

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.2030/2016

Order Reserved on: 20.08.2018
Order Pronounced on: 23.08.2018

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

Raj Kumar Dahiya, Asstt. Director (Retd.)
Aged about 66 years,
S/o Late Sh. Hardev Singh,
R/o H.No.22, Ishwar Colony,
Bawana, Delhi-110 039 - Applicant

(By Advocate: Mr. Somdutt Kaushik)

Versus

Delhi Development Authority,
Through Vice Chairman,
Vikas Sadan, INA,
New Delhi-110 023 - Applicant

(By Advocate: Ms. Gitanjali Sharma)

ORDER

The applicant has filed this Original Application
(OA) seeking the following reliefs:-

- "i. to set-aside recovery order dated 17.10.2012 and restore back the recovered amount of Rs.67383/- with 18% interest per annum to the applicant.
- ii. the respondent be directed to pay balance amount Rs.21615 in the gratuity and Rs.19076/- in commutation of pension and arrears of pension from 1.6.2010 to upto date.
- iii. award 50,000/- rupees cost of litigation.

iv. Direct the respondent to grant an oral hearing to the applicant to explain the lawful position.

v. or any other order or directions as deemed fit in the facts and circumstances of the case may be passed."

2. The brief facts as stated by the applicant in this OA are that the applicant retired on 31.05.2010. It is the case of the applicant that after retirement, the applicant came to know that the pay scale of Assistant has been upgraded in the pre-revised of Rs.7450-225-11500 w.e.f. 1.1.2006. Accordingly, the applicant requested the competent authority to refix his pay as Assistant w.e.f. 1.1.2006 vide letter dated 18.08.2011 and 11.11.2011. Thereafter, the competent authority refixed his pay as Assistant on 1.1.2006 and as on upto the date of his retirement i.e. 31.5.2010 in the pre-revised upgraded pay scale of Rs.7450-225-11500 and arrears were paid to him. However, a copy of letter dated 27.10.2015 addressed to Branch Manager, CBI, Barwala, Delhi, has been received by the applicant in which his pension has been refixed Rs.10600 per month and recovery worked out Rs.67383/-. It is submitted that the as per the letter dated 27.10.2015, refixation of his pension as Rs.10,600/- and recovery to the tune of

Rs.67383/- are not correct and justified in accordance with the pay re-fixed by the competent authority. Thereafter, the respondents issued an impugned order dated 17.10.2012 for recovery of excess payment. Thereagainst the applicant has made a representation dated 06.04.2016 requesting to withdraw the refixation of pension and recovery as mentioned in letter dated 27.10.2015. Hence, the present Original Application.

3. Opposing the OA, the respondents have filed their reply. In reply, it is submitted that inadvertently the pay of the applicant was wrongly fixed on the basis of the last basic pay which was shown Rs.17330/- with Grade Pay Rs.4800, but the said mistake was noticed at the time of pre-audited and accordingly dues were not released.

4. It is further pleaded by the respondents that the calculation shown in para 4.7 of the OA is on the basis of provisional LPC issued by the DDO before his retirement in the month of April, 2010 which is not tenable as the same has been pre-audited at the time of his retirement. It is also submitted that the pay of the applicant was mistakenly stepped up with reference to a Jr. Assistant whose pay was already mistakenly stepped

up to a junior UDC which was not found in order. Hence, the fixation of pay of the applicant has been rectified and his pay has been correctly fixed.

5. It is pleaded that the merger is not applicable in the case of the applicant as he was promoted as Assistant vide EO No. 26 dated 03.01.1996 issued by Joint Director (CR) as per entry recorded in the service book, whereas as per the guidelines given in para 2 of F&E Circular No.9/2010, the said merger is only applicable to those Assistants who were promoted between 01.01.2006 to 31.08.2008.

6. It is further pleaded that due to incorrect fixation of pay unintentionally and authorization of pension and other benefits, the excess payment was made and on recasting of the case of the applicant, the overpayment was recovered/adjusted through his bank account. It is also submitted that the excess recovery of State money has the mandate of law as laid down in the case of **State of Punjab & Ors. vs. Rafiq Masih and Govt. of India**, Deptt. of Personnel & Training, OM F.No.18/03/2015-Estt.(Pay-I) dated 02.03.2016.

7. Having carefully considered the rival submission made by the learned counsel for the parties and perused the pleadings available on record, the short issue involved in this case is whether the recovery made by the respondents is permissible in law or not.

8. It is evident from the record of the proceedings that the applicant had filed two misrepresentations dated 18.08.2011 and 15.11.2011. On the basis of the said misrepresentations, the DDA had refixed the pay of the applicant as Assistant on 01.01.2006 and as upto the date of retirement i.e. 31.05.2010 in the pre-revised upgraded pay scale of Rs.7450-225-11500. The respondents have fairly submitted that this merger is not applicable in the case of applicant as he was promoted as Assistant vide order dated 03.01.1996 whereas, the merger is only applicable to those Assistants who were promoted between 01.01.2006 and 31.08.2008. Hence, it is a case of misrepresentations on the part of the applicant, which led to erroneous fixation of pay.

9. It is also noted that the calculation made by the applicant in para 4.7 of his OA is on the basis of provisional LPC shown as Rs.17330/- with Grade Pay

Rs.4800 before his retirement in the month of April, 2010 which is not tenable as the same has been pre-audited at the time of his retirement accordingly dues were not released.

10. This Tribunal has also gone through the judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Ors. etc. vs. Rafiq Masih (White Washer)**, (2015)4 SCC 334 relied upon by the respondents, in which it was 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, 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."

11. The situation no. (ii) above cannot apply to facts of the present OA as wrong fixation of pay of the applicant had only been done on the basis of provisional LPC issued by the DDO before his retirement but at the time of his retirement, the same has been pre-audited. It is also noted that the applicant retired as Assistant Director which is Group 'B' Post and as such, he neither belongs to Class-III nor Class IV Officer. Accordingly, the case of the applicant does not fall in any of the situations enumerated in **Rafiq Masih's** case (supra).

12. This Court does not find that the case of the applicant even falls under the exceptions of extreme hardships, as he retired from the post of Assistant Director, which is a Gr. 'B' post. As such, the amount received by the applicant without authority of law has been rightly recovered by the respondents to obviate

unjust enrichment of the applicant at the cost of public exchequer.

13. In the case of **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.**, (2012)8 SCC 417, the Hon'ble Supreme Court has held as under:-

"16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

14. For the aforesaid reasons, the OA is bereft of merit and is accordingly dismissed. No order as to costs.

(Nita Chowdhury)
Member (A)

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