

(2018) 09 CAT CK 0115

In the Central Administrative Tribunal

Case No : Original Application No. 1134 Of 2018

Asha Ram Nehra

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 14-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0115

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Jatin Prashar, Ajesh Luthra, Harvinder Oberoi

Final Decision : Dismissed

Judgement

1. The applicant has filed this OA seeking the following reliefs:-

"a) Quash and set aside the impugned orders placed at Annexure A/1.

b) Direct the respondents to immediately refund the illegally recovered amount from the applicant's salary and gratuity with interest @ 15% P.A.

c) Direct the respondents to release the arrears of the applicant in pursuance of the pay fixation order passed prior to the impugned re-fixation order dated 17/11/2017 and also to determine and release all the retiral benefits of the applicant accordingly.

d) Accord all consequential benefits

e) Award costs of the proceedings; and

f) Pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

2. Brief facts of the case are that the applicant was appointed as Constable in BSF on 10.11.1978 and he joined Delhi Police on deputation as Constable w.e.f.

5.2.1986 and thereafter he was absorbed as such in Delhi Police w.e.f. 5.12.1988 and at that point of time, his pay was fixed in accordance with law.

2.1 Subsequently, his pay has been variously fixed on account of implementation of Pay Commission's recommendations, financial upgradations, promotions etc. The applicant has annexed pay fixation order issued on 5.12.2007 in which his pay was fixed in the pay scale of Rs.3200-85-4900 w.e.f. 09.08.1999 and until 17.11.2017, all the pay fixation orders have been issued accordingly. However, vide order dated 17.11.2017, the pay has been re-fixed to his detriment and his pay has been reduced drastically with retrospective effect from 1989. Not only this, he has also paid lesser salary in December 2017 and January 2018 and an amount of Rs.45,778/- have been deducted from his salary of December 2017 and January 2018 and further vide letter dated 9.2.2018, the applicant has been directed by the respondents to deposit the remaining amount, i.e., 2,52,101/-, out of total recovery of Rs.2,97,879/- so that his pension case could be decided.

2.2 The applicant further contended that the said recovery order entails civil consequences and has been passed without any opportunity of hearing and without any show cause notice.

2.3 The applicant retired on 31.1.2018 and the aforesaid illegal action has not only caused recovery from the applicant but has also further prejudiced the applicant in the matter of his pension, computation of pension, leave encashment and gratuity since all the retiral benefits shall ultimately come to be computed on the basis of impugned pay fixation order and the retiral benefits have not been released.

2.4 The applicant has already represented against the said order of recovery vide his representation dated 18.12.2017 (Annexure A/5) to the authorities. However, no positive outcome is expected from the respondents who are adamant to harass the applicant even after his retirement.

2.5 Applicant further contended that no unilateral re-fixation could be done by the respondents and no unilateral recovery could have been affected by them, in view of the law laid down by the Hon"ble Supreme Court in Rafiq Mashi's & Bhagwan Shukla's case.

3. Pursuant to notices issued to the respondents, they have filed their reply in which they stated that before processing the applicant's pension case as per usual practice, his character roll was scrutinized and it was found that he was drawing pay at the time of absorption as Rs.960/- p.m. + Deputation Allowance @ Rs.10% in the pay scale of Rs.825-15-900-EB-20-1200 instead of Rs.950/- + 106 (10 + 96 = 106) as P. Pay w.e.f. 5.12.1988 in the pay scale of Rs.950-20-1150-EB-25-1400 and fixed accordingly till 1.7.2017 vide office order dated 8.12.2017.

3.1 Upon the corrected fixation of pay as per rule, total recovery of Rs.2,97,879/- was to be made from the applicant and accordingly a sum of

Rs.45,778/- was recovered from the salary of the applicant drawn by him from December 2017 to February, 2018 and the remaining amount of Rs.2,52,101/- is yet to be deposited by the applicant, for which notice has been issued to the applicant. Aggrieved by the same, the applicant has filed the instant OA under reply.

