

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1408 OF 2014

New Delhi, this the 7th day of March, 2016

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Balchand,

A-3/360, East Gokalpur,

Amar Colony,

Delhi 110094

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Applicant

(By Advocate: Mr. Padma Kumar S.)

Vs.

1. Chairman,
Delhi Transport Corporation,
Govt. of NCT of Delhi,
I.P.Estate,
New Delhi.

2. Depot Manager,
Delhi Transport Corporation,
NOIDA Depot,
NOIDA

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Respondents

(By Advocate: Mr. Anand Nandan)

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ORDER

The applicant has filed the present O.A. seeking the following reliefs:

- õ(i) Quash and set aside the Orders dated 18.2.2013 and 4.4.2013 to the extent the reduction has been effected.
- (ii) Direct the respondents to restore the basic pay and allowances of the Applicant.

- (iii) Direct the Respondents to reimburse the amount of Rs.4,47,912 + Rs.1,77,000 + 25000/- along with interest thereon as ordered by this Honøble Tribunal.
- (iv) any other relief which the Honøble Tribunal may deem appropriate.ö

2. Opposing the O.A. the respondents have filed a Counter Reply.

The applicant has filed a Rejoinder Reply to the Counter Reply.

3. I have perused the O.A. and Rejoinder Reply filed by the applicant, and the Counter Reply filed by the respondents, and have heard Shri Padma Kumar S, the learned counsel appearing for the applicant, and Shri Anand Nanda, the learned counsel appearing for the respondents.

4. The facts of the case, which are not disputed by either side, are that the respondent-Delhi Transport Corporation (DTC) engaged the applicant as R/C Conductor with effect from 5.4.1978. Thereafter, the respondent-DTC appointed the applicant as Conductor on monthly rate of pay with effect from 5.10.1978. On his request, the respondent-DTC again appointed him as Ticket Tally Clerk (TTC) with effect from 2.12.1987 by way of change of cadre. On receipt of a report dated 31.12.2001 from Shri Shish Ram, O.S.N.N.D., that due to a neighbor brawl, the applicant was involved in a police case for offences punishable under Sections 323 and 308 read with Section 34 of the Indian Penal Code, and that he was detained by Nand Nagri Police Station, the respondent-DTC, vide order dated 13.2.2002, placed him under suspension with effect from 1.2.2002. On 2.2.2002, the applicant was released on bail. The suspension of the applicant was revoked on 13.2.2002. The disciplinary authority issued a

charge sheet dated 27.2.2002 initiating departmental proceeding against the applicant. On appeal by the applicant, the Regional Manager (East), DTC, cancelled the charge sheet, vide its order dated 26.8.2008, with direction to the applicant to keep the office informed of the development in the court case from time to time. On the approval of the Screening Committee on 25.3.2009, the respondent-DTC, vide order dated 20.4.2009, granted him 1st ACP financial upgradation to the applicant from due date. The respondent-DTC, vide order dated 16.3.2010, also granted 2nd MACP financial upgradation to the applicant from due date. Thereafter, the respondent-DTC, vide order dated 8.9.2011, granted him promotion to the post of Senior Clerk with effect from 9.9.2011. While the matter stood thus, on receipt of internal audit report for the year 2010-11 that as the applicant was placed under suspension in the year 2002, and the criminal case was pending against him, he should not have been granted ACP and MACP financial upgradations as well as promotion to the post of Senior Clerk until finalization of the said criminal case, the respondent-DTC, vide letters dated 8.10.2012 and 18.2.2013, respectively, reverted the applicant to the post of TTC, and withdrew the ACP and MACP financial upgradations, and, accordingly, re-fixed his pay. The applicant retired from service on attaining the age of superannuation on 28.2.2013. Thereafter, the respondent-DTC issued the impugned order dated 4.4.2013 (Annexure A/13) to the following effect:

Shri Bal Chand S/o Shri Rimal Singh, Ex-T.T.C., Pay Token No.23461 was appointed on 05.04.1978 and retired from

the services of this Corporation w.e.f. 28.02.2013 vide this office memo no. NOD/PFC(C&S)/Retired/2012/5390 dated 17.10.2012.

Since he has Not Opted for DTC Pension Scheme. Accordingly, his own share as well as Corporation share towards C.P.Fund (both share) in favour of the above said ex-employee may be arranged to send his account No.91302180000123, Micro No.110025120. The photocopy of the cheque is enclosed for ready reference.

The amount of Rs.46,461/- being C.P.Fund deducted in excess on account of excess salary of Rs.4,47,912/- (Basic Pay Rs.2,75,750/- + D.A.Rs.1,11,422/- + HRA Rs.60,740/-) paid in the month of 12.08.2002 to 31.8.2012 may also be adjusted.

