

(2019) 01 CAT CK 0081

In the Central Administrative Tribunal

Case No : Original Application No. 1145 Of 2018

Dr. H.D. Rikhadi

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 16-01-2019

Acts Referred:

Income Tax Act, 1961 — Section 10, 10(13A)

Citation : (2019) 01 CAT CK 0081

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

Bench : Single Bench

Advocate : Prabha Sharma, Sunil Narula, G.D. Chawla, B.L. Wanchoo

Final Decision : Dismissed

Judgement

1. Through the medium of this O.A., the applicant has sought the following reliefs:-

"(i) To quash and set aside the impugned order dated 30.01.2018 passed by the respondent no.2.

(ii) To fix the basic pension of the applicant as per CCS pension rules at Rs.46,350/- for seventh pay commission w.e.f. 01.01.2016.

(iii) To direct the respondents to pay arrears of pension for the period 01.01.2016 to 31.12.2017 with dearness relief on the basic pension fixed in terms of the Relief(i) to the applicant.

(iv) To direct the respondents to pay arrears on release of withheld dearness relief on the basic pension of Rs.17,605/- for the period 01.01.2012 to 31.12.2015 with 14% interest.

(v) To direct the respondents to refund the recovered amount of Rs.1,98,624/- from the pension of the applicant."

2. The applicant retired from the post of Assistant Secretary on 31.01.2012. At

the time of retirement, applicant's pay was Rs.29810/- with Grade Pay of Rs.5400/- i.e. Rs.35210/-. Basic pension of the applicant was fixed at Rs.17606/- and monthly pension at Rs.22007/- with 65% DR, which the applicant was drawing from 01.02.2012 till 30.01.2018.

2.1 Vide the impugned order, basic pension of the applicant has been refixed at Rs. 36050/- and monthly pension at Rs. 30811/- (after commutation) w.e.f. 01.02.2018 with dearness relief of 5%. The applicant submits that as per 7th Central Pay Commission, the basic pension of the applicant actually stands at Rs.46350/- and monthly pension at Rs.39308/- after commutation as per last drawn pay of Rs.35210/-.

3. The applicant submits that respondent No.2 had upgraded the pay scales of some of its employees including the applicant on 28.08.1996 but subsequently withdrew the same on 20.07.1999 on the directions of respondent No.1 as the same was without its prior sanction. The applicant including the other affected employees filed WP(C)-4667/1999 before the Hon'ble High Court of Delhi. This WP(C) was transferred to the Tribunal and numbered as TA-1098/2009. The same was decided on 04.10.2010. The penultimate para of the said order reads as under:-

"8. We, therefore, direct the respondents to reconsider the issue of upgradation of the scales of pay of the applicants from 1986 onwards dispassionately within a period of four months from the date of receipt of this order. Should the case of the applicants do not find favor with the respondent-MH&FW, we expect it to pass a detailed order based on cogent reasons for its decision. No recovery would be made from the salaries of the applicants till a decision is taken by the respondent-MH&FW and ten days thereafter. No costs."

The applicant along with others filed OA-291/2011 (Dr. Lalit Verma & Ors. Vs. The Secretary, Ministry of Health and Family Welfare & Anr.), which was allowed on 28.02.2012 holding that:-

"22. Though the illegality has crept in by not getting the prior sanction of the Government as per the statutory provision but with regard to the issue of recovery of amount already paid to the applicants, it is noted that revised pay scale was given effect to from the year 1986 vide the 2nd respondent's order dated: 28.01.1998. It is the first respondent which intimated about the irregularity committed by the second respondent in granting the revised pay scale. The first respondent vide its communication dated: 11.01.1999 intimated the said irregularity, and recovery of the excess pay was directed. Consequent to the said direction of the 1st respondent, the recovery order was passed by the 2nd respondent in the order date: 20.07.1999 against the applicants. The applicants cannot be blamed for the enthusiastic resolution passed by the Council of the CCH. They have not played any fraud on the respondents to get higher pay. It is therefore, appropriate to direct the respondents not to recover the amount that they have received by the applicants due to revised pay scales

w.e.f. 1986 as they were not instrumental to get higher pay scales. As the stay was granted by this Tribunal against recovery of excess amount, for reasons stated above, the stay is declared absolute."

