

(2019) 07 CAT CK 0049
In the Central Administrative Tribunal
Case No : Original Application No. 159 Of 2018

Suresh Kumar

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision : 17-07-2019

Acts Referred:

Citation : (2019) 07 CAT CK 0049

Hon'ble Judges : Mohd. Jamshed, Member (A)

Bench : Single Bench

Advocate : Shailender Tiwari

Final Decision : Dismissed

Judgement

1. This OA has been filed by the applicant seeking the following relief(s) :-

"(I) The Hon'ble Tribunal may graciously be pleased to allow this OA and quash and set aside the respondent's impugned order dated 03.08.2017 and 10.10.2017 and

(II) Direct the respondent to make payment of Rs.2755/- to applicant towards Retirement T.A.

(III) Direct respondents to refund Rs.37082/- recovered towards dual charge allowance

(IV) Direct the respondent to refund/pay Rs.34063/- towards short payment of Commuted value

(V) Direct respondent to refund Rs.26360/- recovered from DCRG

(VI) Direct respondent to pay interest @ 18% on withheld amount of commutation Rs.840704/- w.e.f.01.06.2013 to 25.09.2017 and thereafter 12% till final payment is made.

(VII) Cost of suit Rs.30000/- may also be awarded against the respondent and in

favor of applicant

(IV) Any other relief which the Hon'ble CAT may consider fair and justifiable may also be granted to the applicant."

2. The relief(s) as prayed by the applicant is for various payments due to him from the respondents. The facts of the case as stated in the OA are that the applicant superannuated from the post of Deputy FA&CAO/C/Jammu, Northern Railway, Ministry of Railway on 31.05.2013. As stated, the applicant was eligible for various retiral and other benefits permissible as per rules. However, the respondents have denied the same vide order dated 03.08.2017.

3. The applicant was sanctioned dual charge allowance by competent authority i.e. GM/N.Rly on 18.08.2011 and was paid Rs.37082/- in September/2011. As stated the same was recovered by respondent-2 in Jan/2012 without assigning any reason or show cause notice to the applicant. It is also stated that the applicant was sanctioned monthly pension of Rs.21375/- out of which Rs.8550/- were commuted from the very beginning but the commuted amount of Rs.840704/- (8550X12X8.194) was withheld and after more than 4 years it was further re-commuted and reduced to Rs.806641/- (8550X12X7.862) and thus Rs.34063 short credited to his SB A/c on 25.09.2017 without interest.

4. It is also stated that there is no bar in commutation of provisional pension and that the provisional pension too was granted to the applicant also after a delay as the respondents had initiated disciplinary proceeding against him. The applicant also stated that a sum of Rs.26360/- was recovered by the respondents while releasing DCRG due to him on 27.02.2017. The applicant has made various representations to the respondents regarding due and delayed payments and also recovery as mentioned above and has sought relief(s) by filing this OA.

5. The respondents opposed the OA and stated that vide impugned order dated 03.08.2017 all issues indicated by the applicant have been considered and decided.

The respondents in their counter stated that in so far as the applicant's claim of Rs.37082 for dual charge Allowance is concerned, the same was incorrectly paid to the applicant as the dual charge was not authorized by the competent authority i.e. General Manager. Therefore, the respondents have rightly made the recovery of this amount. It is also stated that as far as composite transfer grant is concerned the applicant has already been paid the same in two instalments of Rs.42750/- and Rs.46100/- on 25.06.2013 and 21.11.2017 respectively.

6. The respondents have stated that the applicant retired on 31.05.2013 but at that time a major penalty charge sheet was pending against him and as such the DCRG and commutation of pension was withheld as per rules and the applicant was paid provisional pension. During this period the applicant had also requested not to commute his revised pension. As an outcome of the disciplinary proceeding against the applicant, penalty of 20% cut in monthly pension was

imposed and DCRG was released after recovery of the amount for false claims made by the applicant. The applicant filed rejoinder and reiterated the points raised in the OA.

7. Heard the applicant in person and learned counsel for the respondents.

8. The applicant in support of his arguments relied upon Central Administrative Tribunal judgment in K.C. Uttreja Vs. The State Government of NCT of Delhi, dated 21.02.2008 in which the payment of interest on account of delayed payment of retiral dues was directed. He also relied upon Hon'ble High Court of Allahabad's order in Writ Petition No.37932 of 2000 in connection with issue of show cause notice which is required before any recovery is made and any such recovery without show cause notice is in violation of rules. Relevant paras of the judgment are as under :-

"30. Now coming to the second question regarding application of principles of natural justice, it cannot be doubted that whenever an employer takes a view, or from the record, finds, that certain amount has been paid to an employee, in excess to what he was not entitled, before issuing an order of recovery of the same, he must give an opportunity to the employee concerned to show cause, whether such amount should be recovered from him or not. If this opportunity is given to an employee, he can always show that what was paid to him, he was entitled therefor, and, there is neither any excess payment, nor any payment for which he was not entitled. An order passed directly without giving any show cause notice or opportunity to the employee, in my view, would suffer the vice of non observance of principles of natural justice. In a case where there is a dispute as to whether the employee has been paid an amount rightly or not, before passing any order, having civil consequences, the employer must afford an opportunity to the employee, else, such an order would be in violation of principles of natural justice. The Apex Court in Bhagwan Shukla Vs. Union of India & others 1994 (6) SCC 154, in similar circumstances, has held that an order passed in violation of principles of natural justice cannot be sustained. In para 3 of the judgment, the Apex Court observed as under:

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause ...Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him hearing in the matter."

