

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**RA No. 20 of 2019
OA No. 285 of 2018**

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Dr. Prabhas Ranjan Pradhan, aged about 64 years, S/o Late Pravakar Pradhan, permanent resident At-GA-61, SAILASREE VIHAR, PO - CHANDRASEKHARPUR, Bhubaneswar, Dist. - Khurda - 753021.

.....Applicant

VERSUS

1. Union of India represented through the Secretary to the Govt. of India, Health & Family Welfare Department (CHS Division), Nirman Bhawan, New Delhi – 100011.
2. Addl. Secretary & Director General (CGHS), Ministry of Health & Family Welfare (CHS Division), Nirman Bhawan, New Delhi – 110011.
3. Director (CGHS), Ministry of Health & Family Welfare (CHS Division), Nirman Bhawan, New Delhi – 110011.
4. Additional Director, CGHS, Old AG Colony, Unit-IV, Bhubaneswar - 751001.
5. Sr. Accounts Officer, Pay & Accounts Office, Ministry of Health & Family Welfare, 15/1 Chowringhee Square, Kolkata – 700069.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 17.1.2020 Order on : 29.1.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

This Review Application (in short RA) has been filed impugning the order dated 11.2.2019 (Annexure R-A/3) passed by this Tribunal in OA No. 285/2018.

2. One of the grounds urged in the RA is that in the impugned order of the Tribunal, it was wrongly mentioned that the applicant was functioning as Additional Director in Bhubaneswar when the order dated 19.8.2014 for recovery of excess transport allowance was received as per the audit recommendation. It is stated that the conclusion that the judgment in the case of State of Punjab and others vs. Rafiq Masih (White Washer) etc. reported in 2015 AIC SCW 501 regarding recovery of excess payment made to the employees wrongfully will not be applicable to the case of the applicant was based on the wrong finding that the applicant was working as Additional Director at Bhubaneswar at the time of receipt of the order dated 19.8.2014 of the Ministry of Health & Family Welfare regarding recovery of excess Transport Allowance. It is stated in the RA that the applicant was given the charge of Additional Director, Bhubaneswar on 31.8.2015 and necessary notification to that effect was issued by the Ministry on 4.3.2016 (Annexure R-A/2) and hence, he was not working as Additional Director, Bhubaneswar when the order dated 19.8.2014 was received in

the office of Additional Director on 12.1.2015 and at that time, Dr. M.M. Das was the Additional Director, Bhubaneswar.

3. Another ground urged in the RA is that the contentions of double jeopardy raised by the applicant in para 5.3 and 5.4 of the OA have not been considered before passing the impugned order.

4. The respondents were issued notice to file a short objection on maintainability as well as the merit of the RA. The Counter filed by the respondents does not contradict the averments in the RA that the applicant was not working as Additional Director, Bhubaneswar at the time of receipt of the order dated 19.8.2014. It is further stated in the Counter that the applicant was a senior officer of the CGHS and he is supposed to be aware of important circulars issued on 19.8.2014 regarding recovery of excess Transport Allowance. Regarding the contentions of double jeopardy, it is stated in the Counter that the deduction of Rs. 2.7 lakh was on account of Income Tax and in case of excess deduction of Income Tax, the applicant can claim refund from Income Tax authorities.

5. Heard learned counsel for the applicant who stressed on the fact that the Tribunal's order dated 11.2.2019 was based on the wrong observation that the applicant was working as Additional Director when the order dated 19.8.2014 was received at Bhubaneswar office. It was, therefore submitted that the applicant came to know about the order subsequently, for which the judgment in Rafiq Masih case will be applicable to this case. Learned counsel for the applicant further submitted that the finding that the applicant was Additional Director at the time of receipt of the letter dated 19.8.2014 in the office of the Additional Director was not pleaded by any of the party and hence, it was an error apparent on the face of the record, justifying review of the impugned order.

6. Heard learned counsel for the respondents who opposed the RA vehemently stating that the grounds mentioned do not justify review of the order. It was submitted that the applicant, as a senior officer of Government was supposed to be aware of important circulars issued by Government. It was further submitted that there was no error apparent on the face of the record to justify the review of the impugned order.

7. With regard to the submissions by both the parties, it is seen that in paragraph 8 of the impugned order dated 11.2.2019, it was stated as under:

“8. From above, it is clear that the letter dated 19.8.2014 is an order issued by the Ministry for recovery of excess amount as pointed out by the Audit and it was addressed to the Additional Directors. The applicant was working as Additional Director, Bhubaneswar before retiring from service on 30.4.2016 as would be obvious from the copy of his representation dated 29.2.2016 (Annexure-A/6 to the OA). He, as ex-Additional Director, must have received the letter/order dated 19.8.2004 of the Ministry ordering recovery of the excess amount. What action was taken by him after receiving the order dated 19.8.2014 has not been mentioned in the OA. The applicant appeared to have acted after receipt of the letter dated 7.12.2015 (Annexure- A/5) on this issue and he submitted the representation dated 29.2.2016 to the authorities just two months before his retirement.”

