

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application Nos. 040/00242/2016

Date of Order: This, the 9th day of January 2018

THE HON'BLE MR. S.N. TERDAL, JUDICIAL MEMBER

Shri Chandramanishi Kumar
Enforcement Officer
Guwahati Zonal Office
Bye-Lane No. 1, House No. 20
(2nd Floor), Rajgarh Road
Guwahati – 781003.

...Applicant

By Advocates: Mr. S. Nath & Mr. G.J. Sharma

-Versus-

1. The Union of India
Represented by Secretary to the
Government of India, Ministry of Finance
Department of Revenue, New Delhi – 110001.
2. The Secretary
Government of India
Ministry of Personnel
Public Grievances & Pensions
Department of Personnel & Training
3rd Floor, Lok Nayak Bhawan
Khan Market, New Delhi – 110 003.
3. The Under Secretary to
The Government of India
Ministry of Personnel
Public Grievances & Pensions
Department of Personnel & Training
3rd Floor, Lok Nayak Bhawan
Khan Market, New Delhi – 110003.

4. The Director General
Department of Commerce (Supply Division)
Directorate General of Supplies & Disposals
(Administration – IV)
Jeevan Tara Building, 5
Parliament Street New Delhi – 110001.
5. The Joint Director
Enforcement Directorate
Bye-Lane No. 1, House No. 20
(2nd Floor), Rajgarh Road
Guwahati – 781003.

... Respondents

By Advocate: Mr. A. Chakraborty, Addl. CGSC.

Date of Hearing: 05.01.2018

Date of Judgment: 09.01.2018

ORDER

MR. S.N. TERDAL, MEMBER (J):

This O.A. has been filed by the Applicant under Section 19 of the Central Administrative Tribunal Act, 1985 praying for quashing of the order No. 12/2/2015-CS.II(B)(Pt.II) dated 02.05.2016 and letter No. A-12/04/BBSR/2012/684 dated 31.05.2016 seeking recovery of Rs. 98739/- as arrear of Pay and Allowance granted to the Applicant while granting Non Functional Selection Grade (NFSG) in the Grade Pay of Rs. 4200/- in PB-2 for the period from 22.06.2011 to 16.11.2012.

2. Heard Mr. S. Nath, learned counsel for the Applicant and Mr. A. Chakraborty, learned Addl. CGSC for the Respondents. Perused the pleadings and all the documents produced by both parties.

3. The relevant facts of the case are that the Applicant was working as Upper Division Clerk (U.D.C.) against the vacancy for the year 2003 in the department of Commerce (Supply Division), Directorate General of Supplies and Disposals, Ministry of Commerce & Industry, New Delhi. By an Office Memorandum No. 20/49/2009-CS.II(B) dated 22.06.2011, a new grade of UDCs 'Non Functional Selection Grade' (NFSG) was created from the amongst UDCs who have completed 5 years of approved service as UDCs. Accordingly, after completing the formalities, by an order dated 20.08.2015, the NFSG was granted w.e.f. 22.06.2011 and arrears as per the pay fixed in the G.P. of Rs.4200/- was calculated and paid to the Applicant. In the said order dated 20.08.2015, it was taken into account that the Applicant was relieved on selection to another post in another department and the arrears was calculated only up to the date of relieving, that is, 16.11.2012. Subsequently, by the impugned letter No. A-12/04/BBSR/2012/684 dated 31.05.2016, the said amount paid on re-fixation was sought to be recovered, on the basis that, the DPC for granting NFSG was held in February 2014 and by that date, the

Applicant was not working as UDC in the office of Directorate General of Supplies and Disposals.

4. Mr. S. Nath, learned counsel appearing for the Applicant has submitted that even if it is held that the amount paid was mistakenly paid and he was not entitled, yet as the amount was paid without being any fault or incorrect information furnished on the part of the Applicant, as such in view of the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab and Ors. Vs. Rafiz Masih (White Washer) and Ors.** reported in **(2015) 4 SCC 334**, the recovery cannot be made.

5. Mr. A. Chakraborty, learned Addl. CGSC representing the respondents vehemently supported the impugned order No. 12/2/2015-CS.II(B)(Pt.II) dated 02.05.2016 and letter No. A-12/04/BBSR/2012/684 dated 31.05.2016 on the ground that the NFSG was granted to the Applicant when he as no more working as UDC and he has further submitted that as on the date of the impugned order, the Applicant was no more working as Group "C" employee, as such the benefit of the law laid down by the Hon'ble Supreme Court in the case of **Rafiz Masih (White Washer) and Ors. (supra)** shall not be extended to the Applicant.

6. But however, as the arrears sought to be recovered pertains to the period when the Applicant was working as Group 'C' employee and before he was relieved as UDC (NFSG) and the amount was paid by the Respondents without there being any misrepresentation or fraud on the part of the Applicant, as such the submission of the learned Addl. CGSC for the respondents is not convincing.

7. In the circumstances, in view of the facts and submission made by the learned counsel for the applicant, the law laid down by the Hon'ble Supreme Court referred to above is squarely applicable and therefore, the O.A. requires to be allowed.

8. In the result, O.A. is allowed and the impugned order No. 12/2/2015-CS.II(B)(Pt.II) dated 02.05.2016 and impugned letter No. A-12/04/BBSR/2012/684 dated 31.05.2016 seeking recovery of Rs. 98739/- are set aside. No order as to costs.

(S.N. TERDAL)
JUDICIAL MEMBER

ORIGINAL APPLICATION NO. 040/00242/2016APPLICANT'S ANNEXURES

| Sl. No. | Annexure | Particulars |
|---------|----------|--|
| 1 | A1 | Copy of the O.M. dated 22.06.2011 |
| 2 | A2 | Copy of the O.M. dated 18.06.2011 along with Annexure-I1 (extract) |
| 3 | A3 | Copy of order dated 19.06.2015 |
| 4 | A4 | Copy of the order dated 20.08.2015 |
| 5 | A5 | Copy of the corrigendum dated 12.11.2015 |
| 6 | A6 | Copy of the O.M. dated 16.11.2015 |
| 7 | A7 | Copy of the impugned order dated 16.02.2016 |
| 8 | A8 | Copy of the impugned order dated 19.02.2016 |
| 9 | A9 | Copy of the representation dated 16.03.2016 |
| 10 | A10 | Copy of the impugned letter dated 02.05.2016 |
| 11 | A11 | Copy of the impugned letter dated 31.05.2016 |
| 12 | A12 | Copy of the O.M. dated 02.03.2016. |

ORIGINAL APPLICATION NO. 040/00242/2016ANNEXURES OF RESPONDENT NO. 4

| Sl. No. | Annexure | Particulars |
|---------|----------|--|
| 1 | R1 | DoP&T OM dated 03.05.2012 |
| 2 | R2 | DoP&T OM dated 14.02.2014 |
| 3 | R3 & R4 | DoP&T OM dated 09.02.2015 & 24.04.2015 |
| 4 | R5 | DoP&T OM dated 18.06.2015 |
| 5 | R6 | O M dated 22.06.2011 |
| 6 | R7 | O.M. dated 06.10.2015 |
| 7 | R8 | O.M. dated 02.11.2015 |
| 8 | R9 | O.M. dated 16.11.2015 |
| 9 | R10 | O.M. dated 19.06.2015 |