(2018) 09 CAT CK 0128

In the Central Administrative Tribunal

Case No : Original Application No. 1959 Of 2017

Sunil Kumar And Ors — APPELLANT

Vs

Chairman And Managing Director And Ors — RESPONDENT

Date of Decision : 14-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0128

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

Bench : Single Bench

Advocate : Puneet Verma, Mohd. Faisal, Subhash Gosai

Final Decision : Dismissed

Judgement

1. The applicant has filed this OA seeking the following reliefs:-"8.1 Call for the records of the case for perusal;

8.2 Quash the action of the respondent no.1 in recovering the amount of monthly compensation of Rs.3000/-paid during September, October, 2008 and Productivity Linked Incentive (LI) for the year 2007-08 & 2008-09 from the Children Education Allowance of the applicants now at this stage and so also the Order dated 18.12.2015 (Annexure A-1), Order dated 18.12.2015 (Annexure A-2), Order dated 7.1.2017 (Annexure A-3), Order dated 3.3.2017 (Annexure A-4), being illegal, arbitrary, discriminatory, malafide, untenable, without jurisdiction with all its consequences;

8.3 Direct the Respondents 1 to return the said amount illegally recovered as such to the applicants and also pay interest @ 12% on the same since date of recovery till the actual payment of the said amount;

8.4 Allow costs of application;

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

2. Brief facts of the case are that applicant no.1 after passing UPSC IES exam in 1979 was appointed as Class 1 officer in Indian Telecom Services (ITS). He joined this service in erstwhile P&T Department in July, 1981. He has served in Delhi Telephones (DOT) and on deputation to TCIL & BSNL. In the year 1986, MTNL was formed by the Government of India/Department of Telecom, to form a PSU to operate telecom services in Delhi and Mumbai. Applicant no.1 was posted at MTNL by DOT in the year 2003 and he is serving there since then.

2.1 Applicant No.2 similarly belongs to "Indian Telecom Services", has been posted at MTNL by the Department of Telecom (DoT) and he has been working in MTNL since year 2001.

2.2 In the year 2005, DoT sought option from all ITS Officers to either take absorption in MTNL/BSNL or remain with Central Government (DoT). Applicant no.1 opted for DoT. The officers who opted for absorption in MTNL were being paid salaries and allowances as per "Industrial Dearness Allowance" (IDA) scale from the date of absorption, viz., 1.4.2005. The applicants who were transferred/ shifted to DoT by the Government, hence, they had to remain with MTNL. The applicants were being paid salaries and allowances by MTNL as per Central Government Pay Scales, i.e., CDA without any deputation allowance.

2.3 On 5.6.2000, the Board of Directors of MTNL decided to get switch over all the Group "A" and "B" officers from five days to six days working in a week and to pay a compensation of Rs.3000/-p.m. to all the Group "A" and "B" officers working in MTNL. The said compensation was to be paid w.e.f. 1.4.1999 or from their date of joining MTNL, whichever is later, till the IDA pay scales become operative for Group "A" and "B" officers. Accordingly, the applicants were given the benefits of monthly compensation for the months of September & October 2008 as all the employees were shifted from 5 days week to 6 days week and to compensate the employees for working an additional day, the said benefit of compensation was paid and the said amount was certainly not an allowance as tried to allege later on by the respondents.

2.4 Applicants further averred that upto year 2008-09, MTNL was making profits from its services, therefore, as per the decision of MTNL management, all employees working for MTNL, including un-absorbed officers/employees, were being given Productivity Linked Incentive (PIL) in recognition of their contribution towards productivity and profit. This PIL was being given once in financial year, usually in September. PLI was last paid in the year 2009 after which this was stopped. The applicants were paid the PLI for the years 2007-08 and 2008-09.

2.5 They further averred that Sixth Pay Commission enhanced the Children Education Allowance (CEA) to Central Govt. employees. The above applicants, who have been drawing pay and allowances as per Central Government pay scales, raised their claims accordingly at MTNL Corporate Office, for period from September 2008 to April 2012. Their representations were forwarded to the Director (Estt.), DoT vide letter dated 2.6.2015 (Annexure A-11).

2.6 However, after a long time, the claim of the applicant was allowed by MTNL Corporate Office, but the applicants became shocked to see that while allowing the Children Education Allowance, the respondent deducted the amount paid to the applicants earlier as PLI for the years 2007-08 & 2008-09 and compensation for the period of September and October 2008 after the date of implementation of the 6th Pay Commission, i.e., 1.9.2008, was recovered from them. This recovery of Rs.26,000/-per applicant was made by MTNL vide orders dated 18.12.2015 (Annexure A-1) and 18.12.2015 (Annexure A-2).

2.7 Under such circumstances, the applicants made various written/oral representations to the authorities concerned and the matter was sent by the MTNL to the DoT for clarification and the DoT replied that the clarifications as issued by the DoT vide its orders dated 15.3.2012 and 7.8.2015 be followed and as regards the PLI and compensation, the MTNL may take decision on its own.

2.8 It is further pointed out that DoT vide their letter dated 1.10.2008 had clarified earlier that PLI and compensation shall not be recovered from un-absorbed officers.

