

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

O.A.No.1316/2017

Order reserved on 26th March 2018

Order pronounced on 28th March 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

Dev Raj (Aged about 62 years)
Group C
s/o late Sh. Ganga Bishan
r/o RD-238, Dharm Pura Extension
Najafgarh, New Delhi

..Applicant

(Mr. S N Sharma, Advocate)

Versus

1. The Chairman-cum-Managing Director
Delhi Transport Corporation
IP Estate, New Delhi

2. The Depot Manager
Kalkaji, Depot
New Delhi – 110 019

..Respondents

(Mr. P K Singh, Advocate for Mr. Rajeev Kumar, Advocate)

O R D E R

The applicant was employed as a Driver in Delhi Transport Corporation (DTC) on 25.02.1982, and promoted as Assistant Ticket Inspector (ATI) on 28.10.2014. He opted for DTC pension. On attaining the age of superannuation, he retired from service on 30.06.2015. Apparently, he was involved in a criminal case for which he was removed from service. He challenged his removal order before the labour court, who ordered his reinstatement but without back-wages. Consequently, he was reinstated in service on 25.08.2005. The applicant filed W.P. (C) No.23156/2005 before

the Hon'ble High Court of Delhi against the Labour Court award dated 17.08.2004 to the extent it had denied him the back-wages. The said writ petition was dismissed vide judgment dated 25.03.2009. Thereafter, the applicant filed LPA No.378/2009 against the said judgment dated 25.03.2009, which was allowed by the Hon'ble High Court, whose operative part reads as under:-

“5. Having heard learned counsel for the parties, we feel that the interests of justice will be served if it is directed that the Appellant be paid 50% of the back wages payable to him for the period 6th November, 1992 till 25th August 2005. It is ordered accordingly. The amount be paid by the DTC to the Appellant within a period of six weeks from today.”

2. The grievance of the applicant is that he has not been paid his full DCRG benefits and that the respondents illegally, vide Annexure A-1 (Colly.) orders dated 09.02.2017 and 15.02.2017, have deducted an amount of ₹6,59,906/- from his DCRG.

Aggrieved by the aforesaid action of the respondents, the applicant has filed the instant O.A. praying for the following main reliefs:-

“(a) Quash the impugned order dated 09.02.2017 & 15.02.2017.

(b) Direct the Respondents to release the Applicant's monthly pension with full arrears from July 2015 till its realization with 18% of interest.”

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply, in which they have broadly stated as under:-

3.1 The applicant was reinstated in service without back-wages vide memorandum dated 12.08.2005 in terms of order dated 17.08.2004 passed by the labour court. He re-joined his duty w.e.f. 26.08.2005.

3.2 The applicant had put in 33 years, 4 months and 5 days of service, out of which, for 8 months and 25 days, he was on leave without pay. Thus the qualifying service came to 32 years, 7 months and 10 days. Accordingly, his DCRG has been computed.

3.3 The amount of DCRG payable for the period of service rendered by the applicant came to be ₹5,17,806/- but he has been paid an amount of ₹6,58,677/-, i.e., an excess amount of ₹1,40,871/-.

3.4 The Pension Cell of DTC has also objected to the grant of Assured Career Progression (ACP) Scheme / Modified Assured Career Progression (MACP) Scheme benefits to the applicant in respect of the period when he was not in service and only 50% back-wages has been paid to him as per the court directions. The ACP/MACP benefits have been extended to the applicant inadvertently. It was found that the applicant has been paid an excess salary amount of ₹5,19,035/- towards ACP/MACP benefits to which he was not entitled to.

3.5 For the reasons mentioned in paragraphs 3.1 to 3.4 (supra), the applicant is held liable for refund of excess payment of ₹1,40,871/- towards DCRG and ₹5,19,035/- towards salary, totaling ₹6,59,906/-. Accordingly, vide the impugned orders, recovery of ₹6,59,906/- has been ordered.

4. I have considered the pleadings of the parties and heard the arguments of their counsel.

5. Admittedly, the applicant has not indulged in any act of misrepresentation for securing higher monetary benefits from the respondents. The computation of DCRG benefits as well as the ACP/MACP benefits payable to him was done by the respondents based on their own records. The applicant had absolutely no role to play in it. It is significant to note that the applicant retired from service on 30.06.2015 on attaining the age of superannuation, whereas the impugned orders Annexure A-1 (colly.) have been passed almost after one and half years of his retirement from service. Such act of the respondents is contrary to law laid down by the Hon'ble Apex Court in **State of Punjab & others etc. v. Rafiq Masih (White Washer) etc.** (Civil Appeal No.11527/2014 with connected Appeals) decided on 18.12.2014, wherein it has been held as under:-

“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 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.”

6. For the reasons discussed in the foregoing paragraphs and taking into consideration the ratio of law laid down by Hon'ble Apex Court in **Rafiq Masish** (supra), I am of the view that Annexure A-1 (colly.) orders are illegal and deserve to be quashed and set aside, and accordingly it is done.

7. The O.A. is allowed. The respondents are directed to release the withheld monthly pension of the applicant with interest of 8% per annum. This shall be done within a period of three months from the date of receipt of a copy of this order. The interest is payable up to the date of actual release of the pensionary dues. There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

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