CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH

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OA No.290/00380/2016 **Pronounced on : 05.09.2018**
(Reserved on : 17.08.2018)

...

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)

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Rajpal Saran S/o Shri Mani Ram Saran, aged about 55 years, by caste Saran, R/o Quarter No.230/4, MES Colony, Sri Ganganagar (Rajasthan).

...APPLICANT

BY ADVOCATE : Mr. M.S. Godara.

VERSUS

1. Union of India, through Secretary, Ministry of Defence, Raksha Bhawan, New Delhi
2. Chief Engineer, Bathinda Zone, Bathinda Military Station, Bathinda (Punjab).
3. Commander Works Engineer, MES Sri Ganganagar (Rajasthan).
4. Garrison Engineer, Sri Ganganagar, (Rajasthan).

RESPONDENTS

BY ADVOCATE: Mr. K.S. Yadav.

ORDER

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HON'BLE SMT. HINA P. SHAH, MEMBER (J):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Central Administrative Tribunal's Act, 1985, wherein the applicant seeks the following relief:

> "That this application may kindly be allowed and the respondents may be restrained from affecting any recovery from the applicant by quashing letter dated 30.06.2016 (Annexure A1)."

2. The brief facts of the case as stated by the applicant are as under:-

i) The applicant was appointed on the post of Mazdoor on 20.08.1982 and thereafter he was promoted on the post of MPA on 28.12.1983 which

was re-designated as Refrigerator Mechanic with effect from 30.03.1991. He was further promoted to the post of HS-I with effect from 01.01.1996.

3. The applicant had filed OA No.292/2010 which was allowed by this Tribunal to decide his representation dated 05.03.2010 in respect of the grievances raised by him. It is the case of the applicant that fixation of his pay on promotion with effect from March, 1991 on account of his promotion to the post of SK as his basic pay had to be fixed at Rs.1150/- per month but erroneously it was fixed by the respondents at Rs.1110/- per month and due to which he was unable to get timely increments as well as enhanced pay on promotion. He had also sought relief for his promotion qua private respondent named Shri Laxmi Chand. Both of these reliefs were mentioned in his representation dated 05.03.2010 and which was disposed of by this Tribunal vide its order dated 10.11.2010 requesting the respondents to decide the said representation. The said representation of the applicant was decided by the respondents vide order dated 09.02.2011 stating that the issue pertaining to irregularity in pay fixation, GE SGNR has been directed vide this HQ letter No.1109/1592/E1R, dated 22.01.2011 to review the pay fixation according to the pay fixation rules in vogue. Pertaining to the second issue of his irregularity in seniority, which the applicant had compared with Shri Laxmi Chand, FGM, it was pointed out that both the applicant as well as Shri Laxmi Chand were enrolled as MPA but since the applicant opted for trade R/Mech and Shri Laxmi Chand opted trade FGM, there can be no comparison of the applicant with Shri Laxmi Chand because promotions are based on vacancy position and each trade is separate. Thereafter, the applicant made correspondence with the respondents asking them to re-fix his pay in pursuant to the judicial order and has been sanctioned arrears of Rs.1,61,831/- vide correspondence dated 18.05.2011 and 02.06.2011

(Annexure A4 and A5) respectively. The respondents, thereafter, informed the applicant vide letter dated 14.02.2011 allowing the applicant re-fixation of his pay and also admissible arrears being paid to him (Annexure A7).

4. The issue pertaining to the seniority at par with Shri Laxmi Chand, it was mentioned vide letter dated 23.01.2014 that the same is not admissible and the promotion of the applicant cannot be compared with Shri Laxmi Chand. The applicant, thereafter, corresponded to the respondents vide letter dated 04.02.2015 and a speaking order was passed by the respondents dated 04.02.2016. This was a show cause notice given to the applicant stating that erroneously his increment date was extended for three months which lead to delay in the next increment i.e. after 15 months on 01.03.1992. Since he was promoted from Pump House Operator (SK) to R/Mech (SK) into the same pay scale on 30.03.1991, he was not granted increment for the same.