2.9. Having no option, the applicants made representations to the GM (HR) of the respondent/MTNL objecting to recovery made from the children education allowance by the respondent on the ground that the PLI could not be recovered without any order from the Government and admitted there was no such order in the present case and more so the PLI as given to the applicants was for the period prior to the period for which the applicants claimed children education allowance i.e. 1.9.2008 and as such the period was different.

2.10 Applicants further contended that the compensatory amount of Rs.3000/-pm was not an MTNL allowance but the same was given to the officers who were getting IDA pay scale.

2.11 The applicants made their representations dated 6.7.2016 and 18.8.2016 which were again sent by the MTNL to the DoT vide its letter dated 3.9.2016 seeking clarification with regard to transport allowance and all other allowance to the employees who are on deemed deputation in MTNL like the applicants. The DoT vide its reply dated 26.9.2016 clarified that "applicability of payment of all the allowance as per 6th CPC is from 1.9.2008. However, it may be ensured that any allowance which are not admissible to the Central Govt. Employees may not be paid by MTNL to the said officers for the period starting from 1.9.2008 as they were not allowed to claim both the benefits as also communicated vide this office letter dated 15.3.2012."

2.12 However, despite the clear cut interpretation of the rules, the respondent became adamant on its stand and on further raising the grievance by applicant no.2, the respondent again gave the same reply as aforesaid.

2.13 The applicant no.2 again tried to convince the respondent, however, the respondent vide its letter dated 3.3.2017 intimated that the decision conveyed earlier vide office letter dated 7.1.2007 stand final in the instant case.

2.14 Being aggrieved by the aforesaid action of the respondents, the applicants have left with no option except to approach this Tribunal for redressal of their grievances.

3. Pursuant to notice issued to the respondents, both the respondents have filed their counter affidavits separately. In the counter affidavit filed by respondent no.1, i.e., MTNL, it is stated that the applicants are the Central Government Group A officers of respondent no.2, who while working on deemed deputation in MTNL, got the benefits of some MTNL allowances/incentives, i.e., Rs.3000/- a monthly allowance and PLI in addition to their admissible pay and allowances given in CDA pay scales. The respondent no.2, i.e., DoT vide letter dated 15.3.2012 issued instructions that the Central Government Group A officers working on such deemed deputation may be allowed the payment of allowances as per 6th CPC w.e.f. 1.9.2008, however, they may not be allowed to draw the allowances being paid by MTNL which are not admissible to Central Govt. employees as they cannot be allowed to claim both the benefits. The said directions were again reiterated vide DoT letter dated 7.8.2015. Accordingly, in compliance of the said directions, allowances admissible to Central Government employees are being paid to the applicant w.e.f. 1.9.2008 and recovery of MTNL allowances w.e.f. 1.9.2008 was made from the applicants.

3.1 Respondent no.1 further averred that the Hon"ble Supreme Court in the case of U.T. Chandigarh & Ors. Vs. Gurcharan Singh and another, [2013] 12 S.C.R. 853, the Hon"ble Apex Court held as follows:-

"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 can not 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."

3.2 It is further stated that the monthly compensation of Rs.3,000/- was an additional MTNL"s compensation allowance and as per the clarification issued by DoT, the applicants cannot avail the double benefits. The allowances are those fixed sums which are granted/paid regularly to the employee within set of rules and regulations. As per Oxford dictionary "the allowance is the amount of something that is permitted, especially within a set of regulations or for a specified purpose or a sum of money paid regularly to a person to meet needs or expenses." Thus clearly the said amount of Rs.3,000/- and PLI paid to the applicants were the MTNL"s compensatory allowances and the respondents no.2, i.e., DoT has correctly issued the instructions that Central Government Group A officers working on such deemed deputation may be allowed the payment of allowances as per 6th CPC w.e.f. 1.9.2008, however, they may not be allowed to draw the allowances being paid by MTNL which are not admissible to Central Govt. employees as they cannot be allowed to claim both the benefits. Therefore, the applicants contention that the aforesaid amount of Rs.3000/- and PLI as recovered from them was not allowances is wrong and baseless.

3.3 The respondent has lastly stated that instant OA deserves to be dismissed by this Tribunal.

4. In the counter affidavit filed by respondent no.2, it is stated that MTNL was established on 1.4.1986 to manage and control Telecom services in two metropolitan cities, viz. Delhi and Mumbai. The officers and staff working in DoT in Delhi and Mumbai units were transferred en-masse to MTNL on deemed deputation basis.

4.1 Group "C" and "D" employees of DoT were absorbed in MTNL with effect from 1.11.1998 in accordance with instructions contained in Department of Pension and Pensioners Welfare OM dated 5.7.1989 (Annexure R-1) and orders of their absorption were issued during the year 2001-02. Officers of Group "B" and some of the officers of Group "A" were absorbed in MTNL with effect from 1.10.2000 as per Rule 37-A during the year 2004-05 and 2005 onwards respectively.

