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**(2022) 12 DEL CK 0079**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 7885 Of 2019, Civil Miscellaneous Application  
No. 32726 Of 2019

Vinod Sehgal

APPELLANT

Vs

Delhi Urban Shelter Improvement Board Through Its Chief  
Executive Officer

RESPONDENT

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**Date of Decision :** 08-12-2022

**Acts Referred:**

**Citation :** (2022) 12 DEL CK 0079

**Hon'ble Judges :** Jyoti Singh, J

**Bench :** Single Bench

**Advocate :** Pramod Gupta, S.P. Dubey, Poonam Mehta, Parvinder Chauhan,  
Aman Ghawana

**Final Decision :** Disposed Of

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## Judgement

Jyoti Singh, J

1. Present writ petition has been filed by the Petitioner seeking quashing of the impugned Office Order dated 19.12.2018 as well as issuance of writ of mandamus to the Respondent to refund the payment wrongly deducted from the retirement benefits with interest @ 12% per annum. Writ of mandamus is also sought for re-fixation of his pension on the basis of pay drawn on 30.11.2018, in terms of Order dated 28.01.2016.

2. Shorn of unnecessary details, the factual score of the case, to the extent relevant to decide the issue arising in the writ petition, is that Petitioner was working as Assistant Engineer with the Respondent when departmental proceedings were initiated against him and a penalty was imposed on 09.08.2012. Relevant part of the penalty order is as follows:-

"reduction to lower stage in present scale of pay by two stages for a period of three years with direction that the officer will not earn increments of pay during the period of this reduction to the lower stage and on the expiry of such period

the reduction will not have the effect of postponing of the further increment of his pay.”

3. However, the Appellate Authority, vide order dated 31.10.2012, reduced the penalty and revised penalty is as under:-

“reduction to lower stage in present scale of pay by one stage for a period of three years with direction that the officer will not earn increments of pay during the period of this reduction to the lower stage and on the expiry of such period the reduction will not have the effect of postponing of the further increment of his pay.”

4. On expiry of the penalty period, Office Order dated 31.08.2015 was issued, whereby the pay of the Petitioner was fixed as Rs.24430+6600/-, which according to the Petitioner was erroneous since the same should have been Rs.27310+6600/-, restoring three increments withheld during the penalty period.

5. Accordingly, Petitioner made a representation on 14.10.2015 against the erroneous fixation, pointing out that the penalty imposed on him was with non-cumulative effect and therefore, the three increments earned during the penalty period be restored.

6. On receipt of representation from the Petitioner, Respondent sought a clarification on 20.10.2015 from the Services Department of Government of NCT of Delhi, pertaining to the fixation of pay. Significantly, on 27.11.2015, the Services Department clarified that the pay of the Petitioner may be fixed as per Case-3 of DoPT O.M. dated 06.02.2014, thereby giving him the benefit of three notional increments earned by him during the penalty period. Going by the opinion so received, Respondent fixed the pay of the Petitioner at Rs.27310+6600/-, vide order dated 28.01.2016. Petitioner was also granted 3rd MACP on 10.02.2016 in the pay scale of Rs.15600-39100/- with grade pay of Rs.7600/- and the pay was revised to Rs.28330/-with grade pay Rs.7600/-.

7. Petitioner superannuated from service on 30.11.2018. However, post the retirement of Petitioner, Respondent issued an Office Order dated 19.12.2018, which is impugned herein, whereby pay of the Petitioner was again reduced from Rs.27310+6600/- to Rs.24430+6600/-, applying Case-2A of DoPT O.M. dated 06.02.2014, without any notice. By this reduction, pay of the Petitioner was reduced from Rs.102800+7600/- to Rs.94100+7600/-, resulting in a financial loss of Rs.7 lakhs approximately and recovery from the pension to the tune of Rs.7,85,007/-.

8. This led to the Petitioner making a representation on 18.04.2019, pointing out that the reduction was illegal and requesting for restoration of his pensionary benefits, after correct fixation of his pay. However, vide letter dated 23.05.2019, Respondent informed the Petitioner that his pay had been correctly fixed as per Case-2A of O.M. dated 06.02.2014, with the approval of the Competent Authority. Having no option, Petitioner filed the present writ petition, challenging

the order dated 19.12.2018, whereby his pay was erroneously fixed.

9. Learned counsel for the Petitioner submits that vide Office Order dated 28.01.2016, pay of the petitioner was correctly fixed till his superannuation, after seeking clarifications from GNCTD on 30.11.2018 and arrears were released. However, subsequently, the pay was reduced, without notice to the Petitioner and this was premised on the erroneous interpretation of an Illustration Case-2A to the DoPT O.M. dated 06.02.2014. Penalty imposed on the Petitioner was reduction to a lower stage in the present scale of pay by one stage for a period of three years, with a direction that he will not earn increments during the penalty period, but with a further direction that on expiry of the three years, reduction will not have the effect of postponing the future increments of the pay. Therefore, at the end of the penalty period, the three increments have to be restored for the purpose of pay-fixation. It is also contended that the impact of the impugned order is that the Petitioner has not only suffered a financial loss by reduction in his pay and consequently in monthly pension, but an exorbitant amount of Rs.7 lakhs has been recovered from his pensionary benefits. This is against the dicta of the Supreme Court that pension is not a bounty of the State and any illegal recovery therefrom cannot be countenanced.

10. Per contra, learned counsel for the Respondent submits that after the penalty period of three years ended, vide order dated 31.08.2015, pay of the Petitioner was re-fixed by restoring the pay as it existed prior to the penalty period, i.e. Rs.24430+6600/-. On receiving a representation from the Petitioner, clarification was sought from GNCTD and vide letter dated 27.11.2015, GNCTD advised to fix the salary of the Petitioner as per Case-3 of O.M. dated 06.02.2014. Respondent followed the advice and vide order dated 28.01.2016, restored the increments and fixed the pay at Rs.27310+6600/-.

