

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

OA-1070/2017

Reserved on : 23.04.2018.

Pronounced on : 03.05.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Madan Lal Mittal, 63 years
Retired Pharmacist,
S/o Late Sh. Baini Ram,
R/o H.No. 176, Pocket-7,
Block-B, Sector-4,
Rohini, Delhi-110085.

.... Applicant

(through Sh. Sourabh Ahuja, Advocate)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary,
Delhi Sachivalaya,
Players Building,
New Delhi.
2. Secretary Principal Secretary,
Health & Family Welfare,
Department of Health & Family Welfare,
GNCT of Delhi,
9th Level, A-Wing, IP Extension,
Delhi Secretariat, Delhi-110002.
3. CDMO (North-West District),
Delhi Health Service (GNCT of Delhi)
DGD Building Complex,
Sector-13, Rohini,
Delhi-110085.
4. Pay and Account Officer,
PAO-VII,
GNCT of Delhi,
Peeragarhi, Delhi.

5. Director,
Department of Health Service,
GNCT of Delhi,
F-17, Karkardooma, Delhi.

6. Finance Secretary,
GNCT of Delhi,
4th Level, A-Wing,
IPstate, New Delhi.

..... Respondents

(through Sh. Amit Anand, Advocate)

ORDER

Briefly stated, the facts of the current O.A. are that the applicant joined as Pharmacist (Group-C) in the office of the respondents on 26.10.1976.

2. The applicant submits that in pursuance of Government of India Office Memorandum dated 18.11.2009 and 23.10.2010 the respondents refixed his pay. He was granted 3rd financial upgradation under MACP Scheme w.e.f. 01.09.2008 and his grade pay was fixed at Rs.5400/- and arrears were also paid. He continued to draw the grade pay of Rs.5400/- till May, 2014.

3. However, the respondents reduced the grade pay of the applicant from Rs.5400/- to Rs.4800/- w.e.f. August, 2014. The applicant submits that no show cause notice was given to him, hence the reduction in his grade pay from Rs.5400/- to Rs.4800/- is violative of principles of natural justice. The applicant was further surprised to receive the order dated 20.10.2014, whereby the

respondents have withheld/recovered an amount of Rs. 3,53,562/- from his gratuity, barely ten days before his superannuation on 31.10.2014.

4. Against the recovery amount of Rs. 3,55,180/-, the applicant submitted a representation on 15.06.2016 to refund the amount withheld from his gratuity. The applicant has placed reliance on the judgment of Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih & Ors.**, 2014(8)SCALE 613 wherein the following has been held:-

“12. 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, summarise 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. The applicant has submitted that similarly situated persons, namely, Som Prakash, Jai Singh Jain and Bimal Bahl approached this Tribunal by filing OA Nos. 98/2015, 2083/2015 and 1174/2016 respectively, and the same were allowed. The applicant has also submitted that in the case of Sh. Chand Prakash Vats (Pharmacist, who retired in 2014 from Rao Tula Ram Hospital, Jafarpur, GNCT of Delhi), the respondents have not reduced the grade pay from Rs.5400/- to Rs.4800/-. It is contended that the action of the respondents is discriminatory and against the mandate of Article 14 of the Constitution of India.

6. Aggrieved by the recovery order, the applicant has filed the current O.A. seeking the following relief:-

“(a) Declare that the impugned action of the respondents qua the Applicant illegal and arbitrary, whereby, they have withheld/recovered an amount of Rs. 3,53,562/- from the gratuity of the Applicant just few days prior to his retirement/superannuation.

(b) Direct the respondents to revisit/rectify their order dated 26.10.2014 to limited extent and refund an amount of Rs.3,53,562/- (Rupees three Lacs Fifty Three Thousand Five Hundred & Sixty Two Only) along with interest @ 18% per annum along with all the consequential benefits (i.e. re-fixation of pay/pension, grant of arrears etc.).

(c) Call for the records.

(d) Award cost in favour of the Applicant and against the respondents.

(e) Pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.”

7. In reply, the respondents aver that this O.A. is time barred and is liable to be dismissed on this ground alone. They have placed reliance on the decision of **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.**, 2012(8) SCC 417, Hon'ble Supreme Court has held as follows:-

"2. The question that arises for consideration in this appeal is whether over-payment of amount due to wrong fixation of 5th and 6th pay scale of teachers/principals based on the 5th Pay Commission Report could be recovered from the recipients who are serving as teachers. The Division Bench of the High Court rejected the writ petition filed by the appellants and took the view that since payments were effected due to a mistake committed by the District Education Officer, the same could be recovered. Aggrieved by the said judgment, this appeal has been preferred.

18. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012."

It is contended that the impugned order is legal and valid as per the guidelines enunciated in the O.M. of DoP&T dated 06.02.2014 and that DoP&T O.M. dated 02.03.2016 would not be applicable because the applicant retired during 2014-15.

The respondents have also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer**, (2013) 14 SCC 811 in which the following has been held:-

"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.

16. In view of above, no interference is required with impugned judgment and order of the High Court. The appeals lack merit and are, accordingly, dismissed. "

8. I have gone through the facts of the case carefully and considered the rival submissions.

9. Admittedly, the benefits of 3rd MACP were refixed as per the orders of the competent authority vide letter No. F.6/30/TRC/H&FW/2010/9425-65 dated 20.09.2013. Vide this letter, benefits of 3rd MACP were revised fixing the Grade Pay of Pharmacists from Rs.5400/- to Rs.4800/-.

10. However, the fact remains that the applicant was granted the Grade Pay of Rs.5400/- w.e.f. 01.09.2008 and he was given arrears arising out of the difference in the pay w.e.f. 01.09.2008. The applicant continued to receive the salary in the Grade Pay of Rs. 5400/- for more than 05 years i.e. w.e.f. 01.09.2008 to July, 2014 till the respondents refixed the Grade Pay of all Pharmacists. As per the law

laid down by the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) recovery from employees, when the excess payment has been made for a period in excess of 05 years before the order of recovery is issued, is impermissible in law. Similarly, recovery from employees belonging to class III (Group 'C'), or/and those who are due to retire within one year of the order of recovery is also contrary to the law laid down by the Apex Court in the above mentioned decision.

11. In a catena of judgments, relief has been granted against recovery of excess payment of allowances if the excess amount is the result of interpretation of a rule/order, which is subsequently found to be erroneous by the respondents. Such relief is essential not because of any right of the employees but to relieve the employees from the hardship, which will be caused if recovery is ordered and which would be so "harsh that it will far outweigh the equitable balance of employers right to recover." Had the error been detected and corrected within a short span of time, order for recovery paid in excess could have been recovered, which is not the case here. The excess payment made was only due to wrong interpretation of the Scheme by the respondents, in execution of which the applicant had no role to play.

12. In view of the aforementioned discussions, the O.A. is allowed. The respondents are directed to rectify their order dated 26.10.2014,

to the limited extent and refund the amount of Rs. 3,55,562/- recovered from the gratuity of the applicant, within two months from the date of receiving a certified copy of this order. The respondents will, however, fix the pay and pension of the applicant keeping in view of the O.M. dated 20.09.2013 and revise the pension accordingly. The O.A. is accordingly allowed. No costs.

(Praveen Mahajan)
Member (A)

/Vinita/