(2018) 06 CAT CK 0007

In the Central Administrative Tribunal

Case No : Original Application No. 2184 Of 2016

Shriniwas APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 06-06-2018

Acts Referred:

Citation : (2018) 06 CAT CK 0007

Hon'ble Judges : Jasmine Ahmed, J

Bench : Single Bench

Advocate : Yogesh Sharma, Satish Kumar

Final Decision : Allowed

Judgement

Jasmine Ahmed, J

1. At the very outset, learned counsel for respondents stated that the O.M dated 26.10.2015 is being challenged by various applicants and a number of cases is being pending before this Tribunal on the question of validity of the O.M. dated 26.10.2015. He has also stated that the relief No. 1 as prayed by the applicant is for quashing of the O.M. dated 26.10.2015 and the relief no. 2 is consequential to the validity of the order dated 26.10.2015. Accordingly, he states that this matter may also be tagged with those O.As wherein the O.M dated 26.10.2015 is under challenge before this Tribunal. Contradicting the statement given by the counsel for respondents, counsel for applicant drew my attention to order sheet dated 14.11.2017, the order dated 14.11.2017 is quoted as under:-

"The reply has not been filed on behalf of the respondents despite several opportunities having been granted to them. The applicant retired on 31.12.2015 from the post of Sewadar (Group 'C') from the office of respondent no.2. All his retiral dues except leave encashment benefits, have been released. He has also been sanctioned regular pension. The sole reason as to why the leave encashment benefits has not been released to the applicant by the respondent no.2 is that an amount of Rs. 91,302/- is likely to be recovered towards excess payment to him towards transport allowance. The total amount of Leave Encashment amount due to him is Rs. 3,11,860/-. The details in this regard are at Annexure A-

2. The applicant made basically two prayers in this OA:-

(a) To quash an order dated 26.10.2015 (Annexure A-1) of the respondent no.1, whereby the transport allowance is payable to Central Government Employees.

(b) To declare Annexure A-2 order dated 31.05.2016 seeking recovery of alleged excess amount of Rs.91,302/- from the applicant as illegal and arbitrarily.

Today, during the course of the hearing, Mr. Yogesh Sharma, counsel for the applicant submitted that the first relief seeking quashment of Annexure A-1 order dated 26.10.2015 is not being pressed by the applicant.

As such, the only relief that is sought by the applicant is to declare Annexure A-2 order dated 31.05.2015 as arbitrary and illegal. Learned counsel for the applicant submitted that case of the applicant regarding recovery of alleged excess amount by the respondents from the applicant is squarely covered by the judgment of Hon'ble Supreme Court in case of State of Punjab and others etc vs. Rafiq Masih (White Washer) etc. Civil Appeal No. 11527 of 2014.

Mr. Satish Kumar, learned counsel for the respondents submitted that reply would be filed positively within three weeks. Having regard to the assurance given by the learned counsel for the respondents, further opportunity of two weeks is granted to the respondents for filing reply, failing which their right to file the same shall stand forfeited.

Learned counsel for the applicant submits that no rejoinder is required in this case.

List the case on 11.12.2017 on which date efforts would be made to dispose of this OA."

2. Accordingly, the argument of the counsel for respondents is misplaced. The limited issue remaining in this O.A is about how far the withholding of the leave encashment of the applicant is legal and justified. The crux of the case is that the applicant who was working in the post of MTS (Sewadar) was getting Transport Allowance on the basis of the judgment passed by this Tribunal in a bunch of O.As vide its order dated 18.03.2015 Annexure A/5 page 32 of the O.A wherein in para 6.5 of the judgment in O.A No. 996/2014 it is quoted as under:-

"Thus, we are convinced with our direction as given in O.A 2080/2012 on 04.10.2013 having been carried out by the respondents and that impugned order dated 07.03.2014 does not constitute full compliance of the same. We therefore quash and set aside this order and direct the respondents to reconsider the whole issue in accordance with direction given in order dated 04.10.2013 within a period of 8 weeks from the date of receipt of a certified copy of this order. We also direct that till such consideration is made the orders issued by the Ministry of Finance, an employee will continue to draw TA at the rate at which they have been drawing the same so far and no recovery would be made from them till then. In case the applicants are still aggrieved by the decision given by the respondents they will be at liberty, if so advised to challenge the same by means of appropriate judicial proceedings. These O.As are accordingly disposed of. There shall be no order as to costs."

3. Counsel for applicant states that in pursuance of the order, as per the direction of this Tribunal the respondents issued O.M dated 26.10.2015 which is under challenge before this Tribunal and as per order dated 14.11.2017, it is clear that he is not challenging anything in regard to the O.M issued by the respondents dated 26.10.2015. Counsel for applicant states that the applicant was getting Transport Allowance and as per this order passed on 18.03.2015, the order was to continue the T.A till that time consideration is made and order issued by the Ministry of Finance. Meaning thereby, the applicant was entitled to get T.A till 26.10.2015 by the time the respondents had issued the O.M. and after one month of the issuance of O.M dated 26.10.2019, on 31.12.2015 the applicant has retired. Accordingly, even if, the respondents could discontinue the T.A, that would have been only after 26.10.2015 to 31.12.2015 i.e., only after two months approximately. Counsel for applicant states that applicant is a group 'C' employee and already retired on 31.12.2015. Accordingly, as per the Judgment passed by the Hon'ble Apex Court in the case of State of Punjab Vs. Rafiq Masih (White Washer etc.) in Civil Appeal No. 11527/2014 the respondents are estopped from making any recovery from the amount already paid to the applicant and accordingly, the respondents cannot withheld any amount/encashment due to the applicant on the basis of granting him T.A till 31.12.2015.

4. Counsel for respondents argued on the point of O.M. dated 26.10.2015 and stated that the matter is sub judice before this Tribunal.

5. Heard the learned counsel for both the parties.

6. The short issue involved in this matter is that whether the respondents can withheld the leave encashment of the applicant because they have paid him T.A to the tune of Rs.91,092/- till his retirement. As per the order of Hon'ble Apex Court in the case of Rafiq Masih (supra) it is categorically held in para 5 of the judgment which is as under :-

"5. The Hon'ble Supreme Court while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recover, where payments have mistakenly been made by the employer, in excess of their entitlement has summarized 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."

7. Accordingly, the respondents are debarred from making any recovery. Even if the respondents were intended to recover any amount they could have done that deducting the amount of Rs.91,092/- from the amount of leave encashment and would have paid the rest amount to the applicant. The respondents have not done that also.

8. The other short issue is that even if, as per the argument of counsel for respondents the O.M dated 26.10.2015 is upheld by this Tribunal whether that can be given retrospective effect in the case of the applicant? It is a settled law that any order or decision will always have a prospective effect, if not categorically mentioned to give effect from retrospective date.

9. Accordingly, since the applicant has retired on 31.12.2015, even if the O.M. dated 26.10.2015 which is under challenge passes the test of law it cannot be given retrospective effect to in the case of applicant who has retired long back and no recovery can be done. Accordingly, in my considered opinion, in view of the Hon'ble Apex Court's judgment in the case of Rafiq Masih (Supra) and also a settled position that any order will have a prospective effect, the O.A succeeds and the respondents are directed to release the entire leave encashment amount to the applicant without any deduction with interest @ 7% within a month from the date of receipt of a certified copy of this order. Accordingly, order dated 31.05.2016 (page No. 27 of the O.A) is quashed and set aside.

10. The O.A is therefore allowed. No costs.