

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

O.A No.3935/2012

Order Reserved On:28.09.2016
Pronounced on: 30.09.2016

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

Bhisham Mehta
S/o Late Shri S.N. Mehta
R/o D-5, Anamika Apartment,
Plot No.25/B, Sector-4, Dwarka,
New Delhi. .. Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

Union of India & Ors through:

1. The Secretary,
Govt. of India,
Ministry of Urban Affairs & Employment,
Nirman Bhawan,
New Delhi-110001.

2. Director General of Works,
Central Public Works Department,
Nirman Bhawan,
New Delhi.

3. The Chief Controller of Accounts,
Internal Audit Wing,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi. .. Respondents

(By Advocate: Shri R.N. Singh)

ORDER

The short issue in this case is that the applicant had availed of LTC (other than Home Town) which was not permissible under the rules. The department, therefore, gave a notice dated 19.10.2011 (Annexure A-6) to the applicant to deposit an amount of Rs.93,701/- within 7 days towards recovery of LTC advance, which was erroneously

paid to him. When the applicant failed to deposit the said amount within the stipulated period, the same was recovered from him from the amount of Leave Encashment payable to him on his retirement. The applicant retired from service on 30.09.2011 and had submitted the LTC bill in August, 2011.

2. The audit party submitted its audit report on 30.09.2011, the same date on which applicant retired from service, with instruction to make recovery of LTC amount of Rs.93,701/- from the applicant as it was sanctioned/drawn in violation of LTC Rules.

3. The applicant states that according to the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc. 2014 (14) SCALE 300***, recovery of the amount from the applicant is impermissible in law. In this regard, the following para of the judgment was cited:-

“18. 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”.

4. It is stated that according to clause (ii) above, recovery from retired employees, or employees who are due to retire within one year of the order of recovery is not permissible and since the order of notice is dated 19.10.2011 seeking depositing of the amount within 7 days and the applicant had already retired on 30.09.2011, the amount cannot be recovered in accordance with sub-cause (ii) above.

5. Learned counsel for the respondents drew my attention to para 7 of the judgment in ***Rafiq Masih's case*** (supra), which is as follows:-

“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".

6. He also referred to clause (v) of para 18, which is already quoted above and argued that the above observations of the Supreme Court makes it clear that 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. It is, therefore, contended that since the applicant was a Group 'A' employee, being an Assistant Engineer, and has received sufficient retiral benefits, it is not likely to cause hardship to the applicant, which would far outweigh, employer's right to recover.

7. It is further submitted that the applicant submitted his claim only in August, 2011, which is a month before his retirement on 30.09.2011. The department took prompt action and got it audited and the audit report was submitted on 30.09.2011 itself. Without further delay, the applicant was issued a letter dated 19.10.2011 to deposit the amount within 7 days. Therefore, it is argued that the department took very prompt action and it is not a case that a very old matter is being dug up by the department. The LTC advance was sanctioned on 25.05.2011 (Annexure A-2). 10 days Earned Leave conversion was ordered on 25.05.2011 (Annexure A-3). Vide Office Order No.9(1)/N. Division/11-12/1992 dated 01.08.2011 (Annexure A-4), the LTC was sanctioned for the block year 2010-13.

8. I have heard both the learned counsel and considered the facts of the case in detail.

9. The facts are that the applicant, immediately before his retirement, took LTC advance for a journey which he was not entitled to under the LTC Rules. He submitted his bill only in August, 2011. There is no doubt that the department was very prompt in scrutinizing the bill and got it audited as he was retiring on 30.09.2011. The audit was completed on 30.09.2011, i.e., the date the applicant retired. They issued him one letter dated 19.10.2011 (Annexure A-6) to deposit the money in 7 days, as the advance was issued to him erroneously. The applicant is claiming protection under para 18 of ***Rafiq Masih's case*** (supra), specifically clause (ii). It is a fact that the applicant was to retire within a year and is now a retired employee. But it is also a fact that the

applicant wrongly drew the LTC advance just before his retirement and then raised his claim. The department, in my opinion, keeping in view his retirement on 30.09.2011, handled his case extremely promptly and asked him to deposit the amount. This is not a case where the retired employee or the employee who is due to retire within one year is asked to deposit some amount arising out of some erroneous payments made long time ago in the past. As a Group 'A' officer, he was supposed to be aware of the rules. Despite being aware of the rules, he drew the LTC advance wrongly, may be due to negligence of the office or it could be connivance of the office. When he was asked to refund the money, he is now trying to take shelter under clause (ii) of ***Rafiq Masih's case*** (supra). As cited by the learned counsel for the respondents, their Lordships have clarified circumstances in which recovery orders can be interfered with, which I have already discussed above. Clearly, there is no hardship in this case to outweigh employer's right to recover. Moreover, as stated earlier, the applicant took the advance very close to his retirement and definitely within one year of his retirement. Therefore, in my opinion para 18(ii) & (v) read with para 7 of the judgment in ***Rafiq Masih's case*** (supra), clearly is not in favour of the applicant.

8. I, therefore, dismiss this OA. No costs.

**(P.K. BASU)
MEMBER (A)**

Rakesh