3.2 They further stated that in the event of wrong fixation of pay, even if recovery may not be made of the excess amount paid to the employee, the employer has the right to fix the mistake and modify future salary/pension to that effect, in accordance with the correct fixation of pay.

3.3 They also stated that no show-cause was required to be given to the applicant on account of fixation of pay being a departmental administrative matter and there is no rule prescribing giving of a notice before rectifying wrong pay. Further, the same would have only amounted to bring a futile and useless formality. Reliance is also placed on the judgment of the Apex Court in the case of Ashok Kumar Sonkar vs. Union of India and others, (2007) 4 SCC 54, wherein the Apex Court held that principles of natural justice may not be applicable in a case where it would be a futile exercise.

4. In the rejoinder, the applicant besides reiterating the averments made in the OA has also refuted the averments made by the respondents in their counter affidavit.

5. During the course of hearing, learned counsel for the applicant submitted that no show cause notice has been issued by the respondents before giving effect to the so called alleged recovery from the salary of the applicant which amounts to violation of principle of natural justice. Counsel further submitted that there is no misrepresentation on the part of the applicant and the pay was fixed by the respondents themselves and now after a lapse of so many years, they are giving effect to the said recovery pertaining to the period from the date of his absorption in the respondents department till his retirement. This recovery cannot be effected at this stage in view of the judgment of the Apex Court in the case of State of Punjab and others etc. vs. Rafiq Masih (White washer) etc. in Civil Appeal No.11527/2014 decided on 18.12.2014.

6. Counsel for the respondents submitted that before processing the case of an employee for pension, as per usual practice, his character roll is to be scrutinized and the same has been done in the case and it was found that he was drawing pay at the time of absorption as Rs.960/- p.m. + Deputation Allowance @ Rs.10% in the pay scale of Rs.825-15-900-EB-20-1200 instead of Rs.950/- + 106 (10+96 =106) as P. Pay w.e.f. 5.12.1988 in the pay scale of Rs.950-20-1150-EB-25-1400 and fixed accordingly till 1.7.2017 vide office order dated 8.12.2017. There is nothing illegally in the same and the applicant is also directed by the respondents to deposit the remaining amount, i.e., 2,52,101/-, out of total recovery of Rs.2,97,879/- so that his pension case could be decided. Instead of doing the same, the applicant has filed the instant OA challenging the

aforesaid legal action of the respondents in this case. Counsel further submitted that reliance placed by the applicant of the decisions of the Hon"ble Apex Court in the cases of Rafiq Masih (supra) and Bhagwan Shukla vs. Union of India and others, in Appeal (Civil) No.5447/1994 decided on 5.8.1994 are not applicable to the facts of this case.

7. Heard learned counsel for the parties and perused the material placed on record.

8. This Court is unable to accept the contentions of the learned counsel for the applicant, as the applicant has not stated anything in the OA as to how his pay earlier at the time of his absorption was rightly fixed whereas the respondents vide impugned order have clearly stated that at the time of absorption 10% of deputation allowance was also wrongly taken into consideration while fixing his pay, which they have rectified at the time of fixation of his pension case as it is the usual practice in the department that while fixing the pay of each and every employee, the character roll of every employee has to be scrutinized. As such there is no illegality in the action of the respondents and, therefore, there is no need for issuance of show cause notice in this regard. The reliance placed by the applicant in the cases of Rafiq Masih and Bhagwan Shukla (supra) are not applicable in the case in hand.

9. In the case of U.T. Chandigarh & Ors. Vs. Gurcharan Singh and another, [2013] 12 S.C.R. 853, the Hon"ble Apex Court upheld the decision of this Tribunal by observing that "the Tribunal was absolutely right in coming to the conclusion that the pay fixation under the order dated 13th October, 1998 was correct because a mistake was committed in the earlier pay fixation under the order dated 2nd September, 1992."

10. In the result, for the foregoing reasons, this Court is not inclined to interfere with the impugned order and accordingly, the instant OA being devoid of merit is dismissed. There shall be no order as to costs.