5. In the said letter, the respondents submitted the pay fixation proforma to audit authorities and it was pointed out that his pay has been revised erroneously. He was informed about the erroneous payment made to him in respect of the increment by way of show cause notice dated 04.02.2016 as to why said amount should not be recovered from him being public money by 17.02.2016. The applicant replied to the said show cause notice vide letter dated 16.02.2016 and stated that the said fixation was done as per the direction of the Tribunal and now withdrawing the same deliberately and willfully would amount to disobey, disregard and flout the orders passed by this Tribunal and also would amount to contempt of the orders of the Court. According to him, there was nothing wrong in extending the benefit of annual grade increment on completion of 12 months service and therefore now withdrawing the said annual grade

increment on the pretext of wrong pay fixation would be disregard to the judicial orders. As per para 3(ii) of OM dated 06.02.2014, it is clear that "in a case like this where the authorities decide to rectify an incorrect order, a show cause notice may be issued to the concerned employee informing him of the decision to rectify the order which has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee to represent against the same. Speaking orders may thereafter be passed after consideration of the representations, if any, made by the employee". Therefore, as per the law laid down in several Apex Court judgments of Shyam Babu Verma Vs. UOI, 1994 SCR (I) 700, Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors., (2009) 3 SCC 475 and Sahib Ram Vs. State of Haryana, 1995 Supp(1) SCC 18, it has been held that no recovery of excess payments to be made as to avoid extreme hardship to the concerned employees. Therefore, the action of the respondents to recover huge amount from the pension of the applicant is in violation of principles of natural justice and guidelines issued by the respondents.

6. The applicant states that there was no mis-representation or fraud played on his part in so called excess payment made to him as the benefit was extended to him in compliance of the judicial order and therefore the same cannot be withdrawn by the respondents in any circumstances. Secondly, also if the recovery is for some other reason then the applicant is duty bound to know the reason for which the amount is being recovered from the pensioner.

7. The applicant states that he was getting basic pay of Rs.1,110/- per month as on December, 1989. Thereafter, he was entitled for AGI of Rs.20/- as on December, 1990 and after he was promoted with effect from 30.03.1991, so he was entitled for one more increment of Rs.20/-. Thus,

he was entitled to get one more increment of Rs.20/- and therefore he was entitled for basic pay of Rs.1150/- per month with effect from 30.03.1991 but he was not granted the same and only after judicial interference and orders of the Court he was granted such increment and therefore recovery to be made by the respondents is not sustainable and is in violation of the rules on the subject.

8. The applicant relies on judgment dated 18.12.20147 in State of Punjab Vs. Rafiq Masih, in Civil Appeal No.11527 of 2014, 2015(1) SCT 195, and states that as per conditions no.1 and 3 as mentioned in the said case, no recovery can be made from his pay/pension as he is also Class-III employee.

9. The respondents have filed their reply and have mentioned that as per the orders of the Court in OA No.292/2010 filed by the applicant vide its order dated 10.11.2010 a direction was given to the respondents to decide the representation of the applicant. Thereafter, the order dated 09.02.2011 was subsequently passed. Also as per the order dated 14.02.2011, the applicant has been granted two increments of Rs.20/- each.

10. The respondents state that the two increments granted to the applicant in the year 1991 was done by mistake and his pay was erroneously fixed from Rs.1,110/- to Rs.1,150/-. Therefore, when the respondents realized their mistake, they have issued letter dated 04.02.2016 (Annexure A10) to the applicant to show cause as to why the increments granted to him erroneously should be recovered being public money by 17.02.2016. Therefore, the opportunity of being heard has already been extended to the applicant which has been replied by the applicant vide letter dated 16.02.2016 (Annexure A11). The said

Annexure does not disclose or justify any entitlement of the applicant for such increments which was wrongly granted. The only plea taken by the applicant was that such increments were granted under judicial order passed by the Tribunal and therefore the same cannot be withdrawn. As it is clear that the applicant was not entitled for two increments for fixation of his pay at Rs1,150/-, but the same was erroneously granted to the applicant. It is the settled position of law that rectification of mistake can be done at any time and especially in matters if anything has been extended to an employee erroneously, the same can be withdrawn by giving him an opportunity of being heard. Thus, it is clear that the Tribunal had never directed to extend any opportunity of benefit as claimed by the applicant but the directions of the Tribunal in OA No.292/2010 decided on 10.11.2010 was only to the extent of deciding the representation of the applicant. Therefore, the applicant cannot get any benefit of protection of judicial order as no such protection was granted to the said order.