11. It is submitted that the issue of pay fixation of the Petitioner was revisited subsequently as the concerned Authority was of the opinion that case of the Petitioner was required to be dealt with under Case-2A of O.M. dated 06.02.2014 and not Case-3. In order to correct the mistake, the impugned order was issued re-fixing the pay and pension, which necessitated recovery of the excess amounts. Respondent cannot thus be faulted as the action impugned herein is in accordance with law.

12. I have heard learned counsels for the parties and examined their rival contentions.

13. It is an undisputed fact obtaining between the parties that the penalty imposed upon the Petitioner vide order dated 09.08.2012 was reduced by the Appellate Authority and it was clearly mentioned in the revised penalty order that on expiry of the penalty period, reduction will not have the effect of postponing the future increments of pay of the Petitioner. It is equally undisputed that the penalty period was three years, during which the reduction was to continue. F.R. 29(1) of FRSR provides that if a Government servant is reduced as a measure of

penalty to a lower stage in his time scale, the authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, the period of reduction shall operate to postpone future increments and if so, to what extent.

14. In law, reduction to a lower stage in a time scale is not permissible under the Rules either as a permanent measure or for unspecified period and therefore, it is a mandate of law that every order passed by the Competent Authority imposing on a Government servant the penalty of reduction to a lower stage in a time scale should indicate: (a) the date from which it will take effect and the period (in terms of years and months) for which the penalty shall be operated; (b) the stage in the time scale to which the Government servant is reduced; and (c) the extent, if any, to which the period should operate to postpone future increments.

15. The issue that arises for consideration in the present writ petition is the methodology of fixation of pay of a Government servant on expiry of the period of reduction, which in my view, does not need much cogitation, as F.R. 29 is explicitly clear on this. If the original order of reduction states that the period of reduction shall not operate to postpone future increments or is silent on this point, the Government servant would be fixed in the pay which he would have drawn in the normal course, but for the reduction. However, if the original order specifies that the period of reduction is to operate to postpone future increments for any specified period, the pay of the Government servant shall be fixed after treating the period for which the increments were to be postponed as not counting for increments. [Ref. O.M. dated 17.08.1959 and 09.06.1960]

16. It is, therefore, beyond a scintilla of doubt that where the penalty specifies that period of reduction shall not operate to postpone future increments, as in this case, the Government servant has to be allowed to draw the pay which he would have drawn but for the reduction and the increments lost during the penalty period would have to be restored automatically, at the end of the penalty period, albeit without financial effects for the penalty period. This position of law was correctly understood by the Respondent, when on a clarification received from GNCTD, the pay of the Petitioner was fixed vide Office Order dated 28.01.2016 at Rs.27310+6600/- as on 09.08.2015, i.e. the date of expiry of the penalty period.

17. It is evincible that post the superannuation of the Petitioner, there was a change in the stand of the Respondent and the impugned order was issued reducing the pay to Rs.24430+6600/- and consequently recovering the alleged excess payment from the pension of the Petitioner. The only reason discernable from the counter-affidavit filed by the Respondent and as urged and reiterated by the counsel for the Respondent is that the pay fixation was required to be done under Case-2A of DoPT O.M. dated 06.02.2014. Case-2A of the illustration of the said O.M as extracted and relied on in the counter affidavit is as follows:-

“The penalty of reduction to a lower stage in the time-scale of pay by two stages for a period of one year is imposed on a Government servant w.e.f. 13.03.2013. It is further directed that the Government servant would not earn increment during the period and the reduction will not have the effect of postponing future increments of pay.”

18. A bare reading of the aforesaid para, which is only an Illustration to the O.M, shows that it refers to a penalty that can be imposed on a Government servant and the Court is unable to fathom as to which part of the said illustration inures to the advantage of the Respondent, enabling the Respondent to postpone the increments instead of restoring them after the end of three years’ penalty period, for fixation of pay of the Petitioner. It is obvious that there is a total non-application of mind in erroneously re-fixing the pay of the Petitioner, against the settled law and F.R. 29 as well as the correct advice of the Services Department of GNCTD.

19. There is no gainsaying that the illegal and arbitrary action of the Respondent in passing the impugned order has led to reduction in pay/pension of the Petitioner as well as recovery of an exorbitant amount of over Rs.7 lakhs from the pension, resulting ex-consequencia in imposition of a penalty higher than the one imposed. Penalty of stoppage of increments with non-cumulative effect has been indirectly enhanced to one with cumulative effect, compelling the Petitioner to approach the Court. Due to impugned act of the Respondent, which has no genesis in law, Petitioner has been unnecessarily embroiled in litigation for the last three years instead of leading a settled life post-retirement.

20. This Court is of the view that the action of the Respondent is completely arbitrary and illegal and the impugned order deserves to be quashed and set aside with a direction to restore all consequential benefits in favour of the Petitioner.

21. Accordingly, impugned order dated 19.12.2018 is hereby quashed. Respondent is directed to re-fix the pay of the Petitioner after restoring the increments, as was done vide order dated 28.01.2016, with consequent re-fixation of pension. Respondent is also directed to refund the amount deducted from the pension with interest @ 6% per annum from the date the amount was recovered, till the date of actual payment.

22. Writ petition is accordingly allowed with cost of Rs.50,000/-, to be paid by the Respondent to the Petitioner within a period of four weeks from today.

23. Writ petition is disposed of along with the pending application.