Against the order dated 28.02.2012 in OA-291/2001 of the Tribunal, respondent No.1 filed Writ Petition (Civil)-3489/2012 before the Hon'ble High Court of Delhi. As there is no interim stay, the order dated 28.02.2012 is still in force and holds good.

4. The applicant in the meantime also filed another OA-3522/2010 (H.D. Rikhadi Vs. Central Council of Homeopathy) for restoration of five advance increments to him for additional work done by him. The same was allowed on 08.12.2011. Consequently, on 01.03.2012, respondent No.2 provisionally refixed the pay of the applicant granting him five advance increments w.e.f. 01.07.2010 but subject to the decision of OA-291/2011. Respondent No. 2 also fixed the monthly pension of the applicant at Rs. 22007/- 9Rs.17605/- basic pension + 65% DR) after commutation on last drawn payment of Rs. 35210/- w.e.f. 01.03.2012 and stopped paying revised dearness relief w.e.f. 01.07.2012 and till date no dearness relief has been released.

5. The applicant filed another OA-256/2016 (H.D. Rikhadi Vs. Secretary, Dept. of AYUSH and Anrs.) pleading to release the dearness relief since July 2012 with arrears. The Tribunal vide its order dated 16.05.2016 without going into the merits of aforesaid O.A. directed the respondents to consider the representation of the applicant and to pass appropriate and speaking order in accordance with law within 60 days from the date of receipt of copy of order.

5.1 When respondent failed to comply with the Tribunal's order dated 16.05.2016, applicant made a detailed representation dated 19.09.2016 to release his dearness relief on basic pension since July 2012 with arrears and for PPO fixing provisional pension as final on last drawn pay. Respondent No.2 vide letter dated 01.08.2017 decided that as per directions of the Tribunal dated 28.02.2012 in OA-291/2012 and office letter dated 01.10.2012 of respondent No.1, the provisional pension of the applicant is also required to be refixed after the upgraded payment of the applicant is refixed which was revised from 13.03.1992. Therefore, excess drawn pension by the applicant after 28.02.2012 can be recovered and dearness relief is withheld w.e.f. 01.07.2012 shall be released to him once his pension is refixed.

6. The applicant assailed the order of respondent No.2 dated 01.08.2017 to refix the upgraded pay and to refix his pension and to release withheld dearness relief w.e.f. 01.07.2012. On 31.10.2017, respondent No.2 passed an office order to recover the amount of Rs.87400/- from the pension of the applicant in 20 installments at sum of Rs.4370/- per month.

7. It is averred that respondent No.2, without prior notice to the applicant, has recovered two installments from his pension from November, 2017 to December, 2017 and fixed the basic pension of the applicant for 7th CPC at Rs.36,050/- and

Rs.30,811/- monthly pension w.e.f. 01.02.2018 without following the pension rules, which actually stands at Rs.46,350/- basic pension and Rs. 39,308/- as monthly pension after commutation. It is further submitted that at the time of retirement, respondent No.2 has arbitrarily changed the actual sum of last pay drawn of Rs.35,210/- which is actually Rs.29,810/- (basic pay Rs.28780+increment Rs.1030)+5400 (grade pay)=Rs.35210/- arbitrarily making it a sum of Rs.30610/- (basic pay)+4600 (grade pay)=Rs.35210. Thus, the respondent No.2 has arbitrarily fixed the basic pension of the applicant at Rs.13890/- on the basis of its order dated 23.01.2018/or 30.01.2018, which the applicant had never drawn before his retirement.

7.1 The impugned order states that an amount of Rs.13390/- for the period 01.01.2016 to 31.12.2017 has been paid to the applicant after deducting excess payment of Rs.78,660/- from Rs. 92,050/-. Simultaneously vide letter dated 30.01.2018, respondent No.2 directed the Administrator of Syndicate Bank at Bhanot Bhawan, Nangal Rai, New Delhi to stop deducting amount of recovery from the applicant's pension as the entire amount has been recovered by way of lump sum of Rs.78,660/-.

