



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/01558/2014

Date of order : 20.6.2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

SMT. BANI PAUL

VS

UNION OF INDIA & ORS.

For the applicant : Ms. T.Das, counsel

For the respondents : Mr.K.Sarkar, counsel

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. This application has been filed seeking the following reliefs :

- a) An order do issue direction upon the respondents to cancel set aside the impugned order dated 24.9.14;
- b) An order do issue direction to refund the entire amount i.e. Rs.1,07,034/- deducted from the gratuity with interest;
- c) An order do issue to calculate the pension and to give actual pension Rs.9600/- instead of Rs.9495/-;
- d) An order do issue direction upon the respondents to give consequential benefits and interest @ 18% per annum for delayed payment of arrear benefits of financial upgradation (i.e. 3rd MACP).

3. The original application Swapan Pal has been substituted by his widow Smt. Bani Pal, upon his death. The reply filed by the respondents demonstrated that seniority lists were published for 2004, 2007, 2010 followed by office order No. T 02 dated 1.4.10 wherein the date of birth of the applicant was inadvertently recorded as 19.9.50 instead of 19.5.50. It was rectified by the competent authority on 9.9.10. Therefore the applicant was allowed to continue for four months beyond his actual date of superannuation which was 31.5.10. The respondents have contended that as it was felt that the applicant should not be allowed to gain any advantage of the administrative mistake. Therefore an amount of Rs.1,07,034/- was adjusted or realised from gratuity amount

towards pay and allowances for the period from June 2010 to August 2010 as his service for the said period stood null and void due to office order dated 9.9.10.

3. Ld. Counsel for the applicant cited the decision rendered in **State of Punjab & Ors. Etc. -vs- Raflq Masih (White Washer) etc.** :

In **State of Punjab & Ors. Etc. -vs- Raflq Masih (White Washer) etc.** rendered by Hon'ble Supreme Court of India in Civil Appeal No. 11527 of 2014 (Arising out of SLP(C) No. 11684 of 2012) the Hon'ble Apex Court was considering the following :

"The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their dues."

The Hon'ble Apex Court based on its earlier decisions rendered in **Sahib Ram -vs- State of Haryana [1995 Supp (1) SCC 18]**, **Shyam Babu Verma -vs- UOI & Ors. [(1994) 2 SCC 521]**, **UOI & Ors. -vs- M.Bhaskar [1996 (4) SCC 416]**, **V. Gangaram v. Regional Joint Director and Ors [(1997) 6 SCC 139]**, **Col. B.J. Akkara (Retd. -vs- Govt. of India [(2006) 11 SCC 709]**, **Bihar SEB -vs- Bijay Bahadur [(2000) 10 SCC 99]**, etc. summarized 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."*

(emphasis added)

4. The counsels were heard and materials on record were perused.
5. It was found that the proceedings initiated against the applicant due to which his payments were held up, culminated ~~into~~ his exoneration. Nevertheless the respondents have failed to show that the applicant as retained beyond his normal superannuation age due to any fraud or misrepresentation on his part. Moreover, the applicant had discharged his duties during the said period albeit irregularly.
6. Therefore going by the true import of the decision rendered in **Rafiq Masih** the respondents are directed to refund the recovered amount within one month from the date of receipt of the copy of this order.
7. The OA is accordingly disposed of.
8. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)

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