(2019) 02 CAT CK 0141

In the Central Administrative Tribunal

Case No : Original Application No. 137 Of 2018

Sh. Subhash Chander — APPELLANT

Vs

Chairman & Managing Director — RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Central Civil Service (Pension) Rules, 1972 — Rule 71, 72

Citation : (2019) 02 CAT CK 0141

Hon'ble Judges : A.K. Bishnoi, J

Bench : Single Bench

Advocate : Sh. Wills Mathews, Sh. Vijumon Thomas, Sh. Paul John Edison

Final Decision : Allowed

Judgement

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

"(a) Pass an order quashing Notice dated 19.02.2016 issued by the respondent No. 2 (Annexure-P1) against the petitioner, recovering a sum of Rs. 1,67,361.00 and further pass an order directing the respondents to return the amounts back to the account of the petitioners in 45 days time.

(b) Allow the OA with cost of Rs. 55,000/- against the respondents and favouring the petitioner.

(c) Pass such other directions or orders as this Honorable Tribunal may deem fit and proper to meet the ends of justice."

2. Briefly, the facts of the case as stated by the applicant are as follows:

(i) The applicant was working with the Mahanagar Telephone Nigam Ltd., (henceforth referred to as MTNL) as Section Supervisor and retired on superannuation on 29.02.2016. On 19.02.2016, ten days prior to his retirement, he received a notice from the respondents for a recovery of Rs. 1,67,361/- for over payment due to wrong fixation of salary at the time of 2nd IDA pay revision of salary in January, 2007. Accordingly, an amount of Rs. 1,17,361/- was deducted from leave encashment and Rs. 50,000/-from his salary for February, 2016. The applicant has annexed a copy of an OM dated 02.03.2016 of Department of Personnel and Training on the subject of wrongful/excess payment made to Government servants.

(ii) He submitted a representation dated 20.02.2017 to the respondents against the said deduction seeking refund of the amount recovered, with interest. The representation was followed by a reminder dated 27.03.2017 following which the respondents sent him a letter dated 10.04.2017 informing him that Rules 71, 72 and 73 of CCS (Pension) Rules, 1972 have been invoked for effecting recoveries against him.

3. The applicant has cited the following grounds in support of his contentions:

(i) the action of the respondents is a gross violation of the directions of the Hon'ble Supreme Court in State of Punjab & Ors. vs. Rafiq Masih & Ors. and Sayed Abdul Quadir vs. State of Bihar.

(ii) The action of the respondents in making deduction is illegal and arbitrary and violative of his fundamental rights as also the principles of natural justice.

4. The respondents in the reply have at the outset submitted that the present OA is barred by limitation as it is filed after the stipulated one year period. It is further submitted that the orders of the Hon'ble Supreme Court in the cases of Rafiq Masih (supra) and Sayed Abdul Quadir (supra) are not applicable to the facts of the present case. The respondents are only seeking to recover excess monetary benefit made out to the applicant and as a public entity they have to enforce the recovery of public money. The order seeking recovery is a well reasoned order and is not illegal, arbitrary, malafide or perverse.

5. It is further contended that the applicant has not challenged the re-fixation but only the recovery order on the sole ground that it would cause undue hardship to him. The recovery would not cause any undue hardship to the applicant as it is a case of unjust enrichment. The respondents have gone on to give the details of the process including the stages when the pay of the applicant was fixed, up to the calculation of excess payment and its recovery.

6. The applicants have filed a rejoinder more or less reiterating the averments made in the OA.

7. Heard learned counsel for both sides and perused the pleadings.

8. On the issue of limitation, the contention of the learned counsel for the applicant is that his case is squarely covered by the judgment of the Hon'ble High Court of Delhi in WP(C) No. 1199/2018, Mahanagar Telephone Nigam Limited vs. Satnam Singh and anr. Dated 09.02.2018. His case is that of deduction from the retiral benefits and the same does not have any adverse effect on any third party for MTNL to invoke the doctrine of delay and laches. As regards the main pleadings in the OA, he submits that in the case of Rafiq Masih

(supra), law has been completely settled and his case is fully covered by the judgment.

9. Learned counsel for the respondents on the other hand, has referred to the judgment of the Hon'ble High Court in the case of Chandi Prasad Uniyal & Ors. versus State of Uttarakhand & Ors., CA No. 5899/2012 dated 17.08.2012 and also Bharat Amratlal Kothari & Anr. Versus Dosukhan Samadkhan Sindhi & Ors., CA No. 2020/2009 dated 04.11.2009. He also submitted that the applicant has sought the quashing of the notice dated 19.02.2016 and has nowhere sought quashing of the order dated 10.04.2017 which is about the communication to the applicant by the respondents of the recovery having been made.

