

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

OA 2920/2015

Reserved on: 30.09.2016
Pronounced on: 5.10.2016

Hon'ble Mr. P.K. Basu, Member (A)

Dr. Parveen Sachdeva
S/o Late Shri T.C. Sachdeva
Assistant Chief Technical Officer
CESCRA, IARI, Pusa,
New Delhi-110012 ... Applicant

(Through Shri I.C. Mishra, Advocate)

Versus

1. Indian Agricultural Research Institute
Through its Director,
Pusa, New Delhi-110012
2. Indian Council of Agricultural Research
Through its Director General
Krishi Bhawan, Dr. Rajendra Prasad Road,
New Delhi-110001 ... Respondents

(Through Shri Rishi Kant Singh, Advocate)

ORDER

The applicant, who is working as A.C. Technical Officer in Indian Agricultural Research Institute (IARI), has filed this OA seeking quashing of impugned orders dated 15.10.2013 and 18.04.2015. Vide order dated 15.10.2013, recovery has been ordered against the applicant.

2. The genesis of the recovery order is clear from the letter dated 24.04.2012 by Senior Administrative Officer, IARI to the applicant. The contents of the letter summarizes the whole case:

"Whereas Mr Parveen Sachdeva, T-6 (Emp. No.20417) was placed in T-5 grade through assessment promotion under Field/Farm Technician Functional Group w.e.f. 1/1/1998 and further placed in T-6 grade w.e.f. 1/1/2003 vide office order No.18-3/95-Per.V (Part File-3) dated 31/10/2003.

Whereas when the new technical service rules were notified w.e.f. 3/2/2000, the employees desirous of continuing in old technical services rules were given option. However, Mr. Parveen Sachdeva did not elect to be governed by old Technical Services rules as such governed under New Technical Service Rules and his service matters will be dealt as per New Technical Service rules w.e.f. 3/2/2000.

Whereas as per Rule 6.4 (a) of TSR effective from 3/2/2000, the technical personnel in T-5 grade and possessing the essential qualifications prescribed for category-III for direct recruitment, shall be eligible for assessment promotion to T-6 grade in Cat.III after completing five years of service in T-5 grade. As per rule 6.4 (b) of TSR, the T-5 technical employees who do not possess the essential qualification as for direct recruitment prescribed for Cat.II shall be eligible for assessment promotion to T-6 grade after completing 10 years of service in T-5 grade provided such technical personnel are possessing the qualifications prescribed for direct recruitment to Cat. II (T-3). However such technical personnel in T-5 grade who do not possess the qualifications prescribed for direct recruitment to Cat.II (T-3) shall not be eligible for further assessment promotion to Cat.III of the technical services.

The qualifications for Cat.III of Field/Farm Technician Group for Direct recruitment is as under:

"Master's Degree in the relevant field or equivalent qualifications from a recognized University i.e. M.Sc. (Agril)/M.Sc."

In view of above qualification, M.A. (Economics) qualification can not be treated as relevant qualification for the Field/Farm Technician Functional Group. He does not possess the essential qualification for direct recruitment for Cat.III (T-6) of Field/Farm Technician Functional Group i.e. M.Sc. (Agril)/M.Sc as such his placement in T-6 is erroneous.

Subsequently ICAR vide its letter No. 19(10)/2004-Estt.IV dated 24/2/2006 amended the qualification for Cat. III as "Master's degree in Agriculture or any other branch of Science/Social Science relevant to agriculture or equivalent qualification from a recognized university", i.e. M.Sc. (Agril.) M.Sc/Economics is covered by term of 'Social Science' but the requirement of rules is social science relevant to agriculture' accordingly candidate should have studied agricultural economics as part of studies leading to award of the degree of MA (Economics). **It is clarified that these amendments came into force w.e.f. 24/2/2006.**

Mr. Parveen Sachdeva holds the following qualification:

3. B.Sc. (Gen)

4. M.A (Economics) Studied in Agril.Economics as one of the subject in M.A. (Eco.)

Mr. Parveen Sachdeva has studied in **"Agril.Economics"** as one of the subject in M.A. (Economics). Accordingly, he will become eligible for assessment promotion in T-6 grade w.e.f. **24/2/2006** under the clarification given by ICAR vide its letter No. 19(10)/2004-Estt.IV dated 15/10/2008.

Whereas Mr. Parveen Sachdeva, T-6 (Tech.Officer) was erroneously removed category bar from Cat.II (T-5) to Cat.III (T-6) w.e.f. 1/1/2003 in the pay scale of Rs.8000-13500 vide above cited office order as he does not possess the essential qualification prescribed for Cat.III under direct recruitment as per TSR.

ICAR vide its letter No. 19(10)2004-Estt.IV dated 24/2/2006 amended the qualification in Technical Service Rules under the Field/Farm Technician Functional Group Mr.Parveen Sachdeva became eligible for assessment promotion in T-6 grade in Cat.III w.e.f. 24/2/2006 when the amendment in qualification became effective. Accordingly, his placement in T-6grade w.e.f. 24/2/2006 instead of 1/1/2003 is to be rectified.

