

(2018) 10 CAT CK 0114

In the Central Administrative Tribunal

Case No : Original Application No. 1024 Of 2017

Dhirendra Kumar Sinha

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 09-10-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 55(a)

Citation : (2018) 10 CAT CK 0114

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

Bench : Single Bench

Advocate : T.R. Mohanty, P.T. Mohanty, Subhash Gosai

Final Decision : Disposed Of

Judgement

By filing this OA, the applicant is seeking the following reliefs:-

"8.1 to allow the present application;

8.2 to quash impugned Order dated 02.02.2017 (Annexure : A-1) as bad and non est in law;

8.3 to direct the Respondent to grant all consequential benefits to the Applicant;

8.4 to issue any such and further order/directions this Hon'ble Tribunal deems fit and proper in the circumstances of the case; and

8.5 to allow exemplary costs of the application."

2. Facts as narrated by the applicant in this OA are that the applicant was working as Assistant Director (Metallurgy) under Respondent no.1 in the year 2007, when he got selected in RITES Limited (RITES), a Govt. of India Enterprise, as a Deputy General Manager (M&C). Therefore, he tendered his technical resignation with effect from afternoon of 3.5.2007 and joined RITES with effect from forenoon of 4.5.2007. Therefore, the applicant became entitled to Pension, besides his salary that was due from RITES. The Pension Payment

Order of the applicant was issued by the respondent no.2 office on 5.9.2013 (Annexure A-2).

2.1 However, the respondent no.1 issued to the respondent no.2 issued the impugned order dated 2.2.2017 whereby it is ordered adjustment/recovery on the ground that"

"DR on pension may be admissible only after retirement from re-employment post as per Rule 55-A of CCS (P) Rules.

Payments of DR made from the date of absorption may be adjusted/recovered."

2.2 Applicant averred that the said recovery is impermissible in law in view of the judgment of the Hon^{ble} Supreme Court in the case of State of Punjab and others vs. Rafiq Masih and others,

2015 (4) SCC 334 as well as no show cause notice was issued before passing the said impugned order. Applicant also averred the Department of Personnel and Training has also issued similar instructions vide their OM dated 2.3.2016 (Annexure A-3 (Colly)). Applicant further contended that with regard to non-issuance of a Show Cause Notice before the impugned recovery order dated 2.2.2017 was issued, the Applicant wishes to rely upon the Judgments in State of Orissa v. Dr. (Miss) Binapani Dei, AIR 1967 SC 1269 : 1967 SCR (2) 625; M. Gopala Krishna Naidu v. State of Madhya Pradesh, AIR 1968 SC 240 : 1968 SCR (1) 355; A.K. Kraipak & Ors. Etc v. Union of India & Ors., AIR 1970 SC 150; Suresh Koshy George v. The University of Kerala, [1969] 1 S.C.R. 317; D.K. Yadav v. J.M.A. Industries Ltd., 1993 SCR (3) 930 : 1993 SCC (3) 259; Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, [1978] 2 SCR 272 at 308F; Sweadashi Cotton Mills v. Union of India, (1981) 1 SCC 664; R.B. Shreeram Durga Prasad & Fatehchand Nursingh Das v. Settlement Commission (IT & WT) & Anr., 1989 AIR 1038, 1989 SCR (1) 335; M/s Travancore Rayons Ltd. v. Union of India, A.I.R. 1971 S.C. 862; Amal Kumar Ghatak v. State of Assam & Others, A.I.R. 1971 Assam 32; State of U.P. and Ors. v. Ranu sagar Power Co. and Others, AIR 1988 SC 1737 : 1988 SCR Supl. (1) 627; K.I. Shephard & Ors. Etc. Etc v. Union of India & Ors., AIR 1988 SC 686 : 1988 SCR (1) 188; and Chandra Bhavan Boarding and Lodging, Bangalore v. The State of Mysore, 1970 (2) SCR 600.

2.3 When this case was come up for consideration on 27.3.2017 before this Tribunal, this Tribunal issued notice only to the respondents. Being aggrieved by non-grant of interim relief against the proposed recovery for the adjustments of the dearness relief, as proposed vide impugned order dated 2.2.2017, the applicant preferred a Writ Petition (Civil) No.3580/2017 before the Hon^{ble} Delhi High Court, which was disposed of by the High Court vide order dated 26.4.2017 with the following directions:-

"The limited grievance of the petitioner in the present petition is that the Central Administrative Tribunal (CAT) while entertaining the petitioner's original

application while issuing notice to respondents on 29.05.2017 has not granted interim protection to him against the proposed recovery for the adjustments of the dearness relief as proposed vide communication dated 02.02.2017.