7.2 The applicant in the O.A. has placed reliance on the following judgments:-

(i) State of Punjab Vs. Rafiq Masih, (2014) 8 SCC 883.

(ii) D.S. Nakara & Ors. Vs. UOI, 1983 AIR 130.

8. In the counter-affidavit filed on behalf of respondent No.2 without disputing the facts of the case, it is submitted that respondent No.1 vide letter dated 05.03.2012 directed the CCH to implement the order of CAT dated 28.02.2012 in OA-291/2012. Accordingly, the pay scales of all concerned serving employees were reverted back to the sanctioned pay scales from the date of judgment. CCH vide letter dated 03.04.2012 while forwarding the representation dated 09.03.2012 of the applicant sought clarification from respondent No.1 about applicability of judgment to the employees who had retired before the date of judgment i.e. 28.02.2012. Since no reply was received from the Ministry, provisional pension was allowed to the applicant vide letter dated 25.06.2012 to avoid any hardship to him. This was informed to the Ministry vide letter dated 25.06.2012.

8.1 The respondent No.1 vide letter dated 12.10.2012 (after examining the representation of the applicant dated 09.03.2012) informed that the representation of the applicant merits no consideration. Vide another communication dated 01.10.2012 the Ministry directed CCH to ensure compliance of the Tribunal's order dated 28.02.2012 in OA-291/2011 in the case of officials who had retired and were party in the said OA without making any recovery of the amount already paid to them.

8.2 On 04.07.2016, the CCH again sought clarification from respondent No.1, who, vide letter dated 05.08.2016, reiterated its earlier stand already conveyed

through its letter dated 01.10.2012. Thereafter, the pay of the applicant and provisional pension was revised with the approval of the competent authority. However, no recovery was made towards pay and allowances as well as pension till 28.02.2012.

9. Respondents contend that after considering the repeated representations of the applicant for non-implementation of Tribunal's order dated 28.02.2012 in OA-291/2011, a speaking order was issued on 01.08.2017.

10. The respondents submit that the CAG audit team, while auditing accounts of CCH for the year 2005-06 (when the applicant was in service and holding the post of Asstt. Secretary (Admn. & Regn.)) observed that:-

"As per Income Tax Rules under Section 10(13 A) (which deals incomes which do not form part of total income), if wife of an employee acquire or purchase a plot/flat/House from her own funds/sources, she may be treated as separate unit for assessing income tax by getting a rent receipt from her.

Test check of records revealed that Shri H.D. Rikhadi, Asstt. Secretary (Admn. & Regn.) has availed of the benefit of exemption under Section 10 of Income Tax Act to the tune of Rs.40,938/- by providing rent receipt given by his wife (the owner of House). The records, however, revealed that Shri Rikhadi had withdrawn from his G.P.F. Account for acquiring the accommodation in his wife's name. Accordingly, he was not entitled to income tax rebate against the rent receipt issued by his wife. The case may be reviewed and resultant recovery effected under intimation to audit."

On receipt of this objection CCH sought opinion from Income Tax Deptt. vide letter dated 08.02.2006 followed by reminders. Not receiving any reply from them, opinion from Chartered Accountants and a legal view point was sought, both of which, confirmed the CAG audit objection.

10.1 Thereafter, order of recovery of Rs. 87,400/- was issued by the respondents on 31.10.2017. The applicant submitted a representation on 02.11.2017 against the said recovery order. He was conveyed decision of the competent authority on 09.01.2018. The amount of Rs.87400/- so recovered from the applicant has since been deposited online with the Income Tax Department.

11. The respondents submit that they fixed the pension of the applicant in consonance with the judgment of the Tribunal in OA-291/2011 and the directions received from respondent No.1. Hence, the applicant is not entitled to any relief, as claimed by him in the O.A.

