

(2019) 08 CAT CK 0082

In the Central Administrative Tribunal

Case No : Original Application No. 2595 Of 2018

Jai Bhagwan

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Citation : (2019) 08 CAT CK 0082

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

Bench : Single Bench

Advocate : Komal Aggarwal, Anil Mittal, Koonal Tanwarf

Final Decision : Allowed

Judgement

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

"(i) Quash order dated 07.06.2018 (Annexure A.1)

(ii) direct the respondent to re-fix the Basic Pay of the applicant from Rs.46,800/- to Rs.48,200/-and to pay him arrears of salary from March, 2018 till actual payment with interest."

2. The applicant in this OA is aggrieved by the impugned order dated 07.06.2018 whereby the excess payment to the tune of Rs.1,02,799/- made to the applicant due to the wrong grant of 2nd ACP on 15.11.2009 which was actually due in the year 2015, was recovered @ Rs.20,560/- per month from the subsequent salary bill w.e.f. March, 2018. The applicant has challenged this order on the ground that the 2nd ACP had been paid by the office of respondent on 15.11.2009 as per its own records without any misrepresentation of on his part. The applicant has also taken the plea that the objection taken by the audit report in 2014-15 cannot be now implemented in the 2018. The applicant has also relied upon the order dated 06.05.2016 in OA No. 2438/2013 (Bhoop Singh Vs. DTC) in which the Tribunal, while relying upon the decision of the State of Punjab & Ors. vs. Rafiq Masih (White Washer) SLP(C) No. 11684/2012, directed the respondents

not to recover the excess amount claimed to have been paid to the applicant and to release the pension of the applicant along with arrears.

3. In reply to the above, the respondents have filed their counter affidavit. They have contended that there was a deferring period of 06 years, 07 months and 19 days during 1st ACP which was wrongly not taken into account and consequently, the 2nd ACP was erroneously granted to the applicant on 15.11.2009. They have therefore contended that the pay scale of the applicant was correctly revised from Rs.48,200/- to Rs.46,800/- as the sum of Rs.1,02,799/- was paid to the applicant in excess. They have thus prayed the OA is liable to be dismissed.

6. After hearing both the parties and perusing the record, the basic and lone issue to be decided in this case is that whether the para 12 of the judgment of the Hon"ble Supreme Court in State of Punjab & ors. etc. vs. Rafiq Masih (White Washer) etc (supra) will be attracted to the facts of the instant case. For the sake of clarity, we extract para 12 from the order as under:-

"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 applicant has claimed that there is an immunity from recovery, extending to employees belonging to Class-III and Class-IV service (or Group "C" and Group "D" service) or those, who are due to retire, within one year; or employees in respect of whom excess payment has been made for five years prior to the order of recovery being passed.

8. It is noted that applicant is working as a Driver in the respondent organization, which is a post falling under the category of Group "C". It is also a

fact that the respondents have made recovery for grant of 2nd ACP which was wrongly given to the applicant on 15.11.2009 without misrepresentation of the applicant and the order of recovery was passed on 07.06.2018. Hence, the period of about 9 years had already elapsed before the date of recovery was passed.

9. In view of the above, it is clear that the case of the applicant is squarely covered by the principles (i) and (iii) laid down by the Hon"ble Supreme Court in the case of Rafiq Masih (supra). Applying the said principles, the impugned order of recovery dated 07.06.2018 is bad and is liable to be set aside. Accordingly, we direct the respondents to refund the amount which has already been recovered from the salary of the applicant within a period of three months from the date of receipt of a copy of this order.

10. With the above directions, the OA is allowed. Impugned order dated 07.06.2018 is also set aside.