

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 511/2009

This the 12th day of October, 2012

Hon'ble Sri Justice Alok Kumar Singh, Member (J)

Harendra Nath Gupta aged about 71 years son of late Dr. Shankar Lal Gupta resident of A-6, Nirala Nagar, Lucknow-226020.

Applicant

By Advocate: Dharmendra Awasthi

Versus

1. Union of India through the Secretary (Establishment), Railway Board, Ministry of Railway, Rail Bhawan, New Delhi-II.
2. Chief Administrative Officer, DMW (Diesel Modernization and Rebuilding Works), DMW Campus, Patiala-147003.
3. Deputy Chief Personnel Officer, DMW, Patiyala.
4. Sr.AFA (Pension), DMW, Patiyala.

Respondents

By Advocate: Sri B.B.Tripathi

ORDER (Dictated in Open Court)

HON'BLE SHRI JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This O.A. has been filed for the following reliefs:-

- i) quash the impugned recovery order dated 5.6.2007 passed by the opposite party No. 4 which is contained as Annexure no.1 to this original application.
- ii) direct the opposite party No.3 to refund the illegally recovered amount along with 18% interest from the date of recovery started i.e. 5.6.2007 to the date of actual payment/refund.
- iii) pass any other suitable order or direction which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case in favour of the applicant.
- iv) allow the present original application of the applicant with cost.

2. The case of the applicant is that he superannuated on 31.12.1996 from the post of Chief Administrative Officer. After a

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gap of nearly 10 years of his retirement, all of sudden, the opposite party No.4, Sr. A.F.A. (Pension) , Patiala had issued a letter dated 5.6.2007 to the Manager, State Bank of Patiala, DMW Branch, Patiala for recovery of Rs. 18,323/- without prior information to the applicant and also without holding proper course of action. No opportunity was given to the applicant before making the above recovery. As a consequence of this letter, the above amount was deducted from the account of the applicant. As soon as, he came to know about the same, he made a representation dated 1.7.2007 (Annexure 3) followed by another letters dated 13.7.2007 and 31.7.2007. On 8.9.2007, a reply was received that the matter is under consideration but nothing happened. Therefore, the applicant again made an exhaustive representation dated 19.10.2008 (Annexure 7). But even then, no action has been taken. Hence this O.A.

3. In the Counter Affidavit, nothing has been said as to why no show cause notice/ opportunity was given to the applicant before making recovery that too, after a long period of 10 years. The contention of the respondents is that in the light of Railway Board circular dated 8.10.1998, the calculation of commutation value has been done. Consequently the aforesaid recovery of the amount in question was made from the bank. It is further said that in the case of the applicant, again a wrong calculation was made, but after receiving the representation from the applicant, out of recovered amount of Rs. 18323, an amount of Rs. 5018/- was released in favour of the applicant.

4. I have heard the learned counsel for the parties and perused the material on record.

5. At the out set it is worthwhile to mention that the law is settled on the point that firstly no recovery can be made unless any fraud or misrepresentation is alleged on the part of the

person from whom recovery is sought to be made. Secondly, if at all, there is any justification for making any recovery, then also adhering to the principle of natural justice, a show cause notice is a condition precedent for making any such recovery. I fail to find even a whisper in the entire CA as to why without issuance of show cause notice, the recovery in question was made and that too from the account of the applicant maintained by the State Bank of Patiala. Therefore, this Tribunal has no option except to quash the impugned order of recovery and direct the respondent No. 3 to refund the amount in question along with interest @ 8% (which is normal rate in respect of provident fund) w.e.f. the date, the recovery was made till the date of actual payment. Accordingly it is so ordered. O.A. stands disposed of as above. No order as to costs.

Alok Kumar Singh
(Justice Alok Kumar Singh) 12-10-12
Member (J)

HLS/-