Central Administrative Tribunal
Principal Bench

OA No.1500/2015

Order reserved on: 19.11.2016
Order pronounced on: 14.12.2016

Hon'ble Mr. V. N. Gaur, Member (A)

Sh. Madan Mohan Bhatt,
Aged 63 years, Retired ASI,
S/o Late Sh. Jagdish Prasad Bhatt
R/o 80A Gali No.1,
East Sadatpur,
Delhi-94.

- Applicant

(By Advocate: Mr. Ajesh Luthra)

Versus

1. Commissioner of Police,
PHQ, MSO Building,
IP Estate, New Delhi.

2. Addln. D.C.P. (G.A.)
Police Control Room,
Model Town,
Delhi.

- Respondents

(By Advocate: Mr. N.K.Singh)

ORDER

In this second round of litigation the applicant has challenged the Show Cause Notice (SCN) dated 23.12.2013 to the extent the respondents have proposed recovery of amount overpaid following re-fixation of his pay w.e.f. 10.04.1989.

2. The applicant, a former BSF employee joined Delhi Police on 21.02.1986 and was absorbed on 10.04.1989. He retired on

31.03.2012. A few days before the retirement of the applicant the respondents ordered refixing his pay w.e.f. 10.04.1989 and recovery of an amount of Rs.1,43,984/- and deducted the same from his gratuity by order dated 27.03.2012. The applicant challenged that order in OA No.3325/2014, which was disposed of by this Tribunal order dated 11.10.2013 quashing the order dated 14.03.2012 with liberty to the respondents to refix the pay/pension to the applicant after giving him SCN and considering his response thereto. The applicant filed MA No.3370/2014 in OA No.3325/2014 questioning the fresh SCN dated 23.12.2013 calling upon the applicant to show cause as to why his pay should not be refixed w.e.f. 10.04.1989 and recovery should not be made. The MA was, however, disposed of vide order dated 18.02.2015 with the following order:

> "Submissions put-forth by learned counsel for applicant may have some merits. Nevertheless, once the respondents have issued fresh show cause notice and one of the prayers made by the applicant in the MA is to release the gratuity amount of the applicant, the proper course for him would be to institute fresh proceedings."

3. Applicant has accordingly filed this OA questioning a part of the SCN dated 23.12.2013 that relates to the recovery of the overpaid amount.

4. Learned counsel for the applicant submitted that the pay of the applicant was refixed w.e.f. 10.04.1989 just a few days before his retirement. The law is now well established that if an

overpayment has been made to the employee in the past for no fault on his part or any misrepresentation by him, particularly an employee who is going to retire within one year, no recovery can be made by the Government. Reliance of the respondents on the judgment of Hon'ble Supreme Court in **Chandi Prasad Uniyal and ors. vs. State of Uttarakhand**, (2012) 8 SCC 417 at this stage is misplaced, as this Tribunal had already taken note of this judgment in para 2 & 4 of the order dated 11.10.2013 before quashing the order of recovery of the overpaid amount. Subsequent to this the Hon'ble Supreme Court in **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.**, (2014) 8 SCC 883 has reiterated the position with regard to recovery from a retiring or retired employee. He, therefore, prayed for quashing of the SCN dated 23.12.2013 only in respect of the recovery of overpaid amount.

5. Learned counsel for the respondents, on the other hand, submitted that Chandi Prasad Uniyal (supra) has established the law that any excess payment of public money neither belongs to the officers who have effected overpayment nor to the recipients. The question to be asked is whether excess payment is made due to a bonafide mistake. The Apex Court had taken a view that "except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J.Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be

recovered." This Tribunal, following Chandi Prasad Uniyal (supra), upheld the recovery of overpayment. He also referred to **Raghunath Rai Bareja & another vs. Punjab National Bank & others**, (2007) 2 SCC 230 to argue that protection of hardship/equity would come into picture only in the absence of law. When there is a conflict between law and equity, it is the law which has to prevail. In **B.Premanand vs. Mohan Koikal,** (2011) 4 SCC 266 it was held by the Hon'ble Supreme Court that if there was a conflict between equity and the law, it is the law which must prevail. According to learned counsel, the action of the respondents should not be judged by bringing in the hardship and equity as brought out by the applicant.

6. We have heard the learned counsel for the parties and perused the record. The short question to be adjudicated is whether the overpaid amount to the applicant in this case can be recovered at this stage, and, if yes, whether the applicant is entitled for refund of the amount already deducted.

7. In the order dated 11.10.2013 OA No.3325/2014 (supra) this Tribunal had dealt with the implication of Chandi Prasad Uniyal (supra) in the following manner:

> "4. In **Randhir Singh** Vs. **State of Haryana** (1999 (1) ATJ HC (P&H) 122), it has been held thus:-
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> > "....before recovery was sought to be effected from the pay of the plaintiff, neither any show-cause notice was served upon the plaintiff nor any opportunity of hearing was given to him. It is now settled principle of law that before

an order entailing civil consequences is passed, the Authority is bound to abide by the principles of natural justice. Application of principles of natural justice is not a question of observance of formula or a mere technicality. In essence, it is meant to assure that a party concerned has an opportunity of being heard on the principle of Audi Alteram Partem. In the present case, neither plaintiff was asked to explain as to why recovery be not effected from his pay nor was he given any opportunity of hearing before the order came to be passed. Consequently, the judgment and decree of the Courts below is not sustainable in law and, therefore, is set aside."