There are similar observations in paragraphs 9 and 10 of the impugned order. From the pleadings of both the parties in this RA, it is clear that factually this observation in the impugned order dated 11.2.2019 was incorrect as the applicant was handed over the charge of the Additional Director, Bhubaneswar on 31.8.2015 and he was not the Additional Director at the time of receipt of the order dated 19.8.2014 of the Ministry of Health and Family Welfare regarding recovery of the dues in question. The Counter filed by the respondents in this RA does not contradict the averments of the applicant in this regard in the RA.

8. In view of the above, I am of the view that there is an error apparent on the face of the record for which the Review Application deserves consideration. From the record, the fact that the applicant is a senior officer of the department in SAG grade and he had taken over the charge of Additional Director, Bhubaneswar on 31.8.2015 as stated in para 5 of the RA, is not disputed. As a senior officer of the Government, he was expected to be aware of important decisions of Government, particularly regarding the entitlement of Transport Allowance by senior officers including himself. Further, as observed in paragraph 11 of the impugned order, the Principal Bench of the Tribunal in the case of Radhacharan Shaikiya & others vs. Union of India & others has held that for the officers like the applicant, the Transport Allowance at the rate of Rs. 7000/- per month was inadmissible and the said order of the Principal Bench was upheld by Hon'ble Delhi High Court.

9. It is noted that the order dated 19.8.2014 was not impugned in the OA, although the applicant was working as Additional Director, Bhubaneswar when the Ministry of Health and Family welfare issued another letter dated 7.12.2015 (Annexure-A/5 of the OA) with reference to which he submitted his representation dated 29.2.2016 (Annexure A/6). The letter dated 7.12.2015 enclosed the Audit letter dated 6.11.2015 in respect of the Doctors in Safdarjung Hospital (Annexure A/13 of the OA) and the said letter dated 6.11.2015 of Audit also referred to the similar objections in respect of CGHS Doctors and the instructions of the Ministry of Finance in December 2014 that Transport Allowance @ Rs.7000/- per month is not admissible.

10. Taking into factual circumstances as discussed above, I am of the view that although the impugned order needs to be reviewed by modifying some of the observations which are erroneous on the face of the record, but the plea of the applicant that he was entitled for the benefit of the Rafiq Masih judgment and the DOPT OM dated 2.3.2016 (Annexure A/1 of the OA) in respect of the recovery of excess amount drawn by him is not acceptable for the reasons mentioned at paragraph 8 and 9 of this order and hence, the conclusions reached in paragraphs 11 and 12 of the impugned order dated 11.2.2019 in OA No. 285/2018 will not be affected by this review of the order as above. Accordingly, the paragraphs 8, 9 and 10 of the impugned order dated 11.2.2019 are replaced as under after necessary modifications as per the discussions above :-

“8. From above, it is clear that the letter dated 19.8.2014 is an order issued by the Ministry for recovery of excess amount as pointed out by the Audit and it was addressed to the Additional Directors. The applicant was working as Additional Director, Bhubaneswar before retiring from service on 30.4.2016 as would be obvious

from the copy of his representation dated 29.2.2016 (Annexure-A/6 to the OA). He, as ex-senior officer of the Government who had taken over the charge of Additional Director, Bhubaneswar w.e.f. 31.8.2015, was expected to be aware of the letter/order dated 19.8.2014. What action was taken by him on the said order after assumption of charge as Additional Director, Bhubaneswar by him, has not been mentioned in the OA. The applicant appeared to have acted after receipt of the letter dated 7.12.2015 (Annexure-A/5) on this issue and he submitted the representation dated 29.2.2016 to the authorities just two months before his retirement.

9. In addition to above facts, it is also noticed that the letter/order dated 19.8.2014 (Annexure-R/3 to the Counter) has not been challenged in this OA. In reply to the para 6 of the Counter referring to the Annexure-R/3 letter, the applicant in Rejoinder did not mention anything about this letter dated 19.8.2014 of the Ministry ordering recovery of the excess amount. It is also not averred by the applicant that he did not receive this letter/order dated 19.8.2014. As a senior officer of the Government subsequently taking over the charge of Additional Director, Bhubaneswar w.e.f. 31.8.2015, it was the responsibility of the applicant to have taken appropriate action and since he was adversely affected by this letter/order, he should have taken appropriate steps in the matter instead of waiting till February, 2016 to represent.

10. Learned counsel for the applicant had argued that the case of the applicant is squarely covered under the judgment of Rafiq Masih (supra) as the recovery has been effected after retirement of the applicant and that his case is squarely covered as per the paragraph 12(ii) of the judgment (quoted in para 6 above). I am unable to agree with this argument of learned counsel for the applicant, since as discussed in paragraphs 7 and 8 of this order, the recovery order was passed by the Ministry on 19.8.2014, prior to one year of the applicant's retirement on 30.4.2016 and no action on the aforesaid order was taken by the applicant, who was working as a senior officer of the Government who took over the charge of Additional Director, Bhubaneswar on 31.8.2015. After taking over the charge as Additional Director, no action was taken by the applicant as per the order dated 19.8.2014 of the Ministry till submission of his representation on 29.2.2016. Hence, it is clear that the case of the applicant is not covered under the stipulation in paragraph 12 (ii) of the Rafiq Masih judgment and the applicant will not be entitled for any benefit of the said judgment."

11. The Review Application is allowed to the extent as above without affecting the operating part of the impugned order dated 11.2.2019 at paragraphs 11 and 12 of the order. There will be no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath

