

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-584/2016

Reserved on : 13.09.2017.

Pronounced on :

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Munish Girdhar, 63 years
Retired Director, National Disaster
Management Authority (MHA),
S/o (Late) Sh. R.L. Girdhar,
R/o BG-7/29, Paschim Vihar,
New Delhi-110063. Applicant

(through Sh. Basab Sen Gupta, Advocate)

Versus

Union of India & Ors. Through

1. Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. Secretary,
Department of Pension & Pensioners' Welfare,
Lok Nayak Bhawan, Khan Market,
New Delhi.

3. Secretary,
Department of Personnel & Training,
Ministry of Personnel,
Public Grievances & Pension,
North Block, New Delhi.

4. Secretary,
National Disaster Management Authority,
NDMA Bhawan, A-1, Safdarjung Enclave,
New Delhi-110029.

5. Director General,
National Institute of Fashion Technology,
Hauz Khas, New Delhi-110016. Respondents

(through Sh. Rajesh Katyal, Advocate for R-1 to R-4 and Sh. Pratap Shanker and Ms. A. Shivani, Advocate for R-5).

ORDER

The current O.A. has been filed by the applicant seeking the following relief:-

- “(a) Call for the records of the matter.
- (b) Order and direct the Respondent to repay/refund to the Applicant Rs. 1,47,919/- illegally recovered from the Gratuity of the Applicant.
- (c) Direct and order the Respondent to pay interest to the Applicant on the entire amount of Rs. 3,70,632/- from August, 2012 till July 2013 viz., till the date of repayment of Rs.2.2 lakh to him, and on Rs. 1,47,919/- from July 2013 till the time of payment in terms of and at the rate stipulated in G.O.I. order No. 2 below Rule 68 of CCS (Pension) rules, 1972 (viz., at the rate applicable to GPF deposits).
- (d) Award cost of litigation to the Applicant.
- (e) Pass any other/further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant retired as Director from National Disaster Management Authority (NDMA), Ministry of Home Affairs, New Delhi. He was working on deputation with National Institute of Fashion Technology (NIFT), as Registrar, from 06.03.2006 to 29.04.2011. On 09.07.2012, NIFT issued a show cause notice to the applicant proposing to recover Rs. 3,70,632/- from him under intimation to Ministry of Home Affairs and NDMA where he was then posted. It was alleged that :-

- (a) While working on the post of Registrar (Estt.), NIFT HO was given additional charge of Director, NIFT Racebareli Centre vide NIFT HO Order 03.07.2009. His pay was fixed as Rs. 46100/- (37400 + 8700) in the pay band Rs. 37400-67000/- + GP Rs. 8700/- in the post of Director w.e.f.

24.06.2009 for a period of 03 months. The pay fixation of Sh. Munish Girdhar in the post of Director w.e.f. 24.06.2009 was for only 03 months i.e. fro, 24.06.2009 to 23.09.2009. There was no further order issued to him to continue to draw the pay for the post of Director. However from 24.06.2009 to 29.04.2011 i.e. till the date of repatriation he was drawing the pay for the post of Director.

(b) While availing LTC (Home Town) for the block years 2008-09 and 2010-11, the applicant was granted EL encashment of 10 days each time, amounting to Rs. 14465/- and Rs.22954/- respectively. He did not submit the LTC settlement bills for both the block years.

3. MHA advised NDMA to consider withholding the recoverable amount from terminal benefits of the applicant. On 19.07.2012, orders withholding the said amount from the gratuity payable to the applicant were issued by NDMA. The applicant represented against this order to Director General (DG), NIFT on 26.07.2012. On 21.02.2013, NIFT granted ex-post-facto approval for regularization of payment/fixation of pay of the applicant to the post of Director, NIFT Racebareli w.e.f. 24.06.2009 to 29.04.2011.

4. Vide their subsequent communication dated 25.04.2013, NIFT intimated to MHA that an amount of Rs. 1,47,919 was recoverable from the applicant Rs. 1,10,500/- towards excess HRA and Rs. 37419/- towards EL encashment during LTC as against earlier withheld amount of Rs. 3,70, 632/- (Annexure A-7 of Annexure-1). On 08.07.2013, NDMA sent a cheque of Rs. 1,47,919/- in favour of NIFT. Thereafter, the applicant submitted a Review Petition dated

19.08.2014 to the Hon'ble President of India for refunding the payment of Rs. 1,47,919/- withheld from his gratuity.

5. The applicant has placed reliance on Government of India M.F. O.M. No. F.14(9)E.V/66 dated 02.09.1967, which provides that:-

"2. 'Government Dues' does not include dues while on deputation: The term 'Government dues' referred to covers only the dues payable to the Government and does not include dues while on deputation. In other words, the sum due from the officer to an autonomous organization is not 'Government Dues' and so cannot be recovered out of death cum retirement Gratuity payable by the Government to the Officer, except where the Government Servant has given his consent in writing to such a recovery being made from his gratuity, which has become payable to him."

Copy/extracts of the aforesaid instructions dated 02.09.1967 is part (Annexure 8) of **Annexure A-1.**"

6. In view of the aforesaid OM, he submits that no recovery was permissible from the gratuity payable to the applicant. It is further stated that the aforesaid instructions were not considered by the appropriate authority before affecting recovery from his gratuity, nor had he given any consent for such recovery. Therefore, the order dated 08.07.2013 of NDMA for recovery of Rs. 1,47,919/- was illegal, unjust and unfair.

