

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**Original Application No.413/2018
Dated the 6th day of February 2020**

CORAM:

Hon'ble Shri M.C.Verma, Member (J)

Pravinbhai H Shrimali
Son of Shri Hemchandra Shrimali
Aged about 61 years

Residing at 4/100 Satyamnagar
Nagarvel Hanuman Road, Rakhial,
Ahmedabad – 380 023.

Retired Head Clerk,
Income Tax Appellate Tribunal,
Ahmedabad Bench, Ahmedabad – 07. ... Applicant.

By Advocate Shri A L Sharma

V/s

- 1 Union of India,
Notice to be served through
The Secretary, Ministry of Law and Justice,
Department of Legal Affairs, New Delhi – 01.
- 2 The President,
Income Tax Appellate Tribunal,
Central Government Offices Building,
4th Floor, 101, Maharshi Karve Marg, Mumbai – 400 020.
- 3 The Pay and Account Officer,
Central Pension Accounts Officer,
Ministry of Finance, Government of India,

Trikoot II Bhikaji Cama Place, R.K.Puram,
New Delhi – 110066.

- 4 The Registrar,
Income Tax Appellate Tribunal,
3rd Floor Abhinav Arcade, Near Bank of Baroda,]
Pritamnagar, Ashram Road, Ahmedabad – 07.
- 5 Manager,
Dena bank, Ashram Road Branch,
Dena Laxmi, Ahmedabad – 380 009. ... Respondents

By Advocate Ms R R Patel – R 1 to 4

ORDER (ORAL)

1. Being aggrieved by communication No.PAO-LA/18-19/1108 B dated 07.08.2018 from Pay and Accounts Office, Department of Legal Affairs, New Delhi directing recovery of Rs.3, 21,241/- from the applicant, instant OA has been preferred. Copy of impugned order is at Annexure A/1 of the OA.

2. The case of the applicant, in short, as has been pleaded, is that he on 01.04.1987 was appointed as Daftary in respondent's department and subsequently was promoted as Head Clerk on 02.08.2016 and upon promotion, vide order dated 04.10.2016, Annexure A/2, was posted as head clerk Guwahati hqrs Ahmedabad. That one Shri Dilip Balwani, feeling aggrieved by said promotion order, approached the Tribunal by way of OA

No.596/2016 and quashing and setting aside order of promotion, dated 02.08.2016, said OA was partly allowed by the Tribunal on 23.02.2017. That in compliance of order dated 23.02.2017 passed by the Tribunal in OA 596/2017, order dated 30.03.2017 was passed by the respondents and the applicant and other similarly promoted persons were reverted from the post of Head Clerk to the post of Upper Division Clerk with effect from 17.08.2012. That in meanwhile applicant had retired on superannuation on 31.10.2016. That consequent to order dated 30.03.2017, applicant was served with show cause notice, dated 11.10.2017 seeking to recover difference of pay and allowances paid to applicant as a result of promotion to the post of Head Clerk. That applicant made representation dated 25.10.2017 and submitted that in view of settled legal position no recovery can be made from him. That applicant was shocked to receive communication dated 07.08.2018, Annexure A/1, of Pay and Accounts Office of Department of legal Affairs, Ministry of Law and Justice, New Delhi addressed to the Pay and Accounts Officer, Central Pension Accounts Office, New Delhi to initiate recovery of an amount totalling Rs.3,21,241/- from the applicant. That copy of letter Annexure A/1 is marked to applicant also.

3 Respondents contested the case and filed their detailed reply and it has been stated in reply that applicant and others were promoted to the post of Head Clerk, vide order dated 02.08.2016, that said promotion order was impugned on file of Tribunal in OA 596/16 and the Tribunal vide order dated 23.02.2017 set aside the order of promotion. That in compliance with order of the Tribunal, Order dated 30.03.2017 applicant and similarly situated other promoted Head Clerks were reverted to the post of Upper Division clerk. That the recovery is of excess pay paid and hence there is no illegality on the part of respondents, OA may be dismissed.

4 After admission OA was heard for final disposal. Learned counsel Shri A L Sharma, appearing for applicant has submitted that order referred to in the OA is about recoverable amount and there was no direction to recover the excess amount paid. If respondents had committed a mistake by promoting the applicant and made payment equivalent to the grade of Head Clerk and subsequently reverted the applicant to the post of UDC, then also they cannot recover the excess amount paid as the applicant has worked in the post of Head Clerk and there was no mistake on the part of applicant in receiving the promotion or salary payable to the Head Clerk. He also referred to the judgment of Hon'ble Supreme

Court in the case of ***State of Punjab & Ors etc. vs. Rafiq Masih (White Washer)*** (2014) 8 SCC 883 and contended that even otherwise in view of direction given in said case no recovery from a retired person or recovery in cases where an employee has wrongfully been promoted but he discharged the duties of said promotion post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post can be affected. Learned counsel Shri A L Sharma also submitted that he has not challenged the reversion and applicant only want that the recovery made by respondents be directed to be refunded and no further recovery be made from the applicant.

5 Learned counsel Ms R R Patel, appearing for respondents argued that applicant was wrongly promoted and till quashing of promotion order and his reverting to post of Assistant he was paid salary of Head Clerk, had he been not promoted he would have been paid salary of Upper Division Clerk. She do admits that the decision of Hon'ble Supreme Court in Rafiq Masi's case (supra) cover such cases.

6 Considered the submission. Hon'ble Supreme Court in the case of ***Rafiq Masih's case (cited supra)*** (2014) 8 SCC 883 has held as under:-

“..... that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.” (emphasis supplied).*

7 Factual aspects that, applicant and some others were promoted to the post of Head Clerk, vide order dated 02.08.2016, that said promotion order was impugned on file of Tribunal in OA 596/16, was quashed and then vide Order dated 30.03.2017, that applicant and similarly situated other promoted Head Clerks were reverted to the post of Upper Division Clerk with retrospective effect and that the recovery is the difference of salary which the applicant received as head clerk and the salary which he would receive had he not been promoted. It is also not disputed that applicant has retired before setting aside of his promotion order as Head Clerk

and he actually discharged the duties of said promotion post and was paid accordingly.

8 The applicant is a retired employees and recovery is for the reason that he was paid salary of head clerk for discharging said duties after promotion as head clerk, though ought not to have been promoted rightfully. Said recovery is squarely covered by sub-clause (i) & (iv), quoted above in Rafiq Masih's case and is impermissible in law.

9 Taking note of entirety, OA is disposed of with direction to respondents not to affect any recovery and to refund the amount, if any has already recovered within two months from date of receipt of copy of this order.

10 With above-said observation and direction OA stand disposed of. MA pending, if any also stand disposed of accordingly. No order as to costs.

(M C VERMA)
MEMBER(J)

abp