

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

O.A. No.537 of 2016

This the 4th day of October, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Sh. Vishnu Sawroop (Aged 60 ½ years)
S/o Sh. Nathi Lal,
Near Ambedkar Park,
Meethapur Extension,
Badarpur-New Delhi-110044.

....Applicant
(By Advocate : Shri CSS Pillai for Shri Lalta Prasad)

VERSUS

Director General,
Prasar Bharti,
(Broadcasting Corporation of India)
Directorate General Doordarshan,
Doordarshan Bhawan,
New Delhi.

.....Respondents
(By Advocate : Ms. Vertika Sharma)

ORDER (oral)

By filing this OA, the applicant is seeking the following reliefs:-

- “8.1 quash and set aside the order dt. 11.9.2015 by respondent and declare the action of recovery Rs.1,19799 from the DCRG account/amount at the time of retirement are illegal, arbitrary and violation of judgment passed by Hon'ble Supreme Court.
- 8.2 direct the respondents refund the recovery amount Rs.1,19,799/- with the interest of 10% to applicant.
- 8.3 impose the exemplary cost Rs.55300/ upon the respondents for their illegal action.
- 8.4 pass any such order/orders which deems fit and proper in the interest of justice.”

2. Counsel for the applicant submitted that the grievance of the applicant is that the respondents have recovered vide impugned order dated 11.9.2015, an amount of Rs.1,19799/- from the DCRG amount of the applicant at the time of his retirement without issuing any show cause notice on the ground of wrong fixation of his pay at the time of implementation of 6th CPC recommendations w.e.f. 1.1.1996 which is violation of the Apex Court's judgments on this issue. He further stated that in the impugned order, the respondents have stated that "4. Since before implementation of 5th CPC, the official was in pay scale Rs.1400-2600, therefore, pay fixation at Rs.5675/- in pay scale of Rs.5500-9000 w.e.f. 1.1.1996 seems to incorrect. The official has never received any increment in the pre-revised scale of Rs.1640-2900. As per the order quoted above both the scales have been merged w.e.f. 1.1.1996."

3. Counsel for the respondents submitted that the said recovery is an administrative decision and it is an employer's right to correct the mistakes. Counsel further stated that if the applicant desires for any waiver from recovery then he will have to apply under the provisions of Para-3 (iv) of OM dated 6.2.2014 as a requirement of Para 5 of another DOP&T OM dated 2.3.2016 (notified by DOP&T of Hon'ble SC decision in Rafiq Masih (case) read as under:-

"Wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No.18/26/2011-Estt. (Pay-I) dated 6th Feb 2014."

But the respondents have not received any such application from the applicant in terms of the aforesaid OMs. Thus, the present OA is not maintainable.

4. Heard learned counsel for the parties and perused the material placed on record. It is an admitted fact that the alleged recovery pertains to the year 1996 and the same has neither been due to any misrepresentation on the part of the applicant nor had any relation to any dues which were required to be recovered from the applicant. It is a case of alleged wrong fixation of pay, at the time of implementation of recommendations of Vth CPC as according to the respondents the pay of the applicant should not have been fixed at Rs.5675/- in the pay scale of Rs.5500-9000 w.e.f. 1.1.1996 and the same should have been fixed at initial stage of pay scale of Rs.5500-9000 at initial stage without giving benefit of one increment w.e.f. 1.1.1996.

5. The respondents have themselves stated that in such type of cases there is provision of seeking waiver of such recovery but as no such request has been made in terms of the aforesaid OMs, the case of the applicant should not have been considered by them.

6. Keeping in view the OM No.F.No.18/03/2015-Estt. (Pay-I) dated 2.3.2016, a copy of which is at pages 67 to 69 of the paperbook, wherein in para 5, it has been provided as under:-

5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries / Departments are advised to deal with the issue of wrongful / excess payments made to Government servants in accordance with above decision of the

Hon'ble Supreme Court in CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014."

7. Therefore, as there is a provision of waiver of such type of recovery as made from the applicant, this Court deems it appropriate at this stage to direct the respondents to treat this OA as a representation of the applicant for seeking waiver of the said recovery as the same had been affected after his retirement from his DCRG amount and pass a reasoned and speaking order after having consultation with the Department of Expenditure in the matter within a period of 90 days. The decision so taken shall also be communicated to the applicant.

8. The present OA is partly allowed in terms of above directions. There shall be no order as to costs.

**(Nita Chowdhury)
Member (A)**

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