As per clearance certificate of this unit, a sum of Rs.- Nil- is recoverable towards loan against C.P.Fund from the ex-employee.

The Provident Fund Settlement Committee has accorded approval for the above in its meeting held on 18.03.2013.

It is also certified that 90% C.P.Fund Share has not been drawn by the ex-employee as per record maintained.

Nothing else is due from the ex-employee concerned.ö

Challenging the judgment of conviction dated 28.1.2005, and the order of sentence dated 1.2.2005, passed by the trial court against the applicant and others in the criminal case, the applicant and others filed Criminal Appeal No.133 of 2005 before the Honøble High Court of Delhi. The Honøble Court disposed of the said Criminal Appeal, vide its judgment dated 18.11.2013, the relevant portion of which is reproduced below:

ö11. Having regard to the fact that the parties are neighbours; in order to bury the past and reside peacefully they have arrived at an amicable settlement and also executed a compromise deed in the year 2010; the appellants have no criminal record; even after their having been released on bail the appellants have continued to reside peacefully in the neighbourhood; and taking into consideration the statement made by the complainant that he has no objection if the order on sentence is modified, the present appeal is allowed in part. The order on sentence is modified to the period already undergone, subject to the appellants paying further compensation in the sum of Rs.25,000/- to the complainant

within one week from today, receipt of which will be submitted by the appellants with the counsel for the State. Bail bonds of the appellants stand cancelled and surety stands discharged.

12. Appeal stands disposed of.ö

5. In the above backdrop, the applicant has contended that the financial upgradations under the ACP and MACP Schemes as well as promotion to the post of Senior Clerk were granted to him by the respondent-DTC with effect from due dates as per rules. At all relevant points of time, the respondent-DTC was fully aware of the criminal case pending against him. The respondent-DTC having consciously taken decisions and having granted the aforesaid benefits to him, the audit objection/report could not have been the sole basis of the orders passed by the respondent-DTC on 8.10.2012 and 18.2.2013 reverting him from the post of Senior Clerk to the TTC, and withdrawing the said lawful benefits from him with retrospective effect. This apart, the said orders were passed by the respondent-DTC when the applicant was left with few days of service to retire on attaining the age of superannuation, and, that too, without giving him any show-cause of notice. The said benefits were not granted to him by the respondent-DTC on account of any misrepresentation made by him. Therefore, the decisions taken by the respondent-DTC withdrawing the said benefits, being contrary to rules, and violative of the principles of natural justice, are void *ab initio*. On the basis of such void decisions, the respondent-DTC were not justified in ordering recovery of the purported excess amount from C.P.Fund/retirement benefits payable to him on retirement from service after putting in about 35 years of service, more so

when the criminal case was initiated against him and other on account of neighbour brawl, and when the said criminal case was compromised between him and the complainant. In support of his contentions, the applicant has invited my attention to the decision of the Honøble Supreme Court in **State of Punjab & others Vs. Rafiq Masih (White Washer)**, Civil Appeal No.11527 of 2014, decided on 18.12.2014.

6. *Per contra*, it is contended by the respondents that when on account of pendency of the criminal case, the applicant was not entitled to be granted financial upgradations under the ACP and MACP Schemes as well as promotion to the post of Senior Clerk, there was no infirmity in their decision in withdrawing the same and ordering recovery of the excess payment from the applicant's Contributory Provident Fund/retirement benefits payable to him on retirement from service.

7. In **State of Punjab & others, etc. Vs. Rafiq Masih (White Washer), etc.** (supra), the respondent-employees were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authorities in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of status, which the concerned employee was not entitled to; or payment of salary in higher scale than in consonance with the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay scales; or for having been

granted allowances, for which the concerned employee was not authorized. The respondent-employees were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due. The respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the respondent employees was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Thus, the question, which arose for adjudication, was, whether the respondent-employees, against whom orders of recovery (of the excess amount) were made, should be exempted in law, from the reimbursement of the same to the employer. After referring to its various earlier decisions on the point, the Hon'ble Supreme Court held thus:

ō12. 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 that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize 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.ö

7.1 After having considered the facts and circumstances of the case, and the rival contentions of the parties, I am of the view that the applicant's case falls within the five categories delineated by the Hon'ble Supreme Court in paragraph 12 of the judgment in **State of Punjab & others etc. Vs. Rafiq Masih (White Washer) etc.** (supra), under which the impugned recovery could be held impermissible in law.

8. In the light of what has been discussed above, I quash the impugned decision taken by the respondent-DTC for recovery from the retirement dues/C.P.Fund of the applicant. Consequently, I direct the respondent-DTC to refund to applicant the amount already recovered from him, within a period of three months from today.

9. Resultantly, the O.A. is partly allowed to the extent indicated above. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER