
(2018) 10 CAT CK 0037

In the Central Administrative Tribunal

Case No : Original Application No. 3930 Of 2017

Durbeen Singh

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 31-10-2018

Acts Referred:

Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 16

Citation : (2018) 10 CAT CK 0037

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

Bench : Single Bench

Advocate : Kishore Kumar Patel

Final Decision : Allowed

Judgement

1. When this matter was taken up for hearing on 29.10.2018, there was no appearance on behalf of respondents. This Court proceeded to decide this case by invoking the provisions of Rule 16 of the CAT (Procedure) Rules, 1987. Accordingly, this Court heard learned counsel for the applicant and perused the material placed on record.

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

"(a) Call for the records of the case.

(b) Quash and set aside the letter Nos.19-W/Const- 1/N.W.R/JU/P. Rent dated 9.1.2009 and 720E/3/60113/P.13 dated 11/08/2017 (Annexure A/1 Colly)).

(c) Direct the Respondents to refund the penal rent recovered by the Divisional Railway Manager i.e. Respondent No. 2 from the salary of the applicant in pursuance of letter dated 09/01/2009 issued by Dy. C.E. (C) N.W. R., Jodhpur.

(d) Direct the respondents to refund the recovered amount along with interest.

(e) Award exemplary costs of the proceedings.

(f) Pass such further order or orders which this Hon"ble Tribunal may deem fit

and proper in the facts and circumstances of the present case."

3. This is the second round of litigation. As earlier the applicant had filed OA No.4/2010 before the Jodhpur Bench of this Tribunal and the said Bench of this Tribunal vide Order dated 10.4.2014 observed as under:-

7. We have considered the rival contentions of both the parties. Although the applicant has not shown any document from which it can be proved that he was posted/joined at Delhi or Jodhpur from the year 2001 to 2007 but perusal of the documents annexed with his OA as Annexure-A/9 to A/15 reveals that he wrote several letters to the Delhi/Jodhpur authorities for making payment of salary as well as for allowing him to join at Delhi or Jodhpur. Therefore, in our considered view, since there are certain questions of facts involved in this matter and it is also evident from the record that against the order at Annexure- A/1, the applicant never represented to the respondent department for reconsideration of his case in the light of the relevant rules and factual aspects as averred by him in this OA. Therefore, we are proposing to dispose of this application with certain directions.

(i) Applicant is directed to file a representation by averring each and every fact to the respondent authorities within a month from the date of receipt of a copy of this order.

(ii) The respondent authorities are directed to consider the representation of the applicant in the light of the Annexure-A/9 to A/18 (which includes some of the applicants representation as well as communication of the respondents) within a further period of four months from the date of receipt of a copy of such representation, as per law.

(iii) The operation of the order at Annexure-A/1, as regard penal rent, will remain stayed till the final disposal of the representation, and only in case the applicant has vacated the quarter in pursuance to the order of this Tribunal dated 04.02.2010.

8. The OA stands disposed of in the above terms with no order as to costs."

4. In compliance of the aforesaid directions of the Tribunal, the respondents have passed the order dated 30.6.2014, signed on 2.7.2014, and held as under:-

"In view of above directions you were directed to submit a representation within the time limit granted by the Hon"ble Court.

Two and half months have been passed after the date of order dated 10/04/2014 but you have not submitted any representation.

In view of above facts a notice is issued to you to stop the recovery of penal rent made against you, you have not submitted any representation as directed by the Hon"ble Court.

Therefore, you are directed to submit your representation regarding the recovery

within 15 days of issuance of this notice so that future action could be taken by this office."

5. The applicant submitted his representation on 17.7.2014 and 1.8.2014. However, the respondents without considering the representations again started recovery of penal rent.

6. On 30.4.2017, the applicant retired on superannuation. The respondents issued demand letter to recover an amount of Rs.2,84,555/- from DCRG.

7. Being aggrieved by the said demand notice, the applicant has filed this OA seeking the reliefs as quoted above.

8. Pursuant to notice issued to the respondents, they have filed their reply in which it is stated that the instant OA is barred by resjudicata/constructive resjudicata in as much as the applicant had earlier challenged the aforesaid order/letter dated 9.1.2009 before the Hon"ble CAT, Jodhpur vide OA No.4/2010, which has already been decided vide Order dated 10.4.2014.

8.1 Earlier the applicant was working in Construction Organisation under Dy CE/ Const/Jodhpur since 20.5.1992 and transferred to his parent cadre, i.e., Engg Department, Delhi Division on 10.5.2001 but after a long litigation at Jodhpur at all levels, i.e., before Hon"ble CAT/Hon"ble High Court and Hon"ble Supreme Court, New Delhi, the applicant had finally joined Delhi Division on 11.10.2007. During his stay at Jodhpur, the applicant was in occupation of Railway accommodation, which was required to be vacated by him in the year 2001 but he did not vacate the same. Meanwhile, a recovery of penal rent was issued on 9.1.2009 for Rs.4,87,555/- which was stayed by the Hon"ble CAT/Jodhpur on 8.1.2010. On 10.4.2014, the Jodhpur Bench in OA 4/2010 observed as quoted above.

8.2 They further stated that out of Rs.4,87,555/- a sum of Rs.2,03,000/- have been recovered from the regular salary of applicant and remaining outstanding amount of Rs.2,84,555/- have been recovered from his settlement dues, after serving him a show cause notice vide office letter dated 11.8.2017.

9. In the rejoinder, the applicant has stated that the respondents have issued a notice dated 30.6.2014 instructing the applicant immediately file the representation which the applicant filed on 17.7.2014 and supplementary representation on 1.8.2014. However, the respondents without disposing the said representations as directed by the Hon"ble Tribunal issued recovery notice dated 11.8.2017 by the respondents no.2 which is illegal and arbitrary.

10. During the course of hearing learned counsel for the applicant submitted that in pursuance of notice dated 30.6.2014, the applicant submitted his representations dated 17.7.2014 and 1.8.2014, but without considering the same, the respondent have issued the order dated 11.8.2017, although the applicant was retired from service on 30.4.2017, directing recovery of the alleged amount from the DCRG of the applicant.

11. From the letter/notice dated 30.6.2014, signed on 2.7.2014, this Court finds that the applicant was directed to submit his representation regarding the recovery within 15 days of issuance of the said notice so the future action could be taken by the respondent. The applicant has specifically stated and referred to the representations dated 17.7.2014 and supplementary representation dated 1.8.2014 against the alleged recovery. But this Court does not find any averment in the reply filed by the respondents with regard to the said representations, which were filed by the applicant pursuant to the said notice dated 30.6.2014 and have issued the impugned recovery order only on 11.8.2017, which is impugned by the applicant in the present OA along with the initial recovery order dated 9.1.2009.

12. In view of the above facts and circumstances of this case and also having regard to the observations of the Hon"ble Jodhpur Bench of this Tribunal in OA No.4/2010, as quoted above, wherein although the Tribunal directed the applicant to submit his representation by averring each and every fact to the respondent authorities within a month from the date of receipt of a copy of the said Order, however when the applicant has not submitted his representation in terms of the aforesaid Order of the Jodhpur Bench of this Tribunal, the respondents have issued the notice dated 30.6.2014, signed on 2.7.2014, and the applicant gave his representation against the said notice on 17.7.2014 and also a supplementary representation on 1.8.2014, but the respondents have not passed any final order on the same as per the mandate of the said Order of the Jodhpur Bench. Instead they have passed the recovery order only on 11.8.2017 without adverting on the averments made by the applicant in the said representations, as such the present impugned recovery order is liable to be quashed. Accordingly, the said recovery order dated 11.8.2017 is quashed and the respondents are directed to pass a final order on the said representations of the applicant and communicate their decision to the applicant. The said decision should be reasoned and speaking one. This exercise shall be completed within a period of two months from the date of receipt of a copy of this Order.

13. In the result, the present OA is allowed in terms of the above directions. There shall be no order as to costs.