Rafiq Masih* (supra) was decided by the Hon'ble Supreme Court on 18.12.2014, whereas the order for recovery was made by the petitioners on 22.07.2014 and therefore, the learned CAT misdirected itself in placing reliance on the decision of Hon'ble Supreme Court in the case of *Rafiq Masih* (supra). It is submitted that because of various proceedings initiated by the applicant

and in view of the orders passed thereunder, the petitioners could not revert the applicant and re-fix his actual pay in the year 2000 and therefore, the same has resulted in accumulation of excess payment to the tune of Rs. 4,31,538/-.

9. Mr. A.V. Shridhar, learned counsel appearing for the applicant supports the order passed by the learned CAT. It is submitted that the action taken by the petitioners towards recovery of the amount was challenged as illegal and arbitrary before the learned CAT and during the pendency of such proceeding, the Hon'ble Supreme Court rendered decision in *Rafiq Masih* (supra) and therefore, the learned CAT was justified in placing reliance on the said judgment.

10. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

11. The applicant retired from service on superannuation on 31.07.2014. That the applicant was a group 'C' official is an admitted position. In *Chandi Prasad Uniyal* (supra), the Hon'ble Supreme Court observed that it has not laid down as a principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to such irregular/wrong fixation of pay can be recovered. The Hon'ble Supreme Court further observed that any amount received by the recipient without the authority of law can always be recovered barring a few exceptions of extreme hardships but not as a matter of right and taking note of the facts of the case, as presented, it was held that the case of the appellants therein did not fall in any of the exceptional categories and that apart, there was a stipulation in the fixation order that in case 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.

12. While rendering *Rafiq Masih* (supra), the decision in the case of *Chandi Prasad Uniyal* (supra) was also taken note of. After considering case laws on the subject, the Hon'ble Supreme Court at paragraph 18 held as follows :

"18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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 is 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 in 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."

13. In *Chandi Prasad Uniyal* (supra), there was a stipulation in the fixation order that in the event of wrong pay fixation, excess amount drawn can be recovered, which is not the fact situation in the instant case.

14. The applicant being a group 'C' employee and the order of recovery having been passed nine days before his date of retirement, in view of the decision of the Hon'ble Supreme Court in *Rafiq Masih* (supra), recovery of any amount is wholly impermissible in law. Further more, the applicant continued to discharge the duties of Lab Assistant, for which salary was paid accordingly.

15. In view of the above discussion, we find that no case is made out for interference with the order under challenge and accordingly, the writ petition is dismissed. No cost.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge