

(2018) 10 CAT CK 0120

In the Central Administrative Tribunal

Case No : Original Application No. 1059 Of 2016

B.P. Arneja And Ors

APPELLANT

Vs

Bhanu Pratap Sharma And Ors

RESPONDENT

Date of Decision : 09-10-2018

Acts Referred:

Citation : (2018) 10 CAT CK 0120

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : Amit Anand Tiwari, Kiran Ahlawat

Final Decision : Allowed

Judgement

1. Briefly stated, the applicants in OA retired as Chief Medical Officers (SAG) grade officers of CGHS, sub cadre of Central Health Services. They were drawing grade pay of Rs.7000/- per month plus DA and were entitled for an amount of Rs.10,00,000/- as gratuity at the time of their retirement. The current O.A. has been filed on account of recovery of excess transport allowance by the respondents in clear violation of the orders of this Tribunal in OA-4016/2014 (All India GDMO Association & Ors. Vs. UOI & Ors.).

2. The applicants at Serial No. 1, 3, 5, 6, 7 & 9 have been issued letters by the respondents informing them about the proposed deductions from their DCRG. Though applicants No. 2, 4 and 8 have not been issued any letter of deduction of gratuity by the respondents. However, the gratuity amount credited in their accounts amounts to only Rs.4 lakh respectively and they were informed by the respondents that the said deduction has been done on account of alleged excess payment of transport allowance.

3. The applicants state that vide OM No. F.20(5)-E.II(A)/93 dated 28.01.1994, the Ministry of Finance directed that officers of the rank of Joint Secretary and above, who desire to avail the facility of staff car for journeys from residence to office shall be paying at the rates as prescribed in the order. It also stipulated

that the provisions would apply mutatis mutandis to Heads of Departments in Senior Administrative Grade. On 03.10.1997 vide O.M. No. 21(1)/97-EII(B) issued by the Ministry of Finance, it was directed that in view of the recommendations of the 5th Central Pay Commission, which have been accepted by the Central Government, employees would be entitled to draw transport allowance at the new rates. On 29.08.2008 vide O.M.No. 21(2)/2008-E-II(B) issued by the Ministry of Finance, it was directed that officers, who are drawing Grade Pay of Rs.10000/- & Rs.12000/- and those in HAG+Scale would be entitled to draw transport allowance @ Rs.7000/- +DA, in case they do not use the official car.

4. The applicants, who were working in SAG scale and were promoted to this scale as per CHS Service Rules, 1996 were entitled to transport allowance @ Rs.7000/- + DA per month. Vide OM No. 20/16/1998-P&PW(F) dated 11.07.2013, the Department of Pension and Pensioners Welfare, Ministry of Personnel Public Grievances and Pensions communicated to all the Ministries and concerned Department its clarification regarding withholding 10% gratuity from the retiring government servants. On 19.08.2014 vide a letter No. A-27017/01/2014-CGHS-I issued by the Director General of CGHS, the transport allowance of the SAG grade officers of CGHS was reduced from Rs.7000/- + DA per month to Rs. 3200/- + DA per month. On 10.09.2014 an OM was issued by the respondents directing all the zones/offices of CGHS, Delhi that w.e.f. September, 2014 onwards the transport allowance drawn by SAG officers with Grade Pay of Rs.10000/- may be limited to Rs.3200/- + DA per month instead of Rs.7000/- + DA per month.

5. Aggrieved, OA-4016/2014 was filed before the Principal Bench of Central Administrative Tribunal (All India GDMO Association & Ors. Vs. UOI & Ors.). The operation of letters dated 19.08.2014 and O.M. dated 10.09.2014 was stayed by the Tribunal on 13.11.2014. The said interim order is operating till now. On 19.06.2015, the respondent No. 4 addressed a letter to the DDO(HQ), CGHS acknowledging that letters dated 19.08.2014 and 10.09.2014 have been stayed by the Tribunal. On 03.07.2015, the Addl. Director, CGHS in response to the letter dated 19.06.2015 sent by respondent No.4 stated that the issue of release of pay and allowances to all Central Government officers including SAG officers drawing Grade Pay of Rs.10,000/- p.m. had been settled in accordance with recommendations of the 6th Pay Commission and has the approval of both the Department of Expenditure, Ministry of Finance and due approval of the Parliament of India and, therefore, does not require any approval of the IFD, Ministry of Health and Family Welfare. On 15.07.2015, the respondent No.4 again stated that it was not possible for him to accept the recommendation/direction of Additional Director. He also refused to make full payment of the transport allowance to the applicants on the ground that payment on the basis of court decisions/stay orders requires approval of Government of India. AIGDMO Association served a legal notice dated 27.07.2015 on the respondents as complete transport allowance was not being released to its members. Thereafter,

the respondents started paying the complete transport allowance. Vide O.M. No. 18/03/2015-Estt.(Pay-I) dated 02.03.2016 of Department of Personnel & Training a communication was issued to all the Ministries/Department of Govt. of India, informing that by virtue of Order dated 18.12.2014 passed by the Hon?ble Supreme Court in the case of State of Punjab & Ors. Vs. Rafiq Masih etc. [CA No. 11527 of 2014], recoveries in certain situations cannot be made.

6. The applicants have also stated that respondents could not have directed the recovery of the amount which has already been paid to the applicant for the reason that the said payment has been made without any misrepresentation or fault of the applicants. Such an order is bad in law in view of the decision of Hon?ble Supreme Court in the case of Syed Abdul Qadir Vs. State of Bihar, 2209(3) SCC 475. This has also been followed by the Tribunal in OA-363/2013 which related to recovery of excess payment on account of transport allowance. This decision was affirmed vide order dated 05.11.2014 passed by the Hon?ble High Court of Delhi in WP(C) No. 7490/2014.

7. Aggrieved, the applicants in the current O.A. has sought the following reliefs:-

"(a) Quash the letter dated 12.01.2015, 25.02.2015, 01.05.2015, 06.08.2015, 02.11.2015 & 02.12.2015 issued by the Respondents.

(b) Direct the Respondents to refund the amount deducted from the gratuity from Applicant No.1 to 9, on account of alleged excess payment of Transport Allowance with interest."

8. In their short reply, the respondents have stated that the current O.A. is misconceived and is not maintainable under law. The respondents state that the Principal Bench of CAT in its order dated 13.05.2014 in OA-4062/2013 (Radhacharan Shakiya & Ors. Vs. UOI) has held that similarly placed persons, who were granted the Grade Pay of Rs.10,000/- p.m. in PB-4 are not entitled to transport allowance of Rs.7000/- p.m. plus DA thereon. The applicant in OA-4062/2013 approached the Hon?ble High Court of Delhi vide Writ Petition(C)-3445/2014. Vide its order dated 03.09.2014 Hon?ble High Court of Delhi refused to interfere with the impugned order.

8.1 Department of Expenditure vide O.M. No. 21(2)/2016-E.II dated 19.08.2016 has further clarified that officers, who are not entitled for the use of official car for commuting between residence to office and back in terms of Department of Expenditure O.M. No. 20(5)/E.II(A)/93 dated 28.01.1994 are not eligible to opt to draw transport allowance @Rs.7000/- p.m. + D.A. thereon in terms of Department of Expenditure O.M. No. 21(2)/2008-EII(B) dated 29.08.2008, even though they are drawing Grade Pay of Rs.10,000/-in PB-4 under Dynamic ACP Scheme or under the Scheme of Non-Functional up-gradation (NFU). In pursuance of judgment dated 18.12.2014, Hon?ble Supreme Court in the matter of Rafiq Masih (supra), DoP&T has issued instructions vide their O.M. No. 18/03/2015-Estt.(Pay-I) dated 02.03.2016 laying down principles for effecting recoveries of overpayment by the employers. Accordingly, Ministry has issued

Instructions to all the participating unit of CHS to furnish the details of excess transport allowance paid to CHS officers.

9. The respondents have urged issues regarding admissibility or otherwise of the transport allowance emphasizing as to how the applicants were not entitled to transport allowance of Rs.7000/- p.m. +DA thereon. Reference has also been made to various orders of the Tribunal and Hon?ble High Court of Delhi.

10. I have gone through the facts of the case carefully. The issue in the O.A. pertains to recovery made by the respondents from DCRG of the applicants on account of alleged excess transport allowance availed by the applicants. Vide the impugned order dated 02.11.2015 and various other orders, recovery of transport allowance has been mad/withheld from the DCRG of the applicants. In the present O.A., all the applicants are Chief Medical Officers (SAG) grade officers, who have since retired from service. Hence, the adjudication in the present O.A. gets confined to the issue whether the excess amount availed by the applicants as transport allowance could have been recovered by the respondents after their retirement.

11. In the case of State of Punjab Vs. Rafiq Masih (supra) the Hon?ble Apex Court held that:-

"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."

The present case is squarely covered by the law laid down as above since the recoveries, made are from the employees who have already superannuated. It is not the case of the respondents that the recovery of excess payment on account

of transport allowance was on account of any fraud or misrepresentation on the part of the applicants. Rather, the mess is a result of the negligence & carelessness of the respondents themselves.

12. In view of the same, I hold that the recoveries made/ordered are bad in law. Accordingly, impugned order dated 02.11.2015 is quashed and O.A. is allowed. The respondents are directed to refund the recoveries made/withheld from the DCRG of the applicants (through respective orders) within a span of three months from the date of receipt of a certified copy of this order. No costs.