
(2018) 10 CAT CK 0049

In the Central Administrative Tribunal

Case No : Original Application No. 4317 Of 2017

V.K. Juneja

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 23-10-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1972, — Rule 9, 55A, 55A(ii)

Citation : (2018) 10 CAT CK 0049

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : Padma Kumar S., Manish Kumar

Final Decision : Allowed

Judgement

1. Briefly stated, the applicant was appointed as Stenographer Grade-C in National Oilseeds and Vegetable Oils Development (NOVOD) Board under Ministry of Agriculture, Government of India. The Board has since been wound up and the activities of the Board have since been taken over by the Department of Agriculture, Cooperation and Farmers Welfare, Krishi Bhawan, New Delhi.

2. When the applicant was working as Private Secretary in PB 2 Pay Scale of Rs.9300-34800 with Grade Pay of Rs.4600/-, he came to know about the O.M. dated 01.09.2009 issued by the Competition Commission of India calling for appointment of Principal Private Secretaries in PB-3 pay scale of Rs.15600-39100 with Grade Pay of Rs.6600/- on (ad hoc) deputation basis. The applicant applied for the said post on 30.09.2009 and got appointed on deputation on 26.02.2010. The Recruitment Rules of Competition Commission for the post of PPS provided for appointment on absorption, which the applicant applied for. The Competent Authority accorded approval for his absorption. Consequently, the applicant was advised vide O.M. dated 07.03.2011 to submit his resignation from the post of Private Secretary in his parent office. The Competent Authority in NOVOD Board accepted the technical resignation of the applicant from the post of Private Secretary vide Office Order dated 21.09.2011, whereupon, the Competition

Commission of India absorbed the applicant permanently vide order dated 22.09.2011.

3. Thereafter, the NOVOD Board issued orders dated 20.10.2011, 08.11.2011 and 01.12.2011 clearing the GPF, Leave Encashment/Retirement Gratuity and Pension/Pension arrears of the applicant. He has been regularly getting his pension and DA during the period from 26.02.2011 to 31.01.2016. However, on 01.03.2016, the Board reduced the pension of the applicant from Rs.21641/- to Rs.7254/- w.e.f. February, 2016. The applicant wrote a letter dated 17.03.2016 to the NOVOD Board seeking to know the reasons for the reduced pension. In their reply dated 19.05.2016, the Board stated that:-

"the entitlement of DR on pension to the reemployed/absorbee pensioner holding the post below Group "A" prior to re-employment/absorption, is subject to the condition that the pay of the re-employed/absorbee pension is fixed at the minimum of the pay scale of the post in which re-employed,"

5. The applicant made a representation to the respondents on 08.06.2016 stating that the action of the respondent NOVOD Board is not tenable on the following grounds:-

(a) No recovery from a retired employee can be permitted as per the law laid down by the Hon"ble Supreme Court in State of

(b) That the pension and all its ingredients have been calculated as per the organization"s own calculations and the applicant had no role in calculating.

(c) Applicant also requested for release of his pension urgently.

6. The Board vide their letter dated 23.06.2016, without advertng to any of the points raised by the applicant, passed an order for refund of the entire amount of Rs.6,22,933/- in favour of the Board from the monthly pension of the applicant in 86 installments starting from June, 2016. The pension of the applicant was reduced w.e.f. February, 2016 to May, 2016 without any notice and thereafter the pension was completely stopped from June, 2016 till date.

7. The applicant avers that NOVOD Board was a statutory body created under an Act of Parliament and it was a part of Government of India, without any independent legal existence. The NOVOD Board Act, 1983 was repealed by the Parliament vide The Repealing and Amending Act, 2016 which was notified in the Gazette of India on 06.05.2016, which in so far as the National Oilseeds and Vegetables Oils Development Board Act, 1983 is concerned, has been wholly repealed by virtue of the publication of the notification. The applicant states that the order dated 23.06.2016 has been passed after the repealing act came into effect. Although the Repealing Act protects the rights and liabilities etc. of the parties despite the repealing of the act constituting the Board, the fact of the matter is that after the Repealing Act was notified, the NOVOD Board had no power vested in to pass any order.