Learned counsel for the respondents states that the amount to be adjusted/recovered has not been worked out yet. It would be fair to direct that in case the respondents work out the amount to be adjusted/recovered in respect of the dearness relief, they shall give one week's notice to the petitioner before adjusting/recovering the same so as to enable him to take appropriate steps in that respect before the Tribunal.

The petition stands disposed of in these terms."

2.4 The applicant moved MA No.3739/2017 for enforcement of the said Order of the Hon'ble Delhi High Court and this Tribunal vide Order dated 6.10.2017 allowed the said MA with the observation that the respondents shall not effect any recovery except in accordance with the above directions of the Hon'ble High Court.

3. Pursuant to notice, the respondents have filed their reply in which they stated that the applicant is a pensioner from Office of Development Commissioner (Micro, Small and Medium Enterprises) holding PPO No.255911200331 issued to him on 5.9.2013. Prior to issuance of the said PPO, he was drawing only provisional pension since a departmental enquiry had already been pending against him and, on exoneration of the charges, action was taken for release of his regular pension. He was employed as Assistant Director, Grade-I (Metallurgy) in Micro Small and Medium Enterprises, Testing Centre, Okhla, New Delhi till 3.5.2007 and, thereafter, on tendering technical resignation, he got absorbed in RITES w.e.f. 4.5.2007. RITES vide their letter dated 3.11.2016 intimated the Central Pension Accounting Officer (CPAO) that in terms of DOP&T OM dated 2.7.1999, Dearness Relief on pension is not admissible to re-employed pensioners who had Group 'A' posts in Railways/Central Government/State Government prior to their re-employment and in case of other category (Group B, C and D employees), where their pay was fixed above the minimum of the scale of the post in which they are re-employed. RITES has further intimated that applicant has been absorbed in RITES w.e.f. 4.5.2007. The applicant submitted a declaration of details regarding drawal of Dearness Relief on Pension while serving in RITES to them but the applicant had not clearly mentioned that he is getting Dearness Relief on pension as well. He simply submitted that details of period from which dearness relief on pension have been drawn are available with bank. On his re-employment in RITES, the applicant should not have drawn the Dearness Relief on pension.

3.1 The CPAO vide their letter dated 14.12.2016, intimated respondent no.2 that as per RITES letter dated 3.11.2016, the petitioner absorbed in RITES w.e.f. 4.5.2007 and he should not get dearness relief on basis pension. Therefore, CPAO has stated that the Dearness Relief admissible as per their SSA

No.255911200331/885663 dated 5.9.2013 is not admissible to the pensioner and requested respondent no.2 to look into the matter and send authority letter regarding stoppage of Dearness Relief from the date of absorption, if admissible.

3.2 Accordingly, respondent no.2 issued Corrigendum in PPO No.255911200331 in respect of the applicant and issued a letter dated 2.2.2017 to CPAO making following amendments in the PPO:-

"DR on pension may be admissible only after retirement from re-employment post as per Rule 55-A of CCS (P) Rules.

Payments of DR made from the date of absorption may be adjusted/recovered."

3.3 Aggrieved by the aforesaid decision, the applicant filed this OA challenging the order of recovery dated 2.2.2017 issued by Respondent no.2 and prayed for interim relief of stay of the said order till disposal of this OA. However, this Tribunal did not pass any interim order for stay the operation of the recovery order. Thereafter, applicant filed WP (C) No.3580/2017 and C.M. No.15653/2017 before the Hon'ble Delhi High Court to grant ad-interim stay of the impugned recovery order dated 2.2.2017 passed by this Tribunal and the High Court vide Order dated 26.4.2017 passed the Order, as quoted above.

3.4 Accordingly, to comply with the Hon'ble High Court's directions, the respondent's office has requested Chief Manager, State Bank of India, CPPC, Chandni Chowk Branch, Delhi to intimate the total amount to be recovered from the applicant. The Bank vide their letter dated 29.07.2017 intimated that they have already recovered Rs.4,30,000/- from pensioner's bank account on 16.3.2017 and balance amount of Rs.1,00,634/- will be recovered from pensioner's monthly pension from March 2017 @ Rs.9689/-. Presently balance amount is Rs.52189/- which will be completed in January 2018. In fact, the amount to be recovered had already been calculated and even recovery of Rs.4,30,000/- out of the total recovery of Rs.5,30,634/- had already been made on 16.3.2017, that is before filing of Writ Petition (C) No.3580/2017. In view of the above, the directions of the Hon'ble High Court could not be adhered to since the amount had already been recovered from the pensioner.