4.2 The employees working in MTNL were given an option to either get absorbed in MTNL or remain with the DoT. The employees who opted for absorption in MTNL were being paid salaries and allowances as per IDA pay scales. Those employees who did not get absorbed and continued to work in MTNL on deemed deputation basis were being paid salaries and allowances as per CDA pay scales. Consequently to the recommendations of the 6th CPC, the pay of such employees was also revised with effect from 1.1.2006.

4.3 It is further stated that as per the recommendations of 6th CPC, the pay of the employees working in MTNL on deemed deputation basis was also revised with effect from 1.1.2006. Regarding allowances as per the recommendations of 6th CPC, the letter dated 15.3.2012 (Annexure R-3) was issued to MTNL indicating that Group "A" officers who are on deemed deputation to MTNL may be allowed payment of allowances as per 6th CPC. However, they may not be allowed to draw the allowances being paid by MTNL, which are not admissible to Central Govt. employees as they cannot be allowed to claim both the benefits. The answering respondent also stated that representations submitted by the applicants were forwarded by the MTNL to the DoT and the same were replied in terms of the aforesaid recommendations of the 6th CPC.

4.4 Lastly, it is prayed that instant OA is liable to be dismissed by this Tribunal.

5. During the course of hearing, counsel for the applicants submitted that recoveries which were made by the MTNL with respect to PLI from the salary of

the applicants pertains to the period prior to 1.9.2008 and further the amount of compensation of Rs.3000/- pm for the months of September and October 2008 was not MTNL allowance and if the same is as MTNL allowance, the same would have also been given to MTNL executives. As such the recoveries made by the MTNL from the salary of the applicants are not sustainable in the eyes of law and the same is required to be refunded to the applicants.

6. Counsel for the respondents submitted that it is admitted fact that pay of the applicants being Central Govt. employees were revised in pursuance of the recommendations of the 6th CPC w.e.f. 1.9.2008 and the respondent no.2 vide letter dated 15.3.2012 issued instructions that Central Government Group A officers working on such deemed deputation may be allowed the payment of allowances as per 6th CPC w.e.f. 1.9.2008, however, they may not be allowed to draw the allowances being paid by MTNL which are not admissible to Central Govt. employees as they cannot be allowed to claim both the benefits. The said directions were again reiterated vide DoT letter dated 7.8.2015.

6.1 Counsel further submitted that monthly compensation of Rs.3,000/- was an additional MTNL"s compensation allowance and as per the clarification issued by DoT, the applicants cannot avail the double benefits. Counsel for the respondents further placed reliance on the judgment of the Hon"ble Supreme Court in Gurcharan Singh's case (supra) to substantiate their stand in the matter.

7. Heard learned counsel for the parties and perused the material placed on record.

8. The facts of the case clearly reveal that the Applicants are non-optees and they were Government servants when they worked in MTNL on deemed deputation basis and the Respondent no.1, MTNL, admittedly has paid special payment of Rs.3000/-alongwith their normal pay and allowances admissible to the Govt. employees. We also note that the pay structure of the Applicants is governed by the Govt. of India pay scales, which is based on the recommendations of the Central Pay Commission. The Dearness Allowance admissible to them is CDA. On the other hand, the Public Sector Corporations like the MTNL, the Industrial Dearness Allowance (IDA) and the associated pay structure is applicable. Each pay scale is exclusive of the other. The Government employees are entitled to the Central Government pay scale. The IDA pay scales and CDA pay scales are different from each other. The facilities under two pay scales are also different. The DA admissible to the Government pay scales is also different from that admissible for Central Public Sector Enterprises. They may perform the same type of jobs/works/functions as the employees including absorbed optees, but the doctrine of equality would not be applicable to non-optees, who cannot obviously enjoy the best of both the Government service conditions on the one side and the MTNL service conditions on the other.

9. It is an admitted position that the applicants had been granted PLI for the years 2007-08 and 2008-09 and Compensation Allowance @ Rs.3000/- for the

months of September and October 2008 and it is also admitted position that as per the DoT, several letters and instructions, the Central Government Group "A" officers working on such deemed deputation may be allowed the payment of allowances as per 6th CPC w.e.f. 1.9.2008, however, they may not be allowed to draw the allowances being paid by MTNL to its employees which are not admissible to Central Govt. employees as they cannot be allowed to claim both the benefits of two services at one time.

10.So far as the plea of the applicants the said recoveries pertains to the period prior to 1.9.2008 is concerned, the same is not acceptable in view of the facts that pay scale of the applicants were revised w.e.f. 1.1.2006 in pursuance of recommendations of the VIth CPC and the compensation allowance is admittedly not admissible to DoT employees pursuant to recommendations of the 6th CPC. So far as the plea of the applicants that they were paid the PLI for the years 2007-08 and 2008-09 which is permissible as per rules is concerned, the same is also not sustainable in view of the recommendations of the 6th CPC and the letters and clarification issued by the DoT in this regard.

11. In the result and for the foregoing reasons, this Court does not find any illegality in the action of the respondents while making the said recoveries of the amounts from the applicants who are not legally entitled to the same. Therefore, this Court finds that this OA being devoid of any merit is liable to be dismissed. Accordingly the instant OA is dismissed. There shall be no order as to costs.