7. The applicant submits that Pension as defined in Rule 3(1)(o) of CCS (Pension) Rules, 1972 includes gratuity as well in terms of Rule 70 of CCS (Pension) Rules. Pension once authorized, shall not be revised to the disadvantage of the govt. servant except for correction of clerical mistake.

8. In their counter, the respondents submit that the O.A. is not maintainable since the available remedies have not been exhausted by the applicant. The appeal preferred by him to the Hon'ble President of India is still pending. They submit that out of an amount of Rs.3,70,632/- withheld initially from the gratuity of the applicant, Rs.2,22,713/- have already been refunded to him in July, 2013 when NIFT accorded ex-post-facto approval for regularization of his pay as Director, NIFT Racebareli. On the basis of letter dated 08.05.2013 of DG, NIFT the remaining amount of Rs. 1,47,919/- was remitted to the DG, NIFT for adjustment of leave encashment and HRA. The respondents have cited the provisions of Rule-73 of CCS (Pension) Rules, 1972 in support of the action taken by them to recover the outstanding dues from DCRG of the applicant. In view of the above provisions and the legal position, they submit that action for withholding of amount, out of the payable retirement gratuity by NDMA, is justifiable.

9. Heard both the counsels and perused the record carefully. I am convinced by the plea put forth by the learned counsel for the respondents that the O.A. is hit by limitation. The cause of action to the applicant arose in 2012-2013, since show cause notice was issued to the applicant on 09.07.2012 and recovery from the gratuity was effected in 2013 May. The O.A. has been filed in 2016 and no valid reason has been given by the applicant, or his counsel, to explain this inordinate delay. Even on merits, regarding the

outstanding arrears of Rs. 37,419/- towards encashment on LTC, the only defence of the applicant is that the recovery is unfair, since approval for this had been accorded by the competent authority. A perusal of the record shows that the applicant availed two LTCs from his posting in NIFT and received payment but did not support it with the relevant documents. In such an eventuality, as per Rule-38(8)(v) of CCS Leave Rules, he was required to refund the amount of leave encashment with interest. No convincing argument to rebut the charge of non submission of documents has been put forth by the applicant. On the remaining part of recovery of Rs.1,10,500 I observe that as per NIFT order dated 20-21/10/2008, entitlement slab of Housing Benefits, to employees posted in Metropolitan cities was @ Rs. 20000/- and Rs. 15000/- respectively. In case of non-metropolitan cities, the incentive admissible is 75% of the rate mentioned therein. The applicant was posted in NIFT office as Registrar and was entitled to Rs. 15000/- as housing benefit and as Director Raebareli his entitlement was 75% of Rs. 20000/- i.e. Rs.15000/-. In both the cases, he was entitled for Rs.15000 only. Since he drew Rs. 20000/- as housing benefit against his actual entitlement of Rs. 15000/-, therefore, the over payment is established. An amount of Rs. 1,10,500/- as excess HRA thus, appears to have been wrongly availed of by the applicant. These over payments i.e. Rs.37,419/- towards EL encashment on LTC & Rs.1,10,500/- as excess HRA were detected while auditing leave salary and pension contribution of the applicant. The show cause notice dated

09.07.2012, issued to the applicant, also had a recoverable component of Rs.2.2 lacs drawn by him as excess salary. On receipt of the show cause notice the applicant submitted representation quoting certain grounds to consider his case sympathetically and not to hold any amount from terminal benefits. His request was considered by the DG, NIFT and ex-post facto approval of the Board of Governors to regulate his salary as Director was obtained and orders were issued on 07.01.2013. Thus, the issue regarding overpayment of pay was settled and accordingly an amount of Rs.2,22,713/- was refunded back to him. But the remaining amount of Rs.1.47 lacs was withheld from his gratuity.

10. As far as the submission of the applicant that no recovery can be made from DCRG is concerned, the respondents have relied on provisions of Rule 73 of CCS (Pension) Rules, 1972, which read as follows:-

“(i) For the dues other than the dues pertaining to occupation of Government accommodation as referred to in Clause (b) of sub rule (3) of Rule 71, the Head of Office shall take steps to assess the dues two years before the date on which a Government servant is due to retire on superannuation; or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.

(2) The assessment of Government dues referred to in sub-rule (1) shall be completed by the Head of Office eight months prior to the date of the retirement of the Government Servant.

(3) The dues as assessed under sub-rule(2) including those dues which come to notice subsequently and which remain outstanding till the date of retirement of Government servant, shall be adjusted against the amount of (retirement gratuity) becoming payable to the Government servant on his retirement.”

10.1 In view of the provisions of Rule-71(3)(b) of CCS(Pension) Rules, 1972, I feel that the recovery has been rightly made from the applicant since the over payment made to him both, on account of excess HRA & EL encashment on LTC incorrectly availed is to be construed as "Government dues". Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.**, 2012(8) SCC 417, para-16 of which reads as follows:-

"16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

10. In view of the above discussion, I find that the O.A. is hit by limitation and lacks merits. Accordingly, the O.A. is dismissed. No costs.

**(Praveen Mahajan)
Member (A)**

/Vinita/