3.5 They further stated that the ground of challenging the order of recovery dated 2.2.2017 by the applicant that he has less than one year of service to go from the date of issuance of the said recovery order dated 2.2.2017 has no merit and is not applicable in the instance case. The applicant has one year to retire from the service in RITES Limited while the order of recovery has been issued by PAO (MSME), New Delhi from where the applicant had already retired on 3.5.2007 and drawing pension vide PPO No.255911200331 dated 5.9.2013. Respondent No.2 issued a corrigendum in PPO No.255911200331 dated 5.9.2013 vide letter dated 2.2.2017 for recovery/adjustment from pension which is well within the span of 5 years from the date of issue of original PPO on 5.9.2013. Thus, the condition No.(iii) Regarding recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of

recovery is also not applicable in this case.

4. The applicant has not chosen to file any rejoinder.

5. Heard learned counsel for the parties who reiterated the averments made by them in their respective pleadings.

6. It is a settled legal position as held by the Hon'ble Apex Court way back in 1995 in the case of Union of India And Others v. G. Vasudevan Pillay And Others, reported at (1995) 2 Supreme Court Cases 32, where the decision of Union of India not to allow Dearness Relief on pension to an ex-serviceman was taken up for consideration, it was held that denial of dearness allowance to ex-serviceman is legal and just. It is also brought to our notice that after the passing of the aforesaid judgment by the HON'BLE Supreme Court, Office Memorandum dated 13.10.1995 was issued to the effect that in all cases where employees have been paid dearness relief on pension, the Department would be well within its right to recover the dearness relief and this memorandum would show that no penalty was to be imposed on the serviceman, who had received the dearness allowance.

7. Applicant has not refuted the fact that dearness relief on pension is not admissible to the re-employed pensioner. From the reply filed by the respondents they have clearly stated that applicant has not clearly mentioned that he is getting Dearness Relief on pension as well. He simply submitted that details of period from which dearness relief on pension have been drawn are available with bank. On his re-employment in RITES, the applicant should not have drawn the Dearness Relief on pension. When the applicant himself is at fault for not apprising the correct fact about the dearness relief on pension to the RITES where he was re-employed after tendering his technical resignation, it may be that it could not be intimated by him at that time as he was only granted provisional pension and the PPO was issued only in 2013 for release of regular pension after the applicant was exonerated from the charges levelled against him in a departmental inquiry initiated against him. Vide PPO issued in 2013, the regular pension commenced from 4.5.2007, as such at the most in 2013 after receipt of PPO order, it was incumbent upon the applicant to intimate the concerned authority about the status of dearness relief on his pension amount which was received in 2013 and thereafter. But applicant has not adverted on this aspect in his OA nor has he chosen to give reply to the said averment of the respondents as raised by them in their counter reply, by filing his rejoinder.

8. Applicant has alleged that the impugned order is not sustainable on the ground of judgment of the Hon'ble Supreme Court in the case of Rafiq Masih (supra) as well as OM dated 2.3.2016 as also the impugned recovery order has been issued without issuing any show cause notice.

9. So far as judgment of the Hon'ble Supreme Court in Rafiq Masih (supra) is concerned, in the said judgment, the Hon'ble Supreme Court while observing that 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 has summarized 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.

10. None of the above said conditions covers the case of the applicant having regard to the facts and circumstances of the present case. However, it is a fact that the Hon'ble Delhi High Court while disposing the aforesaid Writ Petition preferred by the applicant directed the respondents to work out the amount to be adjusted/recovered in respect of the dearness relief and they shall give one week's notice to the applicant before adjusting/recovering the same so as to enable him to take appropriate steps in that respect before the Tribunal. The said Writ Petition was disposed of by the Hon'ble High Court vide Order dated 26.4.2017. However, as stated by the respondents, out of total amount of Rs.5,30,634/-, Rs.4,30,000/- in respect of dearness relief on pension was recovered from the applicant's bank account on 16.3.2017, i.e., before filing of the said Writ Petition and the balance amount of Rs.1,00,634/- will be recovered from applicant's monthly pension in installments. As such there was no occasion for the respondents to comply with the aforesaid directions of the Hon'ble High Court before affecting the said recovery. However, when the Hon'ble High Court gave the aforesaid directions vide Order dated 26.4.2017, even though they had already recovered the part of the amount of dearness relief paid to the applicant on his pension to which he is admittedly not entitled to, they are required to give the complete details of the amount to be adjusted/recovered in respect of the dearness relief and give one week's notice for recovery of the balance amount not recovered before the Hon'ble High Court's directions. Thereafter, they will pass final orders on their decision.

11. In view of the above, the instant OA is disposed of in above terms. There shall be no order as to costs.