

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 18777 of 2018

Union of India & Ors.

.....

Petitioners

Mr. D. Gochhayat, CGC

Vs.

P.Vaidyanath & another

.....

Opposite Parties

*Mr. C.A.Rao, Sr. Advocate along
with Mr. S.K. Behera,
Advocate(O.P.1)*

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE SANJAY KUMAR MISHRA

ORDER

14.07.2022

Order No.

04.

This matter is taken up through hybrid mode.

2. Heard Mr. D.Gochhayat, learned Central Government Counsel for the Petitioners and Mr. C.A.Rao, learned Senior Advocate along with Mr. S.K. Behera, learned Counsel for the Opposite Party No.1.

3. The Petitioner has filed this Writ Petition seeking to quash the order dated 13.04.2018 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack, by which the Tribunal quashed the impugned orders dated 17.12.2013, 5.02.2014 and hold that the Opposite Party No.1 will continue to enjoy the benefits granted to him vide order dated 15.09.2011 and order dated 05.04.2012 and the excess amount if any recovered from the salary of Opposite Party No.1 be refunded to him within a period of eight weeks.

4. Mr. Gochhayat, learned Central Government Counsel contended that the Tribunal has committed an error apparent on the face of the record by quashing the impugned orders dated

17.12.2013 and 5.02.2014 and holding that Opposite Party No.1 will continue to enjoy the benefits granted to him vide order dated 15.09.2011 and order dated 05.04.2012 and the excess amount if any recovered from the salary of Opposite Party No.1 be refunded to him within a period of eight weeks.

5. Mr. C.A.Rao, learned Senior Advocate appearing for Opposite Party No.1 contended that there is no error apparent on the face of the order of the Tribunal and the Tribunal has passed the order in consonance with law which does not require interference by this Court.

6. Having heard learned Counsel for both the parties and after going through the record, it appears that the Petitioner was initially appointed as Vehicle Helper on 29.6.1988. He was granted temporary status with effect from 30.07.1989 and was promoted as Vehicle Driver, Gr.III in the scale of Rs.950-1500 with effect from 29.6.1989. Subsequently, he was promoted as Motor vehicle Driver, Gr.II and Gr.I with effect from 1.8.1991 and 8.12.1994 respectively, after clearing the required tests. He along with others were reverted to the post of Driver, Gr.III in the scale of Rs.3050-4590 with effect from 1.12.2001 when he was already working as Grade-I Vehicle Driver in the pay scale of Rs.4500-7000/-. He was granted 1st financial up gradation under ACP Scheme with effect from 22.6.2003 in the pay scale of Rs.4000-6000/- from the scale of Rs.3050-4590 drawn by him at that time vide Office Order dated 15.9.2011. Therefore, the order was passed granting first ACP with Grade Pay of RS.2400 from the existing GP Rs.1900 consequent to the passing of the trade test. Subsequently, on 5.4.2012, vide office order No.187/2012, the Opposite Party No.1 was granted 2nd financial up gradation under MACP Scheme on completion of 20 years of service from the date of 50% T.S. with effect from 22.06.2011 and his Grade pay was raised from Rs.2400 to 2800 in P.B.-1. On

17.12.2013, Office of Chief Personnel Officer, East Coast Railway wrote a letter to the Opposite Party No.1 that his Grade Pay has been erroneously fixed at Rs.2800 at the time of grant of 2nd MACP instead of GP rs.2000 since he was in PB-1 with GP Rs.1800 at the time of grant of 2nd financial up gradation under MACP Scheme. The excess payment drawn on account of wrong fixation was reversed from his salary. The Opposite Party No.1 submitted a representation to the Chief Personnel Officer. East Coast Railways on 23.12.2013 praying for restoration of his Grade Pay and not to recover any excess amount from him. Reply was sent him on 5.2.2014 rejecting his representation and revised pay fixation office order dated 31.1.2014 was sent to him wherein he was granted 2nd financial up gradation under MACP in PB-1 with GP of Rs.2000 with effect from 22.6.2011. Being aggrieved by such action of the Authorities, Opposite Party No.1 approached the Tribunal by filing the Original Application. The Tribunal vide order dated 13.04.2018, quashed the impugned orders dated 17.12.2013 and 5.02.2014 and hold that the Opposite Party No.1 will continue to enjoy the benefits granted to him vide order dated 15.09.2011 and order dated 05.04.2012 and the excess amount if any recovered from the salary of Opposite Party No.1 be refunded to him within a period of eight weeks. The Tribunal has passed the order taking into consideration the judgment of the apex Court in the case of *State of Punjab and Others v. Rafiq Masih (Whitewasher)* (AIR 2015 SC 696) and by quoting the relevant paragraphs of the said judgment in the impugned order. The Tribunal by relying the said judgment observed that such recovery cannot be permissible.

7. This Court does not find any error apparent in the face of the order of the Tribunal and as such the Writ Petition merits no consideration, which is accordingly dismissed.

(DR. B.R. SARANGI)
JUDGE

Arun/Banita

(S.K. MISHRA)
JUDGE

