
(2007) 03 DEL CK 0157

In the Delhi High Court

Case No : Writ Petition (C) 3131 of 2006 and CM 2656 of 2006

Sukhvinder Singh Shagufa

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:

Citation : (2007) 96 DRJ 586

Hon'ble Judges : Mukul Mudgal, J; Aruna Suresh, J

Bench : Division Bench

Advocate : appearance not given, for the Appellant; Sarbjit Sharma, for R1, for the Respondent

Final Decision : Allowed

Judgement

Mukul Mudgal, J.

1. Rule DB. With the consent of learned Counsel for the parties, this writ petition is taken up for final hearing.

2. At the relevant time, the petitioner was working as DTP Operator. The Petitioner retired from Govt. of India Press, Mayapuri, New Delhi. The petitioner's grievance has arisen on account of the fact that on attaining the age of superannuation after retirement on 30th June 2004, a recovery of Rs. 23,658/- was made from his retiral dues and this had effect on his subsequent benefit as detailed in O.A. 1098/2005 filed by the petitioner before the Central Administrative Tribunal (hereafter referred to as the "Tribunal"). The principal submission of the petitioner before the Tribunal was based on the judgment of the Hon'ble Supreme Court in Gajanan L. Pernakar v. State of Goa 2000 SCC (L&S) 57, where it was contended that before an administrative order passed in favor of an officer is recalled, show-cause-notice must be issued. It was also recorded by the CAT that the sum of Rs. 23,568/- recovered from the petitioner without issuing show-cause-notice for reduction of his emoluments had been refunded. The Tribunal has dismissed the O.A. inter alia on the premises of the

refund of Rs. 23,658/- to the petitioner. The subsequent affidavit filed by the respondent in this Court shows that no such refund was made and the Tribunal's judgment was obviously founded on an erroneous statement made by the learned Counsel for the respondent. Further, the Tribunal in its judgment sought to distinguish the judgment of Gajanan L. Pernakar (supra) by relying upon the judgment of the Hon''ble Supreme Court in Aligarh Muslim University v. Mansoor Ali Khan 2000 SCC (L&S) 965. The relevant paragraph of the Tribunal's judgment reads as follows:

As far as the judgments relied upon by the applicants are concerned, we find that the principle of law namely that the administrative instructions would not have retrospective effect and would only be prospective is undoubtedly a settled law. But as far as the contention that principles of natural justice must be observed and breach of which would entitle the relief to the applicant, we find that the Hon''ble Supreme Court in 2000 SCC (L&S) 965 (Aligarh Muslim University v. Mansoor Ali Khan), after noticing the various judgments had held that there is no necessity to issue show cause notice particularly when it is found that it would be "useless formality". In the present case the applicant had submitted more than one representation, which were considered by the respondents. The basic issue in the present case had been as to whether the applicant was eligible for in-situ promotion as on 01.3.1996 which aspect we have already dealt with hereinbefore and answered. The judgment relied upon in our considered view being rendered in a different set of facts are not applicable in the facts and circumstances of the present case. We may also note at this stage that the Chandigarh Bench in the afore-mentioned case of Jiley Singh allowed the OA only to the extent that the applicants would be entitled to submit fresh option in terms of DoP&T OM dated 23.4.1999 on the subject of pay fixation. We may further note that the Ministry of Finance clarification dated 6.7.98 as endorsed to all concerned vide Directorate of Printing OM dated 22.7.98 and reiterated on 8.12.2004, whereby it has been specifically stated that maximum of the pay scale for the purpose of computing the eligibility to in -situ promotion has to be determined with reference to the pay in the revised scale effective from 1.1.1996 had not been considered therein and, Therefore, we find that the said judgment is clearly distinguishable.

3. In our view, the above judgment of the Hon''ble Supreme Court is not applicable to the present case as it related to instance of overstay of a Laboratory Assistant who was working abroad and desired an extension of his contract with the University which was already in existence. During the course of his stay abroad he stopped responding to the notices issued by the University. The observation by the Hon''ble Supreme Court in the above case that a show-cause-notice would be a "useless formality" cannot be applied in the facts of the present case because here the petitioner who was regularly in receipt of pensionary benefits and thus readily available was sought to be deprived of such benefits by making deductions in the emoluments without issuing a show-cause-notice to the petitioner. Accordingly, we cannot sustain the order of deduction

and the same is set aside. In case, the respondents seek to take any action against the petitioner based on the premises which are found in the counter affidavit, such action for reduction of the petitioner's pensionary dues and other retiral benefits can only be taken after issuing an appropriate show-cause-notice to the petitioner.

4. In this view of the matter, the writ petition is allowed and we accordingly, direct that a sum of Rs. 23,658/- shall be refunded to the petitioner not later than six weeks from today. The writ petition stands disposed of along with CM 2656/2006.