12. In the rejoinder, the applicant, reiterating his earlier contentions, has relied upon the decision of Hon'ble Supreme Court in the case of Shyam Babu Verma Vs. UOI, (1994) 2 SCC 521.

13. I have gone through the facts of the case carefully and considered the rival contentions of both sides.

13.1 The applicant in the OA has claimed reliefs, purportedly flowing from the order dated 28.02.2012 of the Tribunal. Reliance has been placed by the applicant on the aforementioned judgment in OA-291/2001. It has to be understood that in the said order, the Tribunal held that the mandatory provisions of the Act had not been followed by the Council in getting its resolution passed for the revision of pay of its employees. The action of CCH for revising the pay scales of its employees was termed as "unfortunate", and on merit, the application (the applicant being one of the applicants therein) was dismissed.

13.2 However, with regard to recovery of the excess payment, it was held that any amount already paid to the applicants w.e.f. 1986 onwards was on account of the misplaced enthusiasm of CCH for which the applicants could not be blamed. Since the applicants had not played any fraud to get the higher pay, the respondents were directed to ensure that no recovery of the excess amount should be made from them (applicants).

14. The amount of Rs. 87,400/- has been recovered from the applicant based on the CAG objection regarding incorrect availment of rebate claimed from income tax by the applicant (Dr. H.D. Rikhadi). The observations of Audit report are available in the foregoing Para-10, above.

14.1 These observations were taken up for clarification by CCH with the Income Tax office asking them to clarify/confirm whether HRA rebate is permissible in such circumstances, followed by various letters and reminders. Not receiving a reply, a clarification was sought by CCH from the Chartered Accountant seeking guidance whether an employee residing in a rented accommodation, owned by his wife, where rent was being paid against proper receipt, can claim tax rebate on the basis of said rent. A legal opinion was also sought by CCH in this regard wherein it was confirmed that no HRA exemption is admissible in the case of the rebate claimed by the applicant. This view also stood confirmed by the opinion of Chartered Accountants vide their letter dated 06.02.2017.

15. The respondents, following the CAG advice/objection and after satisfying themselves of its rationale, took the necessary step of recovering the amount of Rs. 87,400/- from the applicant's pension vide their order dated 31.01.2017. However, before effecting the recovery the respondents issued a show cause notice to the applicant on 16.08.2017 (Annexure-O) explaining the reason as to why a recovery of Rs.87,400/- was sought to be recovered from him. The applicant represented against this order vide his letter dated 21.08.2017. The respondents after examining his representation issued the recovery order on 31.10.2017. The submissions of the applicant were duly considered after following due process of law. Hence, the action of respondents recovering the rebate amount, wrongly claimed and availed by the applicant cannot be faulted.

16. The other reliefs claimed by the applicant are totally devoid of merit since his basic pension has been fixed by the respondents by taking into account the

directions of respondent No.1 and CAT in OA-291/2011 dated 28.02.2012. As already stated earlier, the pay scales of the concerned serving employees were reverted back to the sanctioned pay scale, as per the orders of respondent No.1. The Tribunal, in its order dated 28.02.2012 has held in unambiguous terms that pay revision of the employees of CCH, to give them a higher pay scale was bad in law. The order dated 27.12.2010 of Central Government has been upheld holding clearly that upgradation/revision of pay scales, done by CCH, without approval of the Central Government, is irregular and illegal.

17. The respondents thus have acted as per law by revising the provisional pension granted to the applicant, who is trying to misrepresent the facts to take undue advantage of an illegally upgraded pay granted to him by respondent No.2. The benefits being claimed by the applicant, all flow from the upgraded pay scales, which respondent No. 2 had wrongly allowed to him (& other similarly placed employees), which have been held to be wrong with specific directions to rectify the same.

18. The respondents have stated categorically that they have not made any recovery towards pay and allowances as well as pension received by the applicant till 28.02.2012. The recovery made by them vide order dated 31.10.2017 is not on account of excess amount paid to him because of revised pay scales, but on account of the wrongful rebate claimed by him towards income tax, which is absolutely correct.

19. In view of the aforesaid facts, OA lacks merit and is accordingly dismissed. No costs.