

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4198/2013

Order Reserved on: 09.03.2017
Order pronounced on 04.05.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Shiv Narain Boyal
S/o Sh. Hanuman Ram
R/o 63/45A, Kirti Nagar, Defence Colony
Agra (UP). ... Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through the Secretary
Ministry of Defence, Govt. of India, New Delhi.
2. The Commanding Officer
Equipment Depot Workshop
EME, Agra (UP). ... Respondents

(By Advocate: Shri Ashok Kumar)

O R D E R

By V. Ajay Kumar, Member (J):

The OA has been filed questioning the reduction of the pay of the applicant from GP Rs.4200 to Rs.2800 w.e.f. January, 2013.

2. The brief facts, as narrated in the OA, are that the applicant was initially enrolled in Army w.e.f. 21.04.1971 and was discharged on 30.04.1997. Thereafter, he was appointed in the respondent-Department as TCM w.e.f. 01.05.1997 and accordingly retired from the said post on 31.03.2013, on completion of 60 years of age of his superannuation.

3. Since the applicant did not earn any promotion, he was granted 1st Financial Up-gradation under MACP Scheme and accordingly his pay was fixed in Pay Band-2 of Rs.9300-34800 + Grade Pay of Rs.4200, vide Order dated 14.10.2009, and accordingly his pay was fixed at Rs.10360+Rs.4200 GP w.e.f. 01.09.2008. The audit objected to this as he was entitled to Pay Band-1 of Rs.5200-20200 with Grade Pay of Rs.2800 as per MACP Rule of granting upgradation in the hierarchy of scales and not hierarchy of promotional posts. The pay of the applicant was thus revised w.e.f. 01.09.2008 to Rs.10580+Rs.2800 GP in Pay Band-1 of Rs.5200-20200, vide Order dated 29.03.2012. However, the respondents did not give any show cause notice and without giving any opportunity to the applicant, reduced his Grade Pay from Rs.4200 to Rs.2800 w.e.f. January, 2013. Actually, in the Order dated 29.03.2012, the Pay Band also has been erroneously shown as Rs.9300-34800 whereas it should be Rs.5200-20200.

4. Heard Shri Yogesh Sharma, the learned counsel for the applicant and Shri Ashok Kumar, the learned counsel for the respondents, and perused the pleadings on record.

5. Shri Yogesh Sharma, the learned counsel for the applicant, at the time of hearing of the OA, submitted that he is not pressing the OA in respect of the challenge in re-fixation and he is limiting his prayer to the extent of recovery made from his Gratuity amount, in pursuance of the impugned action.

6. The learned counsel submits that the applicant is an Ex-Serviceman and was only worked as TCM, the respondents reduced his pay just two months prior to his date of retirement. He further submits that the applicant was in no way responsible for excess payment, if any, and that the applicant is suffering a lot financially in view of the recovery made from the Gratuity amount, in this advanced age.

7. Placing reliance on the decision of the Hon'ble Apex Court in **State of Punjab v. Rafiq Masih (White Washer) etc**, (2015) 4 SCC 334, he prayed for refund of the recovered amount.

8. Per contra, the learned counsel for the respondents submits that once the re-fixation is upheld, the consequent recovery cannot be questioned. He further submits that decision in **Rafiq Masih** (supra) has no application to the applicant and accordingly prays for dismissal of the OA.

9. The Hon'ble Apex Court in **Rafiq Masih** (supra), held as under:

618. 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 'Døservice).

(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.ö

10. Admittedly, the applicant was in no way responsible for the wrong fixation of his pay. The respondents re-fixed his pay two months prior to his retirement and withheld the consequential amount from his Gratuity.

11. In the circumstances, we are of the view that Para 18(ii) of the case of **Rafiq Masih** (supra) is applicable to the applicant's case.

12. Accordingly, the OA is partly allowed, to the extent that the respondents are directed to release the withheld amount to the applicant within a period of 90 days from the date of receipt of a copy of this order, however, without any interest. No costs.

(P. K. Basu)
Member (A)

V. Ajay Kumar)
Member (J)

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