

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2951/2016

Reserved on: 13.10.2017
Pronounced on:25.10.2017

Hon'ble Mr. Uday Kumar Varma, Member (A)

R.R. Dhruv s/o late M.R. Dhruv
R/o A-2/101, Sector-11,
Rohini, Delhi – 110 085.
Retired Pharmacist from
Bhagwan Mahavir Hospital
Pitampura, Delhi.

...Applicant

(By Advocate: Sh. Sourabh Ahuja)

Versus

1. Govt. of N.C.T. of Delhi through
Chief Secretary,
Delhi Sachivalaya, Players Building,
New Delhi.
2. Secretary,
Health & Family Welfare,
Department of Health & Family Welfare,
GNCT of Delhi, 9th Level, A-Wing,
I.P. Extension, Delhi Secretariat,
Delhi – 110 002.
3. Medical Superintendent,
Bhagwan Mahavir Hospital,
GNCT of Delhi, Pitampura,
New Delhi – 110 085.
4. Pay and Account Officer,
PAO-VII, GNCT of Delhi,
Peeragarhi, Delhi.

...Respondents

(By Advocate: Ms. Ritika Chawla)

ORDER

The instant Original Application has been filed by the
applicant under Section 19 of the Administrative Tribunals
Act, 1985 seeking the following main relief(s):-

- “a. Quash and set aside the order dated 01.07.2014 and accord all the consequential benefits to the applicant; and*
- b). Direct the respondents to refund an amount of Rs.3,12,816/- (Rupees Three Lacs Twelve Thousand Eight Hundred Sixteen only) along with interest @ 18% per annum along with all the consequential benefits (i.e. re-fixation of pay/pension, grant of arrears etc.).*

2. Brief facts of the case are that the applicant joined as Pharmacist, a Group ‘C’ post, having no promotional avenues, with the respondents on 11.12.1975. It is the contention of the applicant that he was granted the benefit of 3rd financial upgradation under MACP Scheme w.e.f. 01.09.2008 and his Grade Pay was fixed as Rs.5400/-. He was paid arrears with effect from the same date, i.e., 01.09.2008 and continued to be paid at Grade Pay of Rs.5400/- till 31.05.2014. He retired after attaining the age of superannuation on 30.06.2014. The applicant submits that it was to his utter dismay that after his retirement, the respondents vide the impugned order 01.07.2014 reduced his Grade Pay from Rs. 5400/- to Rs.4800/- w.e.f. 01.09.2008 without issuing any show cause notice to him and recovered an amount of Rs.3,12,816/- from the dues of earned leave amount.

3. Being aggrieved, the applicant preferred numerous representations dated 01.01.2016, 16.05.2016 and

16.07.2016 to the respondents with a request to refund the recovered amount of Rs.3,12,816/- to him. In support of his claim, the applicant also apprised the respondents about the decision of the Hon'ble Apex Court rendered in an identical and similar matter i.e. ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc.*** [2014 (8) SCALE 613]. The applicant submits that his representations were ignored by the respondents and even acted contrary to the law laid down by the Apex Court in the above decision. The case of the applicant is that as he belongs to Group 'C' category, the act of the respondents in making recovery immediately after his retirement after having made the alleged excess payment for five years, is violative of the DOP&T OM dated 02.03.2016 as well as principles of natural justice. Hence, the impugned order is not sustainable in the eyes of law.

4. The applicant further submits that he is identically situated as one Chand Prakash Vats (Pharmacist), who had been appointed w.e.f. 28.10.1976 and had been placed in the Grade Pay of Rs.5400/-, but was never reverted to the Grade Pay of Rs.4800/- and no recovery had been made from his salary on account of his reversion. In support of this averment, the applicant has relied upon the

information received by him RTI Act, which is placed on record at Annexure-6 (page 49).

5. Learned counsel for the applicant has further relied upon the order of the Tribunal dated 02.12.2016 in OA No.1174/2016 [**Bimal Kumar Bahl vs. Govt. of NCT of Delhi**] whereby a Coordinate Bench of this Tribunal found the judgment of the Hon'ble Supreme Court in **Rafiq Masih's** case (supra) duly applicable and directed the respondents not to recover any amount from his pay.

6. Learned counsel for the respondents, on the other hand, has filed a counter affidavit, vehemently, opposing the averments in the OA. It has been stated that the applicant had been granted 1st, 2nd and 3rd MACP in Grade Pay of Rs.4600, 4800 and 5400 respectively vide office order dated 23.12.2010, in pursuance of the OM dated 18.11.2009 with the prior approval of the Finance Department. Thereafter, a clarification had been issued by the Department of Personnel and Training on 20.09.2013 that pharmacist with entry of Rs.2800 in PB-1 and in receipt of NF grade in the grade pay of Rs.4200 on completion of 2 years of service is eligible for 2nd and 3rd financial upgradation under MACP in the grade pay of Rs.4600 and 4800 respectively. Thereby the pay of the

applicant, who was graded 3rd MACP in the Grade Pay of Rs.5400/- was reverted back to Grade Pay of Rs.4800. The order of pay re-fixation was issued after the superannuation of the applicant on 01.07.2014. The stand of the respondents in opposing the contentions of the applicant is similar and identical as has been taken by them in an identical matter allowed by the coordinate Bench of this Tribunal in **Bimal Kumar Bahl's** case (supra).

7. I have thoroughly examined the pleadings of the parties as also the decisions relied upon by the applicant and carefully heard the arguments so advanced by the learned counsel for both the parties.

8. It may be appropriate to quote the operative paragraph, namely, paragraph 12 of the judgment of the Hon'ble Supreme Court in **Rafiq Masih's** case (supra), which reads 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, summaries 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."

The facts of this case make it abundantly clear that this case is covered under the stipulation (ii) of paragraph 12, referred to above, which lays down that recovery from retired employees, or employees who are due to retire within one year from the date of order of recovery would be impermissible in law. It is also abundantly clear that it is not necessary that stipulation (ii) of paragraph 12 would be effective only when the stipulation (iii) of paragraph 12 is also satisfied. In other words, the stipulations contained in paragraph 12 of **Rafiq Masih's** judgment are mutually exclusive and not concurrent and inclusive.

9. Having gone through the facts and circumstances and contentions of the parties, I am of the considered opinion that the instant case is fully covered by the decision of the coordinate Bench of this Tribunal in OA No.1174/2016 [**Bimal Kumar Bahl vs. Govt. of GNCT of Delhi** (supra)],

which was allowed by the coordinate Bench of this Tribunal relying upon the decision of the Apex Court in ***Rafiq Masih's*** case (supra), and I have no hesitation in allowing this Original Application in the same terms. No costs.

(Uday Kumar Varma)
Member (A)

/Ahuja/