10. I have gone through the pleadings on record as also the arguments advanced by learned counsel for both sides.

11. The Hon'ble High Court of Delhi in Mahanagar Telephone Nigam Limited vs. Satnam Singh has held as follows :

"9. Coming to the first objection with regard to the limitation raised by learned counsel for the petitioner, we may refer to the judgment in the case of Union of India & Ors. vs. Tarsem Singh, reported as (2008) 8 SCC 648 where the Supreme Court has elucidated the principles underlying continuing wrongs and recurring/successive wrongs, as applicable to service law disputes, in the following words:

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches(where remedy is sought by filing a writ petition) or limitation(where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment of re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/ limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition." (emphasis added).

10. As can be seen from the observations of the Supreme Court extracted hereinabove, a belated service related claim will be rejected on the ground of

delay and laches except where a case relates to a continuing wrong or if the issue relates to payment or re-fixation of pay or pension etc. In such cases, relief can be granted inspite of delay as it does not affect the rights of a third party. In the present case, there is no quarrel on the fact position that the petitioner/MTNL had sought to make deductions from the retiral benefits of the respondents and the same does not have an adverse effect on any third party for MTNL to invoke the doctrine of delay and latches. This being the position, we do not find any error on the part of the Tribunal in entertaining the petition filed by the respondents for recovery of the amounts deducted by the petitioner/MTNL from their retiral dues."

The present case is squarely covered by the decision of the Hon'ble High Court of Delhi on the issue of limitation. Hence, I do not find that the present case is barred by limitation.

12. As regards the arguments advanced by learned counsel for the respondents that the applicant has only sought quashing of notice dated 19.02.2016 and not any order related to making the recoveries, it can easily be seen that the document dated 19.02.2016 though going with the head "Notice", is not a notice in any sense of the word and it is a clear direction to the applicant to deposit the money. To sufficiently elucidate the above, the text of communication dated 19.02.2016 is reproduced below:-

"Notice

While processing your pension case, and on review of time to time pay fixation from date of appointment to till date, it has been observed that your pay was wrongly fixed at the time of 2nd IDA pay revision i.e. w.e.f. 01.01.2007 and in view of the revised pay fixation/calculation, an overpayment of Rs. 1,67,361/- (Rs. One Lac Sixty Seven Thousand Three Hundred Sixty One only) has been worked out.

Hence, you are requested to please deposit the over payment in cash within 3 (Three) days from the receiving of this notice, failing which this office has left no option but to recover the same from your Salary for the m/o February 2016 and Leave Encashment."

Thus, the applicant has not erred anywhere in seeking the quashing of the said communication since if this is quashed, all other actions by the respondents in pursuance of the said direction will also stand quashed.

13. The respondents have cited the judgment of the Hon'ble Supreme Court in Bharat Amratlal Kothari & Anr. Versus Dosukhan Samadkhan Sindhi & Ors., CA No. 2020/2009 drawing my attention to paras 26, 29 and 30 of the judgment. It is clear that the facts of the present case are very different as the relief clause in the present OA is specific and in the facts and circumstances of the case, the principle laid down in the judgment referred above does not apply in the present OA.

14. Now let me come to the main issue, that of effecting recoveries by the employer. As regards Chandi Prasad Uniyal and Sayed Abdul Quadir (supra), the legal issues determined in these have been examined in Rafiq Masih (supra) following which the principle has been laid down by the Hon'ble Supreme Court regarding situations wherein recoveries bythe employers would be impermissible in law. To quote the operative portion:-

"18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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 is 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 is a Group C employee and hence his case is covered as it falls in the category defined in (i) above. The recovery has been made in the last ten days of his service before superannuation and as such the matter also falls in the category defined in '(ii)' above. It is quite possible that the applicant's case may also fall in any of the other categories defined above but it would be futile to go into any further examination on this issue. Thus, it can be seen that the case of the applicant is squarely covered by the law laid down by the Apex Court in the case of Rafiq Masih(supra).

15. The OA is accordingly allowed. The order dated 19.02.2016 with all consequential orders are quashed and set aside. The respondents are directed to pay back the applicant the recovered amount within sixty days from the date of receipt of a certified copy of this order. No order as to costs.

