

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) 4411/2022

Biswadip Bose, Aged: 59 years,
Occupation: Sub-Inspector (Retd.)
Railway Protection Force,
South East Central Railway,
Nagpur, residing at Plot No. 163,
Ma Dhangouri Layout,
near Radha Krishna Mandir,
Post office: Uppalwadi,
Bhilgaon Nagpur: 440026
Mobile No. 9921140023.

..... PETITIONER

// VERSUS //

1. The Union of India through
its Divisional Railway Manager,
South East Central Railway,
Kingsway, Nagpur: 440001.
2. The Senior Divisional Security
Commissioner, Railway Protection
Force, South East Central Railway,
Kingsway, Nagpur: 440001.

.... RESPONDENT(S)

Mr. R.D. Dhande, Advocate for the petitioner
Mr. S. A. Chaudhari, Advocate for the respondents

**CORAM : ROHIT B. DEO AND
Y.G. KHOBRAGADE, J.J.**

DATED : 07/02/2023

ORAL JUDGMENT : (PER:- Y.G. KHOBRAGADE, J.)

Rule. Rule made returnable forthwith. With the consent of
both the sides the matter is heard finally at the stage of admission.

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2. The challenge in this writ petition is to the order dated 24.11.2021 directing recovery of the excess payment made to the petitioner towards additional increments and reducing/refixing the basic salary of the petitioner from Rs.52,000/- to Rs.50,500/-.

3. It is the case of the petitioner that he was initially appointed on the post of Constable (Group - C) on 04.04.1987 with respondents and thereafter, he was promoted on the post of Assistant Sub-Inspector/ Railway Protection Force. He voluntarily superannuated from service with effect from 20.10.2021. The respondents without service of any show cause notice passed the impugned order dated 24.11.2021 and directed recovery of Rs.2,41,519/- on the ground of making overpayment, from outstanding gratuity of the petitioner. It is further contention of the petitioner that the respondents have also issued the order dated 24.11.2021 fixing the last pay/level of the basic salary of the petitioner as Rs.50,500/- instead of Rs.52,000/-. Being aggrieved, the petitioner made representations to respondent 2 - Senior Divisional Security Commissioner on 01.02.2022 and 14.06.2022, but respondent 2 has not redressed the grievance. Hence, being aggrieved, the petitioner filed the present petition.

4. The learned Counsel for the petitioner, Mr. R.D. Dhande, submitted that the petitioner has completed more than 34 years of SM Gate

service and obtained voluntary superannuation on 20.10.2021. During the petitioner's entire service, the petitioner was not served with any notice for recovery of the amount by the respondents, but after superannuation, without issuing show cause notice, the respondents directed recovery from the petitioner of Rs.2,41,519/- and wrongly fixed last the pay/level on Rs.50,500/- instead of Rs.52,000/-. After several representations and after enquiries, the petitioner has been orally informed that recovery has been made on the ground of excess increments paid to him. The learned Counsel for the petitioner submitted that no opportunity has been given to the petitioner before passing the impugned orders. The learned Counsel placed reliance on the decision in the case of *State of Punjab Vs. Rafiq Masih (White Washer) [2015(1) ALL MR 957 (S.C.)]*, and submitted that since the petitioner belongs to Group-C post no recovery is permissible after retirement and the impugned orders are liable to be set aside.

5. The respondents filed reply dated 20.01.2023 contending that at the time of final pay fixation and upon inspection of service book of the petitioner, it was found that there was objection to pay fixation in the year 1996 and 1999 and financial benefits for promotion under Assured Career Progression Scheme granted were irregular/excessive. Accordingly, the respondents refixed the last pay scale/level of the salary

of the petitioner on Rs.50,500/- and deducted an of Rs.2,41,519/- as per direction of the Audit Department. Hence, there is no reason to interfere with the impugned order.

6. We have heard the learned Counsel for the parties and perused the record. It is not disputed that the petitioner has served as Group-C employee for more than 34 years from 04.04.1987 and superannuated on 20.10.2021. In the case in hand, the respondents recovered an amount of Rs.2,41,519/- from the gratuity of the petitioner on the ground of additional increments paid to the petitioner for the years 1996 and 1999 and also fixed the last pay/level on Rs.50,500/-. Respondents 1 and 2 contended that at the time of retirement of the petitioner salary of Rs.52,000/- was paid, but upon inspection of service book of the petitioner while final pay fixation, it was revealed that in the year 1999, the petitioner was given pay scale of Rs.3200 – 4900 under Assured Career Progression Scheme (ACP), while granting promotional benefits and ACP in the year 2007 was wrong. After re-fixation of pay scale from 01.01.1996 till 01.07.2021 pay scale of the petitioner was reduced to Rs.50,500/- from Rs.52,000/-, therefore, excess amount of Rs.2,41,519/- paid to the petitioner is recovered. However, respondents 1 and 2 have not stated about issuance of any notice to the petitioner prior to recovery of the said amount. Even otherwise, the ratio of the

decision in the case of **Rafiq Mashhi** (supra) is squarely attracted to the present case, especially the observations in paragraph No. 12 thereof, which read as under:-

“12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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 employer's right to recover.”

7. Admittedly, the petitioner belongs to Class-III post. The recovery and last pay/level fixation have been made by order dated 24.11.2021 and 24.11.2021 respectively and the petitioner superannuated from service on 20.10.2021. The excess payment has been made for a period exceeding 5 years before the order of recovery was issued. The excess payment was made for the years 1996 and 1999 while the order of recovery is dated 24.11.2021. In view of the above discussion and the ratio laid down in ***Rafiq Masih*** (supra), we are of the view that the petitioner is entitled to be refunded total amount of Rs.2,41,519/-.

8. In that view of the matter, we pass the following order:-

(i) The petition is partly allowed to the extent of the recovery of the excess payment. The amount recovered shall be refunded to the petitioner within six weeks.

9. Rule is made absolute in the aforestated terms.

(Y.G. KHOBRAGADE, J.)

(ROHIT B. DEO J.)

SANDIP
MAHADEV
GATE

Personal Assistant to the
Hon'ble Judge
Digitally signed by
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Date: 2023.04.24
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