Besides, it is not in dispute that the applicant has since retired from service and any recovery from him at this stage would cause undue hardship to him. Even in **Chandi Prasad Uniyal & Ors** Vs. **State of Uttarakhand & Ors** (2012) 8 SCC 417), Hon'ble Supreme Court accepted the view taken earlier in **Syed Abdul Qadir & Ors** Vs **State of Bihar and Ors** (ibid), **Shyam Babu Verma** Vs **Union of India** (1994 (2) SCC 521) and Col. **B.J.Akkara (Retd.)** Vs **Government of India & Ors** (2006) 11 SCC 709) to the extent of not allowing the recovery of excess payment from those who are either retired or at the verge of retirement as justified, as it may cause undue hardship to the retiree. For easy reference, para 14 and 15 of the judgment are extracted hereinbelow:-

> "14. **We may point that in Syed Abdul Qadir case such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them.**
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> 15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinabove turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy."

5. In **Syed Abdul Qadir & Ors** Vs **State of Bihar & Ors** (ibid), Hon'ble Supreme Court viewed as under:-

> "27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/ allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by

the employer by applying a wrong principle for calculation the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See **Sahib Ram** Vs **State of Haryana**, 1995 Supp. (1) SCC 18, **Shyam Babu Verma** Vs **Union of India** (1994) 2 SCC 521: **Union of India** Vs **M. Bhaskar,** (1996) 4 SCC 416; **V.Ganga Ram** Vs **Regional Jt. Director**, (1997) 6 SCC 139; Col. **B.J.Akkara (Retd.)** Vs **Government of India & Ors** (2006)11SCC 709; **Purshottam Lal Das & Ors** Vs **State of Bihar** (2006)11 SCC 492); **Punjab National Bank & Ors** Vs **Manjeet Singh & Anr** (2006) 8 SCC 647); and **Bihar State Electricity Board & Anr**. Vs **Bijay Bahadur & Anr** (2000)10 SCC99).

28. Undoubtedly, the excess amount that has been paid to the appellants-teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the official concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.

29. Learned counsel also submitted that prior to the interim order passed by this Court on 7.4.2003 in the special leave petitions, whereby the order of recovery passed by the Division Bench of the High Court was stayed, some instalments/amount had already been recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the appellant-teachers and in order to maintain

> parity, it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them.
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> 30. In the result, the appeals are allowed in part, the impugned judgment so far as it relates to the direction given for recovery of the amount that has been paid in excess to the appellants-teachers is set aside and that part of the impugned judgment whereby it has been held by the Division Bench that the amended provisions of FR.22-C would apply to the appellants-teachers is upheld. We direct that no recovery of the excess amount, that has been paid to the teachers of Secondary Schools, be made, irrespective of the fact whether they have moved this Court or not. We also direct that the amount that has been recovered from some of the teachers, after the impugned judgment was passed by the High Court, irrespective of the fact whether they have moved this Court or not, be refunded to them, within three months from the date of receipt of copy of this judgment."

Also in **Babulal Jain** Vs. **State of MP and Others**, it could be viewed as under:-

> "15. We, however, are of the opinion that in a case of this nature, no recovery should be directed to be made. The appellant has discharged higher responsibilities. It is not a case where he obtained higher salary on committing any fraud or misrepresentation. The mistake, if any, took place on a misconception of law. He was at least entitled to some allowances. In refixing his pay, his claim to that effect has not been considered He has since retired. A sum of Rs.22, 000 has been recovered from him. Such recovery has been affected without issuing any show-cause notice. His case on merit in this behalf had not been considered by the Government and even by the Tribunal."

8. The Hon'ble Supreme Court has dealt with various judgments on the subject of recovery from the employees comprehensively in Rafiq Masih (supra) and culled out the following situations in which such recovery will not be justifiable:

> "(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
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> (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."

9. The case of the applicant covered under the prohibited categories mentioned in (i), (ii) and (iii) above. It was mentioned by the learned counsel for the respondents that the judgment in Rafiq Masih (supra) was dated 18.12.2014, while the recovery had been ordered on 14.03.2012, therefore the later law would not be applicable. I have considered this contention. The situations summarised in Rafiq Masih in which recoveries by employers would be impermissible in law, are not new situations contemplated by that judgment but are based on the decisions referred in that judgment that includes Chandi Prasad Uniyal (supra) and Syed Abdul Kadir (supra). Notably the judgment in Syed Abdul Kadir which directly applies to this case is dated 16.12.2008 would be applicable to the case of the applicant. It can be, therefore, concluded that the exceptions enumerated in the judgment existed in the year 2012 also when a SCN was issued to the applicant for deduction of overpaid amount from his gratuity.

10. With regard to the question of refunding recovered amount the Hon'ble Supreme Court in Syed Abdul Kadir (supra) has also taken a view that where some instalment/amount had already been recovered from the petitioners it would be in fitness of things that such amount be refunded to them. Relevant para is already reproduced in para 29 of the extracts from the extracts in para 6 above.

11. In the light of the foregoing, OA is allowed. The SCN dated 23.12.2013 is quashed to the extent it envisaged recovery of overpaid amount of Rs.1,43,984/- following the refixation of pay w.e.f. 10.04.1989 and the respondents are directed to refund the amount of Rs.1,43,984/- recovered from the gratuity of the applicant on this account vide order dated 27.03.2012. This action may be completed within a period of four weeks from the date of receipt of a copy of this order. No costs.

(V.N. Gaur)
Member (A)

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14th December, 2016