

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 1311/2017

New Delhi this the 27th day of April, 2017

HON'BLE MR. P.K. BASU, MEMBER (A)

Dr. A.K. Belwal
(Retd. Director)
Group 'A', Aged about 71 years,
R/o 137, Sukhdev Vihar,
P.O. Jamia Nagar,
New Delhi-110025.

.. Applicant

(Applicant in person)

Versus

1. Union of India,
Ministry of Labour & Employment,
Labour Bureau,
SCO 28-29, Sector 17-A,
Chandigarh-160017
Through Director.
2. xxx xxx
3. Union of India,
Secretary, Department of Personnel,
North Block, New Delhi.
4. Cabinet Secretariat,
Rashtrapati Bhawan,
New Delhi
Director IES Cadre.
5. Member Secretary,
Tariff Commission,
Lok Nayak Bhawan,
7th Floor, Khan Market,
New Delhi.
6. Secretary,
Ministry of Law & Justice,
Dept. of Legal Affairs,

Shastri Bhawan, New Delhi.
Additional Secretary,
Room No.419,
Shastri Bhawan, New Delhi.

7. IES Cadre,
Department of Economic Affairs,
North Block, New Delhi
Through Director.

.. Respondents

ORDER (ORAL)

The applicant, who was a Member of the Indian Economic Service, retired on superannuation on 31.08.2005. The respondents had commenced departmental proceedings against him for not joining as Director, Labour Bureau, Shimla, which resulted ultimately in penalty of withholding of his 25% monthly pension for a period of 5 years on 06.02.2007. He was thereafter granted his retirement benefits except encashment of Half Pay Leave (HPL) and Earned Leave (EL) in his account. Later on, it was detected by the respondents that while calculating the HPL and EL of the applicant, unauthorised absence from 01.10.2003 to 13.07.2005 (i.e. the period when he did not join at Shimla), for which disciplinary proceedings had been initiated against him and he was punished, had also been calculated to work out his entitlement for HPL and EL. Accordingly, the respondents corrected the EL/HPL account and passed order for recovery due to overpayment of encashment of EL/HPL.

2. The applicant had approached this Tribunal in O.A. No.664/2012 seeking primarily the relief of immediate encashment of HPL taking the applicant's date of joining Govt. service on 22.11.1966. This Tribunal after considering various litigations in this regard as well as relevant rules came to the conclusion that there was no merit in the O.A. and the O.A. was dismissed vide order dated 09.02.2016.

3. The respondents thereafter issued a letter dated 04.11.2016 to the applicant requiring him to deposit an amount of Rs.12,031/- as his O.A. No.664/2012 had been dismissed.

4. The applicant made a representation dated 12.11.2016 stating therein that since he retired on 31.08.2005, no such recovery can be made from him because of the fault of Labour Bureau staff in working out the dues under leave encashment.

5. Vide impugned order dated 24.03.2017, the respondents informed the applicant in reply to an RTI application enclosing letters of Labour Bureau to recover the amount of Rs.12,031/- from the applicant. Being aggrieved by this, the applicant has filed the present O.A. seeking the following relief:

“(1) Pass Order(s) setting aside vide Office order dated 27.9.2016 forwarded vide dated 4.11.2016 received vide RTI reply dated 24.3.2017;

- (2) Pass order(s) directing the consideration of representation dated 12.11.2016, 21.11.2016 and legal notice dated 11.2.2017 (Annexure A-3);
- (3) To pass any other orders that is deem, just, fit and proper to meet the ends of justice as per facts and circumstances of the present case.”

6. Heard the applicant in person and perused the pleadings.

7. The applicant retired on superannuation on 31.08.2005. The Labour Bureau decided in October, 2011 after scrutiny of his HPL/EL account that the unauthorised absence from duty from 01.10.2003 to 13.07.2005 was inadvertently included while making advance credit of HPL for the aforesaid period. This was after a period of 6 years after the applicant had retired. The orders dated 09.02.2016 of this Tribunal took note of all the facts relating to the case and found that there is no merit in the Application and dismissed the same.

8. Normally, the present Application would be hit by principle of res judicata, as the same relief had been sought by the applicant in O.A. No.664/2012. However, on perusal of the order dated 09.02.2016, I find that the Tribunal had not gone into the issue of whether it is legally permissible to recover the amount after so many years, which admittedly arose because of a mistake by the respondents and cannot be ascribed to the applicant. The proper course of action would be for the applicant to file a Review

Application to re-hear the matter in the light of settled law in this regard. In my view, better would be to achieve closure of this old matter by examining the law in this regard keeping in view that the applicant is about 72 years old.

9. In **State of Punjab and Others Vs. Rafiq Masih**, 2014 (14) SCALE 300, the Hon'ble Supreme Court has settled the law in this regard in para 12 of its judgment as follows :

“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 20 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.”

10. It would be seen that clauses (ii), (iii) and (v) squarely applies in this case. The applicant retired in August, 2005 and the respondents passed order of recovery in October, 2011 against the applicant. Admittedly, the mistake was not attributable to the applicant. It was the mistake committed by the respondents. Therefore, in view of the law settled by the Hon'ble Supreme Court, no recovery can be made from the applicant at this stage.

11. In view of this, orders dated 28.09.2016, 04.11.2016 and 24.03.2017 are quashed and set aside and the respondents are directed not to recover the amount of Rs.12,031/- from the applicant and release the leave encashment due to the applicant. The O.A. stands disposed of. No order as to costs.

(P.K. BASU)
MEMBER (A)

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