

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.021/00265/2017

Date of Order: 28.09.2018

Between:

T. Sanjeev Kumar, S/o. late T. Prakasha Rao,
Aged about 60 yrs, Occ: Retd. Employee
(Director, Dy. Surveyor General)
R/o. H. No. 14-121, Beerappa Guda, Opp. Satvick Apts,
Uppal, Hyderabad – 500 039.

... Applicant

And

1. Union of India, Department of Science & Technology,
Technology Bhavan, Institutional Area,
New Mehrauli Road, New Delhi,
Represented by its Secretary.
2. Survey of India,
P. O. Box No. 37, Hathi Barkala Estate,
Dehradun, Uttarakhand,
Rep. by its Surveyor General.
3. The Indian Institute of Survey & Mapping,
Uppal, Hyderabad, rep. by its Addl. Survey General.
4. The Accounts Officer, Regional Pay & Accounts Office,
Survey of India, Hyderabad.

... Respondents

Counsel for the Applicant ... Mr. N. Vijay

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

This OA is filed against the action of the respondents in recovering an amount of Rs.6,06,122/- from the retirement benefits of the applicant on the ground of overdrawn Transport Allowance.

2. Brief facts of the case are that the applicant joined the respondent organization as Dy. Superintendent Surveyor in 1990 and thereafter, promoted as Superintendent Surveyor in 1998, Dy. Director in 2005 and Director in 2008. He retired on 28.02.2017 as Director. As per clause 3 of the OM dt.29.08.2008 issued in pursuance of the recommendations of the VI Central Pay Commission, the officers drawing the Grade Pay of Rs.10,000 and Rs.12,000 respectively and those in the HAG + scale are entitled to use official car and shall be given an option to avail themselves of the existing facility i.e. official car or to draw Transport Allowance at the rate of Rs.7,000 per month plus dearness allowance thereon. The applicant was granted Non Functional Upgradation vide proceedings dated 13.03.2013 by the 2nd respondent in the grade pay of Rs.10,000. In view of the fact that the applicant was drawing the Grade Pay of Rs.10,000, he was paid Transport Allowance at the rate of Rs.10,000 per month since he was not provided with any official car. On retirement, an amount of Rs.6,06,122/- was ordered to be recovered from the Gratuity of the applicant without giving any prior notice on the ground that the Transport Allowance was overdrawn. Therefore, this OA.

3. The applicant contends that the respondents are not empowered to recover any amount from the retirement benefits like gratuity, provident fund without following the rules on the subject. The applicant also states that he did not misrepresent to the department or gave an application for grant of transport allowance and that the Department themselves on the basis of the instructions available at that point of time, transport allowance was drawn as per OM dt.29.08.2008. The applicant also cites that his case is fully covered by the

Hon'ble Supreme Court judgment in *the State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Others, 2015 (4) SCC 334.*

4. The respondents claim that officers drawing grade pay of Rs.10,000 and those in HAG + scale who are entitled to use staff car for commuting between office and residence in terms of OM dt.28.01.1994 shall be given the option to avail themselves of the existing facility or to draw the transport allowance at the rate of Rs.7000 per month + dearness allowance thereon admissible from time to time. However, the applicant being in the non functional scale with grade pay of Rs.10,000 per month he is not entitled for staff car and therefore, transport allowance @ Rs.7000 per month + DA is inadmissible and therefore, recovery of the amount paid in excess is inevitable. This was also pointed out by the audit and therefore, it is necessary to make the recovery. The respondents also state that whenever any recovery of excess amount paid is to be waived, then they have to seek the express approval of the Department of Expenditure. As per the orders of the Principal Accounts Officer (Internal Audit wing), Ministry of Science and Technology, dated 10.02.2017, the overpayment of transport allowance drawn to the applicant was recovered from the retirement gratuity and would be released only if it is waived by the Department of Expenditure, New Delhi. Hence, the amount of Rs.6,06,122/- was recovered from the retirement gratuity of the applicant. The respondents claim that they have acted as per the rules in vogue.

5. Heard learned counsel for both sides. Learned counsel for the applicant also contends that recovery from retirement gratuity of the applicant is against Section 13 of the Payment of Gratuity Act, 1972, which reads as under:

“13. Protection of gratuity:- No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in executing of any decree or order of any civil, revenue or criminal court.”

6. The issue in question has come up before this Tribunal on earlier occasions too wherein it was held that recovery from the retiral benefits like pension, gratuity etc. after retirement is in violation of the Hon'ble Supreme Court in Rafiq Masih (supra) case, wherein it was clearly held by the Hon'ble Supreme Court as under:

“(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.”

7. In the present case, the respondents themselves have drawn and paid the transport allowance to the applicant. The mistake is on the part of the applicant. The applicant has neither misrepresented nor misguided the respondent organization to release the transport allowance as was paid by the respondents. Amount was also recovered from the retirement gratuity, which is against Section 13 of the Payment of Gratuity Act, 1972, as contended by the learned counsel for the applicant. Therefore, the action of the respondents is against the law set by the Hon'ble Supreme Court in Rafiq Masih case and also the

provisions of the Payment of Gratuity Act, 1972. Hence, the action of the respondents is illegal, arbitrary and therefore, the impugned action of the respondents in recovering amount from gratuity is unsustainable.

8. The respondents are directed to consider releasing the amount withheld from the gratuity of the applicant, within two months from the date of receipt of this order. OA is accordingly allowed. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(Dictated in open court)
Dated, the 28th day of September, 2018

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