8. The applicant filed OA-2255/2016 before this Tribunal, which was transferred to Chandigarh Bench of CAT and was renumbered as OA No.060/00823/2016 and allowed on 04.05.2017. As per directions of the Tribunal, the applicant was given a show cause notice on 12.06.2017, to which he submitted a reply on 22.06.2017. Vide order dated 10.10.2017, the respondents (now Ministry of Agriculture instead of NOVOD Board) rejected the reply of the applicant and directed him to refund Rs.6,22,933/- alongwith interest.

9. Aggrieved by the action of the respondents, the applicant has filed the current O.A. seeking the following reliefs:-

"(a) Quash and set aside the impugned Order dated 10.10.2017.

(b) Declare the action of the respondents to have initially reduced the pension and thereafter completely stopped the pension of the applicant as illegal.

(c) Direct the respondents to release already recovered amount with interest thereon"

10. The applicant has relied upon the decision of the Apex Court in the case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc. in their judgment dated 18.12.2014, wherein it has been held that no recovery of over payment from a retired employee can be made.

11. In their counter affidavit, the respondents state that the averments made in the O.A. are wrong since the pension of the applicant has not been stopped. Only the wrongful excess payment, relating to dearness relief on his pension, in excess of his entitlement, has been ordered to be recovered, which comes to Rs. 6,22,933/-.

12. The respondents contend that recovery of wrongful/excess payment related to dearness relief on pension disbursed to the applicant has been ordered as per O.M. dated 19.05.2016 (Annexure R-II). In Paras-4 & 5 of the said O.M. it has been held that:-

"4. While processing the disbursement of Pension and DR on pension for the month of February 2016, it has come to notice that as per CCS Pension (1972) Rules 55-A, "the entitlement of DR on pension to the reemployed/absorbee pensioner holding the post below Group "A" prior to re-employment/absorption, is subject to the condition that the pay of the re-employed/absorbee pension is fixed at the minimum of the pay scale of the post in which re-employed," as contained under para 3(a), 4(11) a DP&PW"s O.M. no. 45/73/97-P&PW(G) dated 2-7-1999 and a certificate in this regard is required to be issued to this effect by the re-employer/absorbee organization for disbursement of DR on pension to the re-employed/absorbee pensioner.

5. In view of the aforesaid Rule position CCS Pension (1972) Rule 55-A, DR component only was put on hold by the Board w.e.f. the month of February 2016 and disbursement of basic Pension has been continuing as per revised Payment

of Pension Order (PPO) dated 17 Oct. 2012 to the employer Sh. V.K. Juneja. In terms of the CCS Pension (1972) Rule 55-A, referred at para (4) above, the necessary certification and the certified copies of the pay details of Sh. Juneja on his absorption at CCI, was sought from CCI, New Delhi vide Board's letter No. 4-21/NB/(Pension/Family Pension)/72, dated 02-03-2016."

It is contended that the dearness relief (DR) on pension was not admissible to him since he was not a pensioner in real terms but had been absorbed in the respondent organization. The respondents contend that disbursement of dearness relief on pension made to the applicant from 26.02.2011 to 31.01.2016 in excess of his entitlement works out to Rs. 6,22,933/- which he is required to refund to the respondents in terms of the OMs dated 06.02.2014 and 02.03.2016 of Ministry of Personnel, Public Grievances & Pensions. It is submitted that the judgment of Hon"ble Supreme Court in the case of Rafiq Masih (supra) is integrated in DoP&T O.M. dated 02.03.2016 (Annexure R-4), and the waiver clause under Para-4 of the said O.M. is not applicable in the instant case since the applicant in the current O.A. is an absorbee pensioner.

13. During the course of hearing, the learned counsel for the applicant Sh. Padma Kumar vehemently argued that the recovery from a pensioner is not permissible as per Rule-9 of CCS (Pension) Rules, 1972, since after retirement only the Hon"ble President of India has the authority to withhold or withdraw pension and order recovery, if any, departmental or judicial proceedings are pending against a pensioner or if he is found guilty of grave misconduct or negligence during period of service including service rendered on re-employment after retirement. All these conditions, he argued, are not applicable in the case of the applicant. Hence, the impugned order is illegal and the respondents had no right to withdraw/withhold his pension without following due process of law. Sh. Padma Kumar also produced extracts of the Bank statements of the applicant for the month of January, 2016 onwards in support of his claim that no pension is being paid to the applicant since then. Relying strongly upon the judgment of Hon"ble Supreme Court in the case of Rafiq Masih (supra) the learned counsel argued that once the Law of the Land has been laid down by the Hon"ble Apex Court, no authority can disobey its mandate.

14. Per contra, the learned counsel for the respondents Sh. Manish Kumar taking the Bench through the points already raised in the counter, argued forcefully that the applicant is not entitled to the dearness relief component on pension disbursed to him, hence the excess amount of dearness relief has been correctly ordered to be recovered from him. Submitting that the reduced monthly pension of the applicant will be restored on completion of the recovery due from him, he emphasized that the applicant is only an absorbee pensioner and had been employed on a higher post for his own advantage, hence the judgment of the Hon"ble Supreme Court in the case of Rafiq Masih (supra) is not applicable to the applicant. He argued that in the instant case, Rule-55A(ii) on dearness relief on pension/family pension would be applicable, which stipulates that:-

"If a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank under them in India or abroad including permanent absorption in such Corporation/Company/Body/Bank, he shall not be eligible to draw Dearness Relief on pension/family pension during the period of such re-employment."

Referring to O.M. dated 06.02.2014 of DoP&T, he submitted that following the mandate laid down in the case of Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhan & Ors., 2012(8)SCC 417, all the Departments and Ministries have been advised to deal with the issue of wrongful payments by taking immediate corrective action, as has been done by the respondents in the current case.

15. The case of the respondents is that excess payment of dearness relief on pension has been made to the applicant, which is sought to be recovered by the impugned order dated 10.10.2017. The applicant in the O.A. has challenged the recovery firstly on the ground that the respondents have not acted as per Rule-9 of CCS (Pension) Rules, 1972, where the pension can only be withheld or withdrawn by the Hon"ble President of India in case of retired government servants secondly, that recovery proceedings against retired government employees are impermissible as per law laid down in the case of Rafiq Masih (supra) and thirdly that the NOVOD Board had no power to issue the recovery order after the Board stood repealed by an Act of Parliament on 06.05.2016.

16. I have carefully gone through the submissions made by both sides. The applicability of Rule-55A relied upon by the respondents, in their counter and during the course of hearing, is certainly relevant to the facts of the case inasmuch as the issue of admissibility of dearness relief on pension is concerned. What however needs to be adjudicated is whether the dearness relief, if wrongly paid to the pensioner, can be recovered from them? The respondents have placed reliance on O.M. dated 06.02.2014 and various other OMs issued by DoP&T in support of their decision to recover the amount from the pension of the applicant. In my view, the Land Mark judgment of the Hon"ble Supreme Court in the case of Rafiq Masih (supra) alone (without going into other issues raised in OA) takes care of the grievance of the applicant. The issue of recovery of payment, mistakenly made by the employer, in excess of the entitlement of the employees has been lucidly and succinctly dealt with in the aforementioned judgment. Summarizing the situations where recoveries by the employers would be impermissible in law, no distinction has been made by the Hon"ble Supreme Court about the "type" of recoveries, which would still remain permissible in law. The basic principles laid down, in unambiguous terms (amongst others) are that recovery from retired employees or employees who are due to retire within one year of the order of recovery is impermissible in law. The relevant Para-12 of Rafiq Masih(supra) judgment reads as under:-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on

the decisions referred to herein above, we may, as a ready reference, summarise 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."

17. Recovery of any type, including dearness relief on pension, would thus be impermissible in case of the applicant. In the present case, the applicant, who is time and again being referred to as an "absorbee pensioner" still remains a "pensioner", who superannuated from service from the respondents organization. By no stretch of imagination does he go out of the protection provided under law, as contained in Paras-12(ii) and 12(iii) referred above. Undoubtedly, excess payment has been made erroneously by the respondents but there is not even a whisper that the same was made on account of any fraud or collusion on part of the applicant by misrepresenting facts. In the evening of one's life when limited resources are left with the Government employee, the effect of recovery would certainly be wrongful and cause undue hardship to the pensioner, which in my view, would far out balance the right of the employee to recover the same. In the case of Syed Abdul Qadir Vs. State of Bihar, 2009(3)SLJ 38, the Hon"ble Supreme Court has held that:-

"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139;

Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99."

18. In view of the aforesaid, I have no hesitation in concluding that the recovery ordered by the respondents vide their order dated 10.10.2017 would be impermissible in law as the same was the result of negligence/careless of the respondents for which the applicant cannot be held responsible. Hence the impugned order being bad in law, is set aside. The O.A. is accordingly allowed. No costs.