(2019) 05 CAT CK 0089

In the Central Administrative Tribunal

Case No : Original Application No. 4217 Of 2017

Ram Pyare Yadav APPELLANT

Vs

Chief Managing Director RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:
Central Civil Services (Pension) Rules, 1972 — Rule 71, 73

Citation : (2019) 05 CAT CK 0089

Hon'ble Judges : Nita Chowdhury, J

Bench : Single Bench

Advocate : Puneet Verma, Shashwat Sharma

Final Decision : Disposed Off

Judgement

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

"8.1 Call for the records of the case for perusal;

8.2 Quash and set aside the impugned order/letter dated 29.9.2017 (Annexure A-1) and any other letter(s) or order(s) to same effect; being illegal, arbitrary, discriminatory, malafide, untenable, without jurisdiction;

8.3 Direct the Respondents to refund the amount of Rs.150570/- which was arbitrarily deducted from the Leave encashment of the applicant along with 12% interest thereon to the applicant;

8.4 Allow costs of application;

8.5 Pass any other order(s), which this Hon?ble Tribunal may deem just and equitable in the facts and circumstances of the case;"

2. Both the parties are present and argued the case.

3. Briefly, it is the case of the applicant that he has not been treated fairly by the respondents who have deducted an amount of Rs.1,50,570/- as excess payment after fixation made in DA and HRA. They have quoted the same even in the

recovery order dated 05.12.2016. Neither the applicant nor the respondents have filed a copy of the said excess payment order with regard to pay fixation which is the basic document on which the processing of the pension claim has been done. However, vide Annexure-10, which reads as under;-

"No.AO (P&A) Plg/MTNL/Vr.8/2016-17/14 dated 05.12.2016 Sub:- Regarding refund of recovery amount of Rs.150570/- for the period from 1998 to 31.03.2016/ With reference to your complaint/letter dt. 25.07.2016 addressed to CMD MTNL 9 CGO Complex New Delhi on above mentioned subject. In this regard it is pointed out that while checking the pay fixation before processing pension case, it is seen that as per order no.1-38/MPP-98 dated 20.04.99, Endst No.STE/E-210/98/21 dated 03.06.99 your pay was fixed under FR 22(i) a (ii) instead of FR 22(i) a (ii) w.e.f. 01.12.98, due to that you have drawn excess amount of Rs.1,50,570/- which is recovered after serving a notice to you as per departmental rule/procedure.

In this regard it is to inform you that the amount of overpayment of pay and allowances is "Government dues" in terms of Rule 71 of CCS Pension Rules 1972 and is recoverable from the employee in terms of Rule 73 of the said rule.

Further in view of the peculiar facts and circumstances of the case and excess salary paid to you being public money and no hardship has been caused in recovering the same after giving due limitation.

As such the recovery of overpayment of pay and allowances has been rightly done by MTNL in terms of applicable rules......" we do find a mention of pay fixation order dated 05.12.2016 but neither has the applicant challenged nor has he given the details of the same. In this case, a copy of the order of pay scales of OTBP/BCR officials inducted into the restructured cadres of Phone Mechanic, Telecom Technical Asstt. and Sr. Telecom Operating Asstts. has also been filed as Annexure R-2. We do not find any information in the same with regard to the pay scales pertaining to Class III and Class IV employees. The classification of the pay scales is very important because the applicant is placing reliance on the decision of the Hon?ble Supreme Court in the case of State of Punjab & Ors. etc. vs. Rafiq Masih (White Washer), (2015)4 SCC 334 to claim that no recovery should be made from him.

5. We also note that there are different decisions on the recovery of excess payment from Class III and Class IV employees and in the decision of the Hon?ble Supreme Court in the case of Hon'ble High Court of Punjab & Haryana vs. Jagdev Singh, Civil Appeal No. 3500 of 2006, it has been clearly laid down that in cases where undertaking has been given by an employee for recovery of excess amounts, the excess amount would be required to be refunded. We also notice that final review of pay fixation is done at the time of retirement and this is not an exceptional action in this case, but one which is routinely carried out before determining the pensionary benefits of every employee under the relevant CCS(Pension) Rules, 1972.

6. The question of recovery can only be determined if the fixation order is first clarified by the applicant. The respondents are, therefore, directed to first decide the question of refixation of pay etc. of the applicant after receiving his representation within 15 days of receipt of a copy of this order. The respondents must clarify the position of the applicant as to under which Rule, i.e, Rule 71 or Rule 73 of the CCS (Pension) Rules, 1972 the applicant is governed. They may not have cadres specifically stating them to be Class III or Class IV employees. Accordingly, they shall, after determining the equivalence of the pay drawn by the applicant to similar pay scales of employees, pass a speaking order within a period of 30 days of receipt of a representation of the applicant, in terms of Rule 71 or 73 of the CCS (Pension) Rules.

7. With the above directions, the OA stands disposed of. No costs.