11. The respondents further submit that the applicant was drawing basic pay of Rs.1,090/- per month as on December, 1999 has granted to him vide PTO dated 18.12.1989. Thus, by granting one increment on 01.12.1990 and 30.03.1991, the applicant was entitled to get his pay at Rs.1,110/- only, but by mistake the same was fixed at Rs.1,150/-. Therefore, as soon as the mistake was detected, the respondents served show cause notice and therefore the order of recovery is justified.

12. The respondents relied on the judgment of the Hon'ble Supreme Court in Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors. reported 2012 AIR SCW 4742 and also the OM dated 06.09.2016. As per the said judgment, it is very clear that the pay of the applicant was erroneously fixed as on 30.03.1991 at Rs.1150/- by granting two

increments and the same is rightfully being recovered by them as they have also served a show cause notice to the applicant. Therefore, the rectification of mistake for granting two increments to the applicant in the absence of any entitlement is justified.

13. Heard Shri M.S. Godara, learned counsel for the applicant and Shri K.S. Yadav, learned counsel for the respondents and perused the material available on record.

14. After perusal of the record, it is clear that OA No.292/2010 was filed by the applicant and the said OA was disposed of by this Tribunal vide its order dated 10.11.2010 with the direction to the respondents to dispose of the pending representation with the respondents. The respondents had by mistake granted two increments to the applicant and accordingly his basic pay was raised from 1,110/- to 1,150/- due to two increments of Rs.20/- granted to him as on 01.12.1989 as well as 01.12.1990. It is the case of the applicant that there is no misrepresentation or fraud played on his part in getting the said increments as the same were given to him only after the orders of this Tribunal. According to the applicant, the two increments were given to him as per law. He relies on the judgment of State of Punjab Vs. Rafiq Masih and states that as he is fulfilling the conditions no.(i) and (iii) of the conditions laid down in Rafiq Masih (supra), no recovery can be permitted also he being a Class-III employee and therefore great hardships will be faced by him if such a recovery is permitted by the Court. According to him the show cause notice dated 04.02.2016 is not a proper show cause notice and therefore the same cannot be permitted.

15. It is the case of the respondents as per para 1 of OM dated 06.02.2014, they have issued proper show cause notice to the applicant

and thereafter passed the recovery order. As per Rafiq Masih (supra) judgment, it is clear that condition no.iii is not applicable in the present case and recovery can be made.

16. The judgment of the Chandigarh bench in OA No.060/00561/2014 relied by the respondents in case of Surinder Pal Singh Vs. UOI & ors., decided on 17.04.2015, the Court on the issue of recovery had stated that since the applicant has retired and was 70 years old and getting the pension of Rs.18000/- per month. The monthly deduction from his pension was directed to be restricted to an amount of Rs.2000/- only as the same would be intolerable burden on the pensioner. The Tribunal had also observed that excess payment of public money is disregarded, as tax payers money which belongs neither to the officers who have effected overpayment nor that of the recipients. The Court had also observed that any amount paid/received without any authority of law can always be recovered bearing 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.

17. The respondents have also relied on the judgment of the C.A.T. Chandigarh Bench in OA No.060/00636/2015, decided on 23.05.2016 in the case of Jaswinder kaur Vs. UOI & Ors., the Court had observed that the respondents are fully within their right to recover the payment made to the applicant. However, the recovery at the rate of Rs.5000/- per month was reduced to Rs.3000/- per month.

18. After going through the submissions made by the learned counsels, it is observed that as the respondents by mistake had given two increments to the applicant, as soon as the authority realized the mistake immediately, show cause notice dated 04.02.2016 was given to the

applicant and vide order dated 30.06.2016, the recovery was effected from the applicant's pay. It is clear that the respondents have immediately rectified their mistake and therefore they cannot be punished for the said wrong though neither it was a mistake of the applicant nor any misrepresentation or fraud played by the applicant in getting the excess payment. It is the right of the respondents to recover the amount which was wrongfully given and therefore as per the law laid down in Chandi Prasad Uniyal's case (supra) and as per the OM dated 06.02.2014, the respondents are justified in making said recovery.

19. In view of the observations made above, the impugned order dated 30.06.2016 is justified and there is no question of quashing and setting aside the said order.

20. Accordingly, the OA is dismissed with no order as to costs.

(HINA P. SHAH)
MEMBER (J)

Dated: 05.09.2018
Place: Jodhpur

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