

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

O.A No. 1476/2016

New Delhi this the 9th day of May, 2017

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

Sujata Thakur,
Aged 58 years,
W/o Shri Kuldeep Thakur,
R/o 151, Medha Apartments,
Mayur Vihar Phase-1 Extension,
Delhi-91
(Retired on 31.03.2016 as
GM Corporate Marketing and Sales, ITDC).

.. Applicant

(By Advocate : Shri Ashim Sridhar)

Versus

1. Union of India,
Through Secretary,
Ministry of Tourism,
1, Transport Bhawan,
Sansad Marg,
New Delhi-110001.

2. Indian Tourism and Development Corporation,
Through Chairman & Managing Director,
Scope Complex Core 8,
6th Floor, Lodhi Road,
New Delhi-110 003. .. Respondents

(By Advocate : Dr. Ch. Shamsuddin Khan for R-1 and
Ms. Mahima Gupta for Shri Anish Chawla for R-2)

ORDER (ORAL)

The applicant was deputed as Regional Director, India Tourism New York vide order dated 09.03.2011. She was posted there till 08.04.2014. The applicant retired on 31.03.2016.

2. On 22.03.2016, Ministry of Tourism issued a letter to Indian Tourism and Development Corporation (ITDC) (which is the parent organisation of the applicant) that the applicant, former Deputy Director General/Regional Director (Tourism), New York, has been overpaid Rs.12.60 lakhs as she was paid Standard Foreign Allowance applicable to IFS Officers instead of Foreign (Compensatory) Allowance, which is paid to Non-IFS Officers who are posted abroad in non-representational in nature.

3. The applicant has challenged this order dated 22.03.2016 and prayed as follows :

- “(a) Quash the impugned order dated 22.03.2016 and letter dated 09.03.2016 issued by the Respondent No.1 directing the Respondent No.2 (Indian Tourism Development Corporation/ITDC) to withhold an amount to the tune of Rs.12.60 Lacs (Rupees Twelve Lacs Sixty Thousand Only) from the pensionary benefits of the applicant who retired on 31.03.2016.
- “(b) Issue necessary time bound directions to the Respondent No.1 and Respondent No.2 to release the entire retrial and pensionary benefits legally due to the applicant.

- (c) Issue time bound directions to the Respondents for the release of the amount of Rs.12.60 Lacs(Rupees Twelve Lacs Sixty Thousand Only) illegally being withheld at an interest of 18% p.a. from and on the date on which the same were due.
- (d) As any other order this Honourable Court may deem just and proper in the facts and circumstances of the case."

4. The grounds for challenge are as follows:

(i) The order dated 22.03.2016 has been issued just 9 days prior to the applicant's retirement and, therefore, such recovery cannot be made in view of judgment in **State of Punjab and Others Vs. Rafiq Masih**, 2014 (14) SCALE 300, in which 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."

It is stated that the applicant's case is clearly covered by Para 12 sub-para (ii) of the judgment.

(ii) The recovery order has been made without providing any opportunity to the applicant to present her case.

(iii) Order dated 10.12.2010 (Annexure A-5), which is regarding equivalence of Civil Non-IFS Officers on deputation abroad and IFS Officers was only meant for rank equivalence of Civilian Non-IFS Officers as experts in academic, medical, engineering and other fields, and the applicant does not fall within the purview of the same.

(iv) The Establishment Order dated 09.03.2011 categorically states that the applicant is transferred and posted as Regional Director in New York as against a deputation, which is condition present for applicability of order dated 10.12.2010.

(v) The clarification sought by the Ministry of Tourism in September, 2014 from Ministry of External Affairs on entitlement of

officers posted as GoI Officers abroad was sent by Ministry of External Affairs vide letter dated 09.10.2014, i.e. after the date on which the applicant had come back from New York on 08.04.2014. In this letter, Ministry of External Affairs had clarified that GoI Tourist Officers abroad are non-representational in nature and hence these officers are entitled to Foreign (Compensatory) Allowance.

5. Learned counsel for the respondents stated that as per instructions dated 10.12.2010, the applicant is only entitled to draw Foreign Compensatory Allowance and she cannot be granted the Standard Foreign Allowance. In para 11 of the reply, however, it has been mentioned that the Ministry of Tourism is moving a proposal to the Department of Expenditure on the waiver of recovery as per Office Memorandum dated 02.03.2016 of Department of Personnel and Training, which is based on the judgment of the Hon'ble Supreme Court in **Rafiq Masih** (supra). This OM requires that, in case of waiver, the Department of Expenditure has to be consulted.

6. Learned counsel on behalf of respondent No.2 stated that they are only abiding by the instructions from the Ministry of Tourism and beyond that, there is nothing else to state.

7. Heard the learned counsel and perused the relevant orders and judgment of the Hon'ble Supreme Court in **Rafiq Masih** (supra).

8. The order dated 22.03.2016 is about a week before the date of superannuation of the applicant. Clearly, the judgment in **Rafiq Masih** (supra) would apply as the applicant's case is covered by Para 12 sub-para (ii), as quoted above. Thus, in accordance with law settled by the Hon'ble Supreme Court, no recovery can be made from the applicant. As regards the respondents' submission in their reply that they have sent the matter to the Department of Expenditure proposing waiver of recovery in view of O.M. dated 02.03.2016, that is not relevant. No circular/decision can go beyond law which is already settled by the Hon'ble Supreme Court.

9. Lastly, there is strength in the submission of the learned counsel for the applicant that the clarification which the Ministry of Tourism had sought from Ministry of External Affairs that Tourism Department Officers will be entitled only to Foreign Compensatory Allowance while posted abroad, is received much after the period of deputation of the applicant, and hence not applicable.

10. The O.A. is, therefore, allowed and the respondents are directed to release the withheld amount of Rs.12.60 lacs to the applicant, within a period of 90 days from the date of receipt of a certified copy of this order. In view of the facts and circumstances of the case, as the Department had not withheld the amount with any mala fide intention or wilfully, the applicant is not entitled for interest. No order as to costs.

**(P.K. Basu)
Member (A)**

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