

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

OA-4517/2017

New Delhi this the 27th day of August, 2018

Hon'ble Sh. Ashish Kalia Member (J)

Gursharan Singh
Retired Pharmacist
S/o Sh. Niranjana Singh
R/o UB-4, 1st Floor, Usha Park,
Hari Nagar, New Delhi – 110064
Aged around 65 years
Last Posting
North West Zone

...Applicant

(By Advocate: Sh. Sourabh Ahuja)

Versus

1. Govt. of N.C.T. 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
IP Estate New Delhi.

...Respondents

(By Advocate: Ms. Neetu Mihsra for Sh. Amit Sinha)

ORDER (ORAL)

The present OA has been filed by the applicant seeking the following reliefs :-

"8.1. (a) Declare that the impugned action of the respondents qua the Applicant illegal and arbitrary, whereby, they have withheld/recovered an amount of Rs. 2,35,228/- (Rupees Two Lacs thirty five Thousand two Hundred and twenty eight only) from the gratuity of the Applicant (Group 'C' employee) on the date of his retirement/superannuation. And

b. Direct the respondents to revisit/rectify their order dated 31/12/2012 to limited extent and refund an amount of Rs. 2,35,228/- (Rupees Two Lacs thirty five Thousand two Hundred and twenty eight only) along with interest @ 18% per annum along with all the consequential benefits (i.e. re-fixation of pay/pension, grant of arrears etc.). And

c. Call for the records. And

d. Award cost in favour of the Applicant and against the respondents. And/or

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."

2. Learned counsel for the applicant submits that the impugned action of the respondents qua the applicant is illegal and arbitrary, whereby they have withheld/recovered an amount of Rs. 2,35,228/-

from the gratuity of the applicant on the date of his retirement/superannuation and accordingly sought a direction to the respondents to refund that money.

3. The facts of the case are that the applicant was working with the respondent no. 3 as Pharmacist since 1977. The 3rd financial up-gradation was given to him w.e.f. 01.09.2008 and his pay was fixed in PB-2 with Grade Pay of Rs. 5400/-. The applicant superannuated on attaining the age of 60 years on 31.12.2012. His gratuity was withheld to the tune of the Rs.2,35,228/-. The applicant was informed orally that his Grade Pay has been reduced to Rs.4800/- instead of Rs. 5400/- w.e.f. 01.09.2008. He has relied upon the judgment of Hon'ble Supreme Court in the case of **State of Punjab and Others etc. v. Rafiq Masih (White Washer) etc.**

4. Notices were issued to the respondents and they have filed their reply. Ms. Neetu Mishra appeared on behalf of Sh.Amit Sinha, learned counsel for the respondents.

5. The matter was heard at length.

6. The basic ground of excess payment made was for the reason that the up-gradation was given in grade pay Rs.5400 whereas it was to be given in PB-2 with Grade Pay of Rs. 4800/- w.e.f. 01.09.2008 and they are entitled to recover the same.

7. During the course of arguments, learned counsel for applicant has pointed out that the respondents in similar circumstances have not made recovery from Sh. Chand Prakash Vats (Pharmacist), who retired in 2014 from Rao Tula Ram Hospital, Jafarpur, Govt. of NCT of Delhi. He has handed over a judgment passed by this Tribunal in OA No. 4285/2017 titled **Sh. Sunil Kumar Gupta vs. Govt. of NCT of Delhi**, which is similar to the present O.A.

8. Heard the learned counsel for the parties. The law laid down by the Hon'ble Apex Court in the matter of Rafiq Masih (supra), is that the recovery from the employees when the excess payment has been made, for the period of excess five years before the order issued by the Hon'ble Apex Court, wherein the following order was passed :-

"12. (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.

x x x x x

(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."

9. Relying upon the legal position laid down by the Hon'ble Supreme Court, this Tribunal is of the view that the present O.A. be disposed of with a direction to the respondents to refund

Rs.2,35,228/- to the applicant preferably within 60 days without any interest. Ordered accordingly.

10. In view of the above, pending MA is also disposed of.

(Ashish Kalia)
Member (J)

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