
(2019) 07 CAT CK 0014

In the Central Administrative Tribunal

Case No : Original Application No. 1291 Of 2018

Laxmi Narian, Group ?C?

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Citation : (2019) 07 CAT CK 0014

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

Bench : Single Bench

Advocate : Gaya Prasad, Satpal Singh

Final Decision : Disposed Off

Judgement

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

â??i) to quash and set aside the impugned order dated â?" January, 2017, July, 2017, 07.07.2017 and the PPO dated 11.09.2017 (Annexure A-1 to A-

3, page 53A & 54A of A-4) to the extent from deducting/recovering illegal amount from retiral benefits and further direct the Respondents to

calculate DCRG, Leave Encashment and Pension on the basis of last pay drawn i.e. Rs.64,100 and pay the difference of arrears alongwith interest

@18% p.a. thereon from the date of retirement i.e. 30.11.2016 till actual payment alongwith cost of the litigation to the extent of Rs.50,000/-; and

ii. Any other relief which the Hon?ble Tribunal deem fits and proper may also be granted to the applicant.â??

2. It is the case of the applicant that the respondents, in compliance of the order dated 30.03.2017 passed in his earlier OA No. 1068/2017, have

released the settlement dues with regard to retirement benefits, like refund of GIC, leave encashment, commutation value and DCRG on the basis of

wrong fixation of his basic pay as Rs.58,600/- instead of last basic pay of Rs.64,100/-. He further alleged that despite the Court's order, the respondents have failed to release the said retiral benefits within the time frame set by the Tribunal. He therefore, sought a direction to pay the interest on the delayed payment of the settlement dues as well as on the difference of arrears of pension @ 18% arisen on account of wrong fixation of his basic pay.

3. The applicant has also alleged that recovery made by the respondents on the fixation of wrong basic pay as Rs.58,600/-instead of 64100/- is also in contravention of decision of the Hon'ble Supreme Court in the case of State of Punjab & Others Vs. Rafiq Masih (White Washer) etc (Civil Appeal No.11527/2014).

4. The respondents have controverted the aforesaid contentions of the applicant. They have filed their detailed CA and submitted that there is nothing pending with the respondents and all the settlement dues were given within the time limit fixed by the Tribunal. It is contended that at the time of the retirement of the applicant, his service record was misplaced but the same was reconstructed and as per the directions of the Tribunal in OA No.

1068/2017, the applicant was paid all the settlement dues within the extended time frame as allowed by the Tribunal in MA No. 2215/2017. The

respondents have further contended that basic pay of the applicant was earlier wrongly fixed as Rs.64,100/-which was later duly vetted by Associate

Finance and accordingly fixed as Rs.58,600/- on account of the fact that the applicant was awarded lots of punishment for non-performance of his

proper duties. They have also drawn our attention to fact that during the extended time period as allowed by the Tribunal, the applicant had also filed

CP No. 612/2017 which was dismissed on 11.09.2017. They have further contended that as per leave account, the applicant was due 131 days LAP

CPC for encashment duly verified by SWLI and vetted by associate finance and recovery of over credit of HAP for 10 days for which necessary

recovery of 10 days HAP have been made from his DCRG and leave encashment for 131 days amounting to Rs.2,61,004/- have been paid to the

applicant. They have thus prayed that this OA may be dismissed.

5. It is clear from the record that the applicant, who retired on 30.11.2016, has filed the OA No. 1068/2017 which was disposed of by this Tribunal on

30.03.2017 in which a clear directions was issued that the interest would be payable @ applicable to GPF rates on the amount of delay beyond the period of three months from the date of retirement. Thereafter, the respondents filed an MA No. 2215/2017 seeking extension of time for implementing the order of the Tribunal which was allowed by the Tribunal on 04.08.2017 and the time was further extended by three months. It is also to be noticed that in the meanwhile, the applicant has also filed CP No. 612/2017 which was dismissed by the Tribunal on 11.09.2017 with the observation that "Since the time extended by this Tribunal is still in operation and not expired, hence the present CP filed alleging violation of the orders of this Tribunal in the OA is dismissed." It is an admitted position that that the respondents have paid the pension @29300 pm vide PPO No. 2017730301891 on 11.09.2017 and family pension @29300 PM upto 7 years and Rs.17580 pm thereafter vide PPO No. 2017730301891 on 11.09.2017 which is within the time limit fixed by the Tribunal. Hence, there is no delay on the part of the respondents in releasing the settlement dues, which were paid on the fixation of basic pay of the applicant as Rs.58,600/- after vetting by associate finance. Hence the recovery of overpayment made by the respondents on the wrong fixation of the basic pay of the applicant as Rs.64100/-instead of Rs.58600/- is permissible in light of the judgment of the Hon'ble Supreme Court in the case of UT Chandigarh & Ors. Vs. Gurucharan Singh & Anr. (Civil Appeal No. 9873/2013) in which the following order has been passed:-

"12. Though a submission had been made on behalf of the respondent that no amount should be recovered from the salary paid to the respondent, the said submission cannot be accepted because if any amount had been paid due to mistake, the mistake must be rectified and the amount so paid in pursuance of the mistake must be recovered. It might also happen that the employer might have to pay some amount to the respondent as a result of some mistake and in such an event, even the appellant might have to pay to the respondent. Be that as it may, upon settlement of the account, whatever amount has to be paid to the respondent employee or to the appellant employer shall be paid and the account shall be adjusted accordingly.

13. For the aforestated reasons, we are of the view that the High Court was not correct in allowing the writ petition. We quash and set aside the order

passed by the High Court so as to restore the order passed by the Tribunal and give effect to the pay fixation order dated 13th October, 1998. The appeal stands disposed of as allowed with no order as to costsâ??.

5. However, if the applicant still finds any retiral due payable to him, he shall make a specific claim with regard to the same within a period of 30 days

of receipt of a copy of this order. Thereafter the respondents are directed to dispose of the same within 45 days of receipt of such claim.

6. With the above, the OA stands disposed of. No order as to costs.