

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

WRIT PETITION (WP) 5894/2022

Ashok Ganeshlal Chouragade, Aged:60 years,
Occupation: Sub-Inspector (Retd.)
Railway Protection Force,
South East Central Railway, Nagpur,
residing at Behind Grand Sita Hotel
near Sai Suman Apartment, Gondia,
Mahavir Colony, Post office,
Gondia City, District: Gondia
Pin Code: 441614.

..... 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 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 30.06.2021 directing recovery of the excess payment made to the petitioner for additional increments.

3. It is the case of the petitioner that he was initially appointed on the post of Constable (Group - C) on 24.07.1980 with respondents and thereafter, he was promoted on the post of Sub-Inspector/ Railway Protection Force. After completion of 39 years of service, he superannuated on 30.06.2021. On the day of superannuation, respondent 2 issued a letter directing recovery of Rs.2,50,965/- from the petitioner and thereafter, recovered the said amount from the petitioner. Being aggrieved, in September 2021 the petitioner made a representation to the Principal Chief Security Commissioner, Railway Protection Force, South East Central Railway, Bilaspur but, the said authority did not address the grievance of the petitioner. Thereafter, on 27.05.2022, the petitioner sent another representation for refund of the said amount, but till date the petitioner has not received the said amount.

4. The learned Counsel for the petitioner, Mr. R.D. Dhande, submitted that the petitioner has completed more than 39 years of service and superannuated on 30.06.2021. During the petitioner's entire

service, the petitioner did not receive any notice for recovery of the amount from the respondents. On the date of superannuation, he has been served with the notice for recovery of the amount. After several representations, 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 order. 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 and the impugned order is liable to be set aside.

5. The learned counsel for the respondents supported the impugned order. The respondents filed reply dated 23.01.2023 contending that in view of the direction of the Accounts Department, the salary of the petitioner was revised and the amount of Rs.2,50,965/- was found to be recoverable from the petitioner for the period from 01.12.1998 to 01.05.2015. It is also contended that the respondents have received the representations of the petitioner and the respondents have already disbursed/refunded the amount of Rs.1,78,839/- to the petitioner and now only the issue of refund of Rs.72,126/- survives. It is

also contended that the petitioner was informed about the recovery of the aforesaid amount.

6. We have heard the learned Counsel for the parties and have perused the record. It is not disputed that the petitioner has served as Group-C employee for more than 39 years from 24.07.1980 and superannuated on 30.06.2021. The respondents in its reply have also admitted the partial refund to the petitioner. In the case in hand, the respondents recovered an amount of Rs.2,50,965/- on the ground of additional increments paid to the petitioner for the period from 01.12.1998 to 01.05.2015. It is seen that ratio of the decision in the case of **Rafiq Masih** (supra) is squarely attracted to the present case, particularly 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 has been made by order dated 30.06.2021 and the petitioner superannuated from service on 30.06.2021. The excess payment has been made for period exceeding 5 years before the order of recovery was issued. The excess payment was made from 01.12.1998 to 01.05.2015 while the order of recovery is dated 30.06.2021. 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.2,50,965/-.

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
SANDIP MAHADEV
GATE
Date: 2023.04.24
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