CENTRAL ADMINISTRATIVE TRI BUNAL LUCKNOW BENCH LUCKNOW

ORIGINAL APPLICATION NO: 547 of 2015

ORDER RESERVED ON : 03.08.2018

ORDER PRONOUNCED ON :06.08.2018

THE HON'BLE MR. DEVENDRA CHAUDHRY, MEMBER(A)

Smt. Ram Shri Devi, aged about 61 years, wife of Shri Baldeo Prasad Hans, resident of 6/21, Geeta Palli, Alambagh, Lucknow.

……Applicant

By Advocate: Shri Manish Mishra

VERSUS

1. Union of India, through Secretary, Ministry of Communication and Information Technology, Govt. of India, Sansad Marg, New Delhi.

2. Chief Post Master General, Uttar Pradesh Circle, Lucknow.

3. Director, Postal Services, Office of the Chief Post Master General, Uttar Pradesh Circle, Lucknow.

4. Accounts Officer, Office of the Chief Post Master General, Uttar Pradesh Circle, Lucknow.

……..Respondents

By Advocate: Shri S. Lal.

ORDER

DELIVERED BY THE HON'BLE MR. DEVENDRA CHAUDHRY, M(A)

The applicant has in brief, sought the following relief(s):-

> *"(i) To set-aside the order dated 6.8.2014 and 5.10.2015*
>
> *(ii) refund of Rs. 1,14,702.00/- to applicant with interest, which has been recovered from the pensionary benefits.*
>
> *(iii) Apart from above, any other order deemed fit alongwith costs."*

2. The brief facts of the case are that the applicant is challenging the order dated 06.08.2014 passed by the Respondent no.4 (R-4) and order dated 5.10.2015 issued with the approval of Chief Post Master General (Chief PMG), U.P. Circle, Lucknow(RespondentNo.2). The applicant-Smt. Rama Shree Devi was initially appointed as Postal Assistant in Postal Department on 03.07.1979 and till the year 2011 she rendered 32 years of regular unblemished service to the department. That, there-upon due to heart ailment in the period 2008-2011, the applicant filed for voluntary retirement vide application dated 04.07.2011. This application was accepted vide order dated 30.08.2011 w.e.f. 31.8.2011. Thereafter, the department paid various retiral dues to the applicant.

3. However, after receiving pension for about three years without any hindrance, when the applicant submitted a representation for payment of leave encashment vide application dated 07.04.2014, an order was received dated 25.04.2014(Annexure-5) from the department directing recovery of Rs. 1,14,702.00/- from the applicant @ Rs. 8000/- per month from the Dearness allowance given as part of pension w.e.f. April, 2014. The applicant has further prayed that her representation against the recovery was rejected vide order dated 06.08.2014 (Annexure-1) of Accounts Officer (R-4)in the office of Chief PMG, U.P. Circle, Lucknow in which it was additionally informed that the said representation has been disposed off earlier also on 06.06.2014(Page-22 of the paper book). The applicant, thereafter, preferred another representation and the same was also rejected with the approval of the Chief PMG, U.P. Circle, Lucknow (R-2) vide order dated 05.10.2015 (Annexure-2).

4. The applicant, drawing reference to the ruling of Hon'ble Supreme Court in the case of State of Punjab & Others Vs. Rafiq Mashih wherein it has been held that the recovery is impermissible in law from the employees belonging to class III and IV services etc. and since the employee is of class III category, hence prayed that orders dated 6.8.2014/ 5.10.2015 be accordingly set aside.

5. As against above, the Respondents have filed Counter Affidavit, wherein, it has been argued that the relief sought by the applicant vide Para -8 is with respect to the orders dated 06.08.2014 and 05.10.2015 whereas, the actual order of recovery which is the truly substantive portion of the relief sought concerns the order dated 25.4.2014 (Annexure-5) which is not the impugned order in the O.A. (Para-8). That since, the relief sought vide para-8, does not incorporate the impugned order, hence, no relief can be given merely because some inter-connected order dated 06.8.2014 and 05.10.2015 are alluded to. Hence, application is worthy of dismissal.

6. The Learned Counsel for Respondents here further pointed out that in the petition dated 26.03.2015 by the applicant, the order dated 25.04.2014 has been assailed which does not find mention in the Para 8 of the relief sought in the O.A. itself and therefore, the O.A. needs to be dismissed for want of correct relief sought by the applicant for not quoting the exact orders from which relief is sought and rather mentioning related orders from which relief cannot be given. The Learned Counsel

for the Respondents has pointed out that in fact, the applicant