

\$~21 (2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 05.08.2021

+ **W.P.(C) 7838/2021 & CM No. 24386/2021**

LAKSHMAN SINGH Petitioner

Through: Mr. K.R. Shukla, Adv.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Jagjit Singh, senior counsel for
railways with Mr. Preet Singh and
Mr. vipin Chaudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

[Court hearing convened via video-conferencing on account of COVID-19]

CM No. 24386/2021

1. Allowed, subject to just exceptions.

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2. Issue notice.

2.1. Mr. Jagjit Singh accepts notice on behalf of the respondents.

3. In view of the directions that we intend to pass, Mr. Singh says that, he will argue the matter based on the record presently available before the Court.

4. This writ petition is directed against the order dated 02.03.2021,

passed by the Central Administrative Tribunal (in short 'the Tribunal') in OA No. 937/2020. The impugned order came to be passed in the background of the following facts and circumstances:-

4.1 The petitioner was engaged by the respondents as a substitute *safaiwala/khalasi* on 14.01.1984. His services were regularized in 1987 and he was promoted to the next higher grade, from time to time, as per rules obtaining at the relevant point in time. He retired from the post of Senior Technician (C&W) on 31.07.2020.

4.2. On the verge of the petitioner's retirement from service i.e. on 03.06.2020, his pay was revised and adjustments were made to his salary, as the respondents were of the view that a clerical error had been made *vis-à-vis* his pay fixation. Accordingly, necessary directions were issued for recovery of amounts, which were overpaid, prior to settlement of the petitioner's retirement benefits.

4.3. The petitioner, being aggrieved, challenged the order dated 03.06.2020, before the Tribunal.

4.4. The Tribunal allowed the prayer made in the original application and set aside the order of recovery dated 03.06.2020, as the said order had been issued without affording an opportunity to the petitioner to defend his position. The Tribunal, however, granted liberty to the respondents to pass a fresh order after giving due opportunity to the petitioner and hearing arguments in support of his case.

4.5. It is relevant to note that, the petitioner had cited the judgment of the Supreme Court rendered in the matter of *State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.*, (2015) 4 SCC 334, before the Tribunal, for the proposition that the recoveries in his case, apart from anything else, were

being made after a long gap and on the eve of his retirement, and hence were not tenable in law.

5. Given this position, Mr. K. R. Shukla, who appears on behalf of the petitioner, says that, not only the petitioner's case is covered by the judgment of the Supreme Court in **Rafiq Masih's** case, but is also supported by the Office Memorandum (OM) dated 02.03.2016, issued by the Department of Personnel and Training (DoPT).

6. On the other hand, Mr. Jagjit Singh, who appears on behalf of the respondents, says that, insofar as the aforementioned OM is concerned, since the same has been issued by the DoPT, it is not applicable to the respondents i.e. the Railways.

6.1. Mr. Shukla, however, contends to the contrary and submits that, the Railways has followed the DoPT circular dated 02.03.2016, and accordingly, issued its own circular. Mr. Shukla has, however, not placed on record, the circular said to have been issued by the Railways.

7. Therefore, according to us, the instant writ petition can be disposed of with the following directions: -

- (i) In case respondents were to pass a fresh order qua recoveries against the petitioner, they will, as directed by the Tribunal, accord opportunity of hearing to the petitioner.
- (ii) Respondents, while passing the fresh order, will take into account the judgment of the Supreme Court in **Rafiq Masih's case**.
- (iii) The respondents will also examine: whether the OM dated 02.03.2016, issued by the DoPT, is applicable to the petitioner? In case, the concerned authority concludes that the said OM is not applicable, it will furnish reasons as to why it is not applicable in the

petitioner's case.

(iv) A copy of the speaking order, passed by the respondents, shall be furnished to the petitioner.

(v) The aforesaid exercise will be carried out with due expedition, though not later than 6 weeks from the date of receipt of a copy of this judgement.

7.1. It is ordered accordingly.

8. Needless to add, if the order passed by the respondents is adverse to the interests of the petitioner, he will have liberty to take recourse to an appropriate remedy, *albeit*, as per law. It goes without saying that, if the respondents rule in the favour of the petitioner, the respondents will refund the recovered amount to the petitioner.

RAJIV SHAKDHER, J

TALWANT SINGH, J

AUGUST 05, 2021/nk

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