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W.P.No.17239 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2025

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

W.P.No.17239 of 2023

1. Union of India
rep.by General Manager
Southern Railway
Park Town
Chennai 600 003
2. The Senior Divisional Finance Manager
Madurai Division, Southern Railway
Madurai 625 016
3. The Divisional Personnel Officer
Madurai Division, Southern Railway
Madurai 625 016 .. Petitioners

v.

1. The Registrar
Central Administrative Tribunal
Madras Bench
High Court Building
Chennai 600 104
2. K.Kumar .. Respondents



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Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the Hon'ble Tribunal in its impugned order dated 25.08.2022 in O.A.No.865 of 2016 passed by the 1st respondent, Hon'ble Central Administrative Tribunal, Madras Bench and to quash the same.

For Petitioners :: Mr.N.Ramesh, Senior Panel Counsel

For Respondents :: R1-Tribunal
No appearance for R2

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

W.M.P.No.16404 of 2023 seeking to permit the petitioners to file a single writ petition stands ordered on payment of single Court fee.

2. The order of the Central Administrative Tribunal, Madras Bench dated 25th August, 2022 in O.A.No.865 of 2016 is under challenge in the present writ proceedings. Union of India represented by its General Manager, Southern Railway and his subordinates are the writ petitioners. The second respondent filed the original application before the Central Administrative Tribunal challenging the revision of pay and the consequential recovery imposed by the writ petitioners. The second



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respondent/original applicant was serving as Loco Pilot and retired from service on attaining the age of superannuation on 30.04.2016. On the fag end of his retirement, while scrutinizing the service records for settlement of terminal and pensionary benefits, the authorities found that the pay of the second respondent was erroneously fixed. Thus action was taken to verify the correctness of the pay fixed by the establishment. Finally the authorities found that the fixation of pay was erroneously made in the year 2006 onwards and excess salary was paid to the second respondent continuously for a period of ten years till he attained the age of superannuation on 30.04.2016. Thus an order was passed re-fixing the scale of pay and recovery was imposed.

3. Mr.N.Ramesh, learned Senior Panel Counsel appearing on behalf of the writ petitioners would submit that the correction of mistake is permissible and there is no infirmity as such. The second respondent had received excess salary over and above his eligibility and therefore the authorities had revised his pay and imposed consequential recovery. The Central Administrative Tribunal thus committed an error and the writ



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petition is to be considered.

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4. Notice had been served on the second respondent, but none appeared and the name of the second respondent is printed in the cause list.

5. We have gone through the issues raised between the parties and the Central Administrative Tribunal found that the recovery is perverse. While arriving at a conclusion that the recovery is perverse, the Tribunal quashed the re-fixation of pay order, which in the opinion of this Court became unnecessary.

6. The Supreme Court in the case of *State of Punjab and others v. Rafiq Masih (White Washer) and others*, (2015) 4 SC 334, held that the correction of error in fixation is permissible and no employee is entitled to receive excess salary over and above his/her entitlement. Thus the establishment is empowered to correct the mistake in fixation of pay. However, while correcting such mistakes, excess payment, if any, identified cannot be recovered after a long number of years. However, such recovery



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of excess pay is permissible only if the revision of pay has been made due to misrepresentation or the employee has given an undertaking that he will pay in the event of identifying excess payment of salary. In the present case, both the elements are absent and there was no misrepresentation on the part of the second respondent. That being so, the authorities ought to have corrected the mistake and issued revised pay order enabling the employee to receive pension and pensionary benefits accordingly. In the present case, the writ petitioner establishment recovered the entire excess salary already paid from the year 2006, which resulted in great hardship to the second respondent/employee.

7. Pertinently, the excess salary paid cannot be recovered from the retired employee(s). Such recovery would result in hardship and they may not be in a position to lead a settled life with the terminal benefits due to them.

8. This Court is of the considered opinion that the revision of scale of pay effected by correcting the mistake is in order, but the recovery of excess



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salary paid alone is to be set aside. Thus this Court is inclined to modify the order of the Central Administrative Tribunal. Accordingly, the order dated 25.08.2022 in O.A.No.865 of 2016 on the file of the Central Administrative Tribunal, Madras Bench is modified to the extent that the recovery of excess salary alone is set aside and the re-fixation done by the writ petitioners in accordance with the pay rules and the office memorandum in force are confirmed. The writ petitioners are directed to refund a sum of Rs.2,16,838/- to the second respondent within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is allowed in part. Consequently, W.M.P.No.16405 of 2023 stands closed. No costs.

Index : yes
Neutral citation : yes

(S.M.S.,J.) (M.J.R.,J.)
23.01.2025

SS

To

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Central Administrative Tribunal
Madras Bench
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S.M.SUBRAMANIAM,J.

AND

M.JOTHIRAMAN,J.

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