

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

O.A. No.1838 of 2016

This the 10th day of October, 2018

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

Dr. Tarsem Lal,
s/o Late Sh. Taro Ram,
Ex-Principal Scientist,
National Bureau of Soil Survey & Land Use Planning,
Delhi Regional Centre, IARI Campus, New Delhi-12.
A-115, Freedom Fighters Enclave,
Neb Sarai, IGNOU Road, New Delhi-12

....Applicant

(By Advocate : Shri Amit Chawla)

VERSUS

1. Ministry of Agriculture,
Through its Secretary,
Krishi Bhavan, Rajendra Prasad Road,
New Delhi-110001.
2. Indian Council of Agricultural Research & DARE,
Through its Director/Secretary,
Krishi Bhawan, New Delhi-110114.
3. Agricultural Scientist Recruitment Board,
Through its Chairman,
Krishi Anusandhan Bhawan-I, New Delhi-110012.
4. National Bureau of Soil Survey & Land Use Planning,
Through its Director,
Amravati Road, Nagpur-440023.

.....Respondents

(By Advocate : Shri Vikram Singh for Shri S.K. Gupta)

ORDER (Oral)

Heard Shri Amit Chawla, learned counsel for the applicant,
and Shri Vikram Singh, proxy counsel for Shri S.K. Gupta, learned
counsel for the respondents.

2. In this OA filed under Section 19 of the Administrative Tribunals, Act, 1985, the applicant is seeking the following reliefs:-

- “a. Allow the present O.A. and quash the letter dated 22nd February 2016 of the recovery order of arrears issued by the Director, ICAR-NBSS & LUP, Nagpur vide office order F.No.-4-74-78/Admn./20245/3. in contravention of Notification dated 02.03.2016 direction for relief of recovery under DOP&T vide F.No.18/3/2015-Esstt.(Pay).
- b. Pass such other and further orders or direction as this Hon’ble Court may deem just and proper in the facts and circumstances of the case.

2. The applicant in this OA has challenged the order dated 22.2.2016, which reads as follows:-

“WHEREAS that Dr. Tarsem Lal, Principal Scientist, Regional Centre, New Delhi of this Bureau was promoted to the next higher grade as Principal Scientist w.e.f. 27.07.1998 (Pre-revised) vide Council’s Office order No.203/2003-AU dated 30.11.2012. Accordingly, the pay has been fixed and arrears of pay was also paid to him.

AND WHEREAS in the ICAR, New Delhi circular No.2-26/2001-AU dated 19.12.2014, it has been decided that as per Hon’ble Supreme Court direction, arrears in terms of monetary benefits may be allowed on pension so calculated after fixing the notional pay in case of retired scientist but they would not be entitled for any other monetary benefits. Similarly, scientists who are in service will be entitled for notional fixation of pay as Principal Scientist w.e.f. 27.07.1998, but not for arrears of backwages. However, actual benefits in terms of arrears will be effective from July, 2014 in the case of Scientists who are in service.

AND WHEREAS As per Hon’ble Court direction the respondent would be entitled for notional fixation of pay but would not be entitled for arrears of back wages.

AND WHEREAS the case of Dr. Tarsem La, Principal Scientist was not regulated accordingly, as he was given arrears of back wages by the Institute and it was also clarified in Council’s letter dated 19.12.2014 that he may be given the benefit of notional fixation of pay as Principal Scientist with effect from 27.07.1998, but the actual benefit shall be effective from July, 2013 only.

NOW, therefore, the Competent Authority is requested to recover the excess arrear paid to Dr. Tarsem Lal, Principal Scientist."

3. Applicant has alleged that the impugned order is not sustainable on the ground of judgment of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Waster) etc.*** in CA No.11527/2014 and in compliance of the aforesaid judgment of the Apex Court, the DOP&T has also issued an OM dated 2.3.2016.

4. So far as judgment of the Hon'ble Supreme Court in ***Rafiq Masih*** (supra) is concerned, in the said judgment, the Hon'ble Supreme Court while observing that 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 has summarized 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.

5. None of the above said conditions covers the case of the applicant having regard to the facts and circumstances of the present case, as it is admitted fact that applicant represented against the Circular dated 19.12.2014 regarding the arrears of back wages paid on account of assessment promotion under CAS w.e.f. 27.7.1998 was rejected by the respondents vide order dated 29.4.2016 wherein they specifically held as follows:-

“The representation of Dr. Tarsem Lal, Pr. Scientist has been examined in the Council and it is observed that his case for promotion to the post of Principal Scientist was considered in pursuance of Hon’ble Supreme Court Judgment dated 30.03.2011 given in the case of Dr. Sundararaju. As per Hon’ble Court direction “**the respondent would be entitled for notional fixation of pay but would not be entitled for arrears of back wage.**” However, the case of Dr. Tarsem Lal, Principal Scientist was not regulated accordingly, as he was given arrears of back wages by the Institute. It was also clarified in Council’s letter of even number dated 19.12.2014 that, he may be given the benefit of notional fixation of pay as Principal Scientist w.e.f. 27.07.1998 but actual benefit shall be effective from July, 2013 only.

Having regard to the issues raised in the representation dated 05th Mar, 2016, it is clarified that, the institute had already been directed for recovery vide council’s letter dated 19.12.2014. Hence, the instructions of the Council given in the letter dated 19.12.2014 may please be adhered to and all recoveries, as admissible under the rules may kindly be made immediately.”

6. Further keeping in view the judgment of the Hon’ble Supreme Court in the case of **High Court of Punjab and Haryana and others vs. Jagdev Singh** in Civil Appeal No.3500/2006 decided on 29.7.2016, the Hon’ble Apex Court held as follows:-

“9 The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10 In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.” (emphasis supplied).

11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.

13 The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs.”

this Court does not find any illegality in the action of the respondents. However, as the respondents have asked for recovery of actual amount of Rs.624,941/- from the applicant towards pay fixation but directed the applicant to seek refund of the excess income tax deposited from the Income Tax Department. This is not a proper course in this case, as the alleged wrongful payment of arrears was made to the applicant by the respondents after deducting the admissible amount towards Income Tax. As such, the respondents are directed to recover the admissible amount as per rules from the applicant after deducting the amount which was deducted by them towards the income tax from the actual amount of Rs.624.941/- and then take up the matter in this regard with the Income Tax Department.

7. In the result, for the foregoing reasons, the present OA is partly allowed in above terms. There shall be no order as to costs.

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

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