31. X X

32. Now applying the above expositions of law, in the present case, I find from a bare perusal of impugned recovery shows it has been initiated without giving any opportunity of hearing, i.e. without issuing any show cause notice. The impugned recovery, apparently, is in violation of principles of natural justice. Learned Standing Counsel also could not dispute that the impugned recovery has been initiated without any show cause notice or without any opportunity to petitioners

to explain their point of view.

33. In view of the aforesaid expositions of law, and the admitted fact, in the case in hand, that, the impugned recovery was initiated without affording any opportunity to the petitioner, this writ petition deserved to be allowed, since the recovery impugned is unsustainable being in violation of the principle of natural justice. Law is well settled long back still respondents have chosen to disregard law and are continuously passing such illegal orders forcing unnecessary litigation upon employee concerned."

9. The applicant has also annexed the Presidential Order on the disciplinary proceeding from major penalty chargesheet dated 04.12.2016, concluding para-7 is as under :-

"7. In the light of the observations and findings as discussed above and after taking into account all other aspects relevant to the case, the President note that the charges established against the CO constitute grave misconduct on his part and consider that the ends of justice would be met in this case if the penalty of withholding of 20% (twenty percent) of the monthly pension otherwise admissible to Shri S.K.Azad, the CO, is imposed on him for a period of three years. The gratuity admissible to him may be released, if not required to be withheld in any other case, after recovering the amounts of the false claims made by him. This is hereby done."

10. From the above, it is evident that the applicant, who retired from service on 31.05.2013, was undergoing disciplinary proceedings and a major penalty charge-sheet had been issued to him. This impacted release of some of the retiral benefits to him as per the rules by the respondents. The applicant has sought reliefs from the Tribunal by setting and quashing aside the respondent's impugned orders dated 03.08.2017 and 10.10.2017. These orders have been issued by the respondents on consideration of his representation and the order dated 03.08.2017, is the reply to a legal notice given by the applicant. In the letter dated 03.08.2017 in response to the legal notice given by the applicant, detailed position with regard to various aspects of the due payments as mentioned by the applicant, have been clarified and replied. As far as payment of retirement TA of Rs.2755/- is concerned, it is clarified by respondents that the applicant was paid composite transfer grant equal to one month pay and that as per rules only the composite transfer grant is paid to the employees at the time of retirement and the TA is subsumed in the same. As far as recovery of Rs.37082/- towards dual charge allowance is concerned, the applicant has sought relief in this OA. However, he did not bring on record that this matter has already been considered by this Tribunal in earlier OA.

11. Respondents have stated that the applicant had filed OA No.4370 of 2015 on the similar issue of recovery of dual charge allowance. The Hon'ble Tribunal vide order dated 21.10.2016 in OA No.4370 of 2015 clearly held that "the recovery of an amount of 37,082/- from the applicant towards the DCA wrongly paid, was

absolutely in order and the applicant is not entitled to any relief on this account." The said OA was dismissed.

12. It is also stated by respondents that in addition to the composite transfer grant, Traveling Allowance of Rs.7986/- has also paid to the applicant vide order dated 25.06.2013. Provisional pension was granted in view of the ongoing disciplinary proceeding against the applicant.

13. The amount of Rs.26360/- from the DCRG was recovered on account of false claims made by the applicant. The applicant relied upon the Hon'ble Allahabad High Court judgment (supra) and it is noted that this matter has been dealt with and decided in the earlier OA and the recovery was found to be in order. The applicant is, therefore, not entitled to any relief on this account.

14. From the above mentioned, it is evident that the due retiral benefits to the applicant as per the rules have been paid. The pension which was given provisionally has also been restored. The delay in payment of regular pension and other retiral benefits was on account of the pending disciplinary proceedings against the applicant which have resulted in imposition of major penalty of 20% cut in the monthly pension otherwise admissible to the applicant. DCRG has been released after deducting the amount of false claims made by the applicant. Therefore, the applicant is not entitled to any relief in terms of interest on the delayed payment. This is the second round of litigation and the applicant has failed to bring to the notice to the Tribunal that the major issue of refund of dual charge allowance prayed for in this OA has already been decided by the Tribunal in the OA No.4370/2015 and making the major contention of this OA as resjudicata.

16. In view of the above, I do not find any merit in the present OA and the same is accordingly dismissed. No order as to costs.