

24.03.2025
D.L.2
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
WPA 11033 of 2024

Subrata Samanta
Vs.
Union of India & Ors.

Mr. Ujjal Ray,
Mr. Arpa Chakraborty,
.....for the petitioner.
Mr. Sanajit Kumar Ghosh,
Ms. Rini Bhattacharyya,
Mr. Siddharth Gupta
...for the respondents.

Report in the form of an affidavit on behalf of the respondent nos.2 and 3 filed in Court today is taken on record.

The petitioner is an ex-serviceman who retired from the services of the Defence Force with effect from 30th June, 2003. The petitioner was reemployed as Constable in Railway Protection Force (in short, RPF) and was assigned to North Frontier Railway with effect from 1st February, 2006. The petitioner's last drawn pay while he was in service in the Defence Force was protected at the time when he joined RPF. The petitioner thereafter served the RPF till up to 31st March, 2024. During his service tenure with the RPF between 1st February, 2006 and 31st March, 2024 there has been implementation of the Pay Commission recommendation as also other increase

and enhancement of the salary, owing to which the scale of pay provided to a constable in the RPF also increased. The petitioner, therefor, was also given the benefit of such increase. The petitioner says that just on the eve of his retirement, the petitioner was served with an order dated 26th March, 2024 wherein it was alleged that a sum of Rs.16,69,084/- has been paid in excess to the petitioner. The RPF authorities also expressed their desire to recover Rs.10,74,052/- from the petitioner's settlement dues against such alleged over payment of Rs.16,69,084/-. After realizing the said sum of Rs.10,74,052/-, the balance sum of Rs.5,95,032/- was to be further recovered. The RPF authorities advised the petitioner to deposit the rest amount of Rs.5,95,032/- in the Railway account within 5 days positively, that is, within 5 days from the date of receipt of the letter dated 26th March, 2024.

The petitioner has filed this writ petition challenging such recovery. This writ petition was moved on 20th June, 2024 when by an interim order the respondents were restrained from realizing any further dues on account of alleged excess payment from the petitioner.

It is submitted by the petitioner that during the pendency of the writ petition, the RPF authorities

have realized that their computation to the extent that an excess payment of Rs.16,69,084/- has been paid to the petitioner was erroneous, and as such, they have refunded the said sum of Rs.10,74,052/- to the petitioner which was realized out of the petitioner's settlement dues as stated hereinabove.

The RPF authorities are also not willing to impose the realization of Rs.5,95,032/- which remained outstanding as the same was a demand on the basis of erroneous calculation.

As on date, therefor, the petitioner has no grievance to ventilate against the respondents. Similarly, the respondents are not required to respond to any further query from the petitioner or this Court at the instant of the petitioner.

It is submitted by the respondents that under Rule 15 of the Railway Service (Pension) Rules, 1993, the Railway authorities are empowered to recover and/or adjust any Railway dues from the pensionary benefit of the employee concerned. If the Rules so permit, the Railway authorities may recover and/or adjust money from the pensionary benefit of an employee, but to do so the Railway authorities have to specifically get an undertaking from the concerned employee. At the time of passing the benefit it should be clearly stated that any excess payment made

erroneously shall be adjusted subsequent to the mistake being detected. Unless such specific undertaking is there, only because of the general provisions under Rule 15, the money cannot be adjusted or recovered from the retiral dues of the employee or can be done within one year prior, as will appear from a conjoint reading of the judgments reported in (2015) 4 SCC 334 (State of Punjab & Ors. vs. Rafiq Masih (White washer) & Ors. and (2016) 14 SCC 267 (High Court of Punjab & Haryana vs. Jagdev Singh).

In the aforesaid facts and circumstances, in absence of any specific undertaking having been given by the petitioner the question of realizing any excess payment just on the eve of his retirement is contrary to the provisions laid down in Rafiq Masih (supra) and the exceptions culled out therefrom in Jagdev Singh (supra).

In any event the petitioner says that the amount realized on account of excess payment has now been refunded back and no further excess payment has been made or sought to be made.

The writ petition is thus disposed of only by quashing and/or setting aside the order dated 26th March, 2024 appearing at page 29 of the writ petition as Annexure 'P-3' thereof.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)