Show cause notice issued to him for rectifying the mistake in line with the direction of the Council. Now ICAR has intimated that the recommendations of the Committee on the anomaly in the matter of promotion/appointment of technical staff across different categories have been rejected by the Secretary/DG, ICAR.

Accordingly with the approval of the Director, IARI, Mr.Parveen Sachdeva stands reverted in T-5 grade w.e.f. 1/1/2003. Placement of Mr. Parveen Sachdeva in T-6 grade by removal of category bar vide this office order No.18-3/95-Per.V (Part file-3) dated 31/10/2003 is hereby withdrawn and illegitimate payment, if any, is to be recovered. His case for rectification of date of placement in T-6 grade w.e.f. 24/2/2006 will be placed in the next Assessment Committee meeting for which he is requested to fill up assessment form for the period 1.1.2003 to 24.2.2006, if he has not submitted the same earlier.

This issues with the approval of the Director, IARI."

3. It would be thus clear that the pay of the applicant had been erroneously fixed while promoting him to Category-III (T-6), which was rectified by the respondents. The mistake which the department committed was that whereas the applicant became eligible for T-6 grade with effect from 24.02.2006 when Indian Council of Educational Research (ICAR) amended the

qualification in Technical Services Rules, they placed the applicant in T-6 grade with effect from 1.01.2003.

4. The learned counsel for the applicant relied on order dated 8.12.2015 of this Tribunal in OA 862/2014, which was a similar case of recovery of pay against one Shri Kay Prasad, Scientist in ICAR due to wrong fixation of pay. The Tribunal, considering the judgment in **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.**, AIR 2015 SC 696, quashed the decision of the respondents to recover the excess amount from the applicant as one of the situations summarized, where recovery by the employer would be impermissible in law, was when the excess payment has been made for a period in excess of five years, before the order of recovery order is issued. It is argued that since in the present OA the recovery pertains to the period 2003 to 2006 i.e. more than five years before the impugned order dated 15.10.2013 was issued, both in light of the judgment in Rafiq Masih (supra) and order of the Tribunal in OA 862/2014 (supra), no recovery could be made from the applicant.

5. Learned counsel for the respondents, first of all, drew my attention to the judgment of the Hon'ble Supreme Court in **Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others**, Civil Appeal No.5899/2012 and specifically to the following observation of the Hon'ble Supreme Court:

"16..... Any amount paid/ received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

The learned counsel drew my attention to the following paras of the judgment in Rafiq Masih (supra):

"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under [Article 142](#) of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

He also drew my attention to sub-para (v) of para 12 of the judgment, which is as follows:

"(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 argued on the basis of the judgments in Chandi Prasad Uniyal (supra) and Rafiq Masih (supra) that the Hon'ble Supreme

Court has recognized the need for interference by Courts but only in matters when the recovery would result in hardship, which would far outweigh the equitable balance of the employer's right to recover. It does not take away the right to recover.

6. Learned counsel for the respondents also relied on the order of the Ahmedabad Bench of this Tribunal dated 18.06.2014 in OA 150/2012, in which based on the judgment of the Hon'ble Supreme Court in Chandi Prasad Uniyal (supra), the OA was disposed of allowing the respondents to recover the amount. The only condition put was that it should be in easy instalments not exceeding 15% of their total monthly emoluments.

7. I have heard the learned counsel for the parties, gone through the record of the case and perused the judgments cited.

8. Order of the Ahmedabad Bench of this Tribunal dated 18.06.2014 in OA 150/2012 had been delivered before the judgment of the Hon'ble Supreme Court in Rafiq Masih (supra) and, therefore, the Tribunal only relied on Chandi Prasad Uniyal (supra). Now that the judgment in Rafiq Masih (supra) is available, the order in OA 150/2012 cannot act as precedent. Order of the Tribunal in OA 862/2014 has been passed squarely relying on judgment in Rafiq Masih (supra). The judgment in Rafiq Masih (supra) being a judgment of the Division Bench as

opposed to Single Bench in Chandi Prasad Uniyal (supra), Rafiq Masih (supra) shall rule the field. As already stated, in Rafiq Masih (supra), the Hon'ble Supreme Court has recognized the employers right to recover but at the same time, it has directed to ensure that recovery should not be harsh or arbitrary to such an extent, as would far outweigh the employers right to recover. In fact, this is reiterated in sub-clause (v) of para 12, which we have quoted above.

9. The applicant is a Senior Scientist in IARI and not a Group 'C' or 'D' employee. Therefore, the observations of the Hon'ble Supreme Court in para 7 and sub-clause (v) of para 12 of the judgment in Rafiq Masih (supra) have to be read in conjunction. Clearly, the applicant being a senior Scientist, it will not be a case of hardship. But the order of the Hon'ble Supreme Court in Rafiq Masih (supra) is very specific in such cases namely that recovery from employees is impermissible when excess payment has been made for a period of five years before the order of recovery is issued. The Hon'ble Supreme Court has clearly stated that in such situation, recovery would be impermissible in law. In view of this specific ruling of the Hon'ble Supreme Court, the OA has to be allowed.

10. Thus, the impugned orders dated 15.10.2013 and 18.04.2015 are quashed and set aside. The respondents are

directed to refund back the amount recovered from the applicant on this account. No costs.

(P.K. Basu)
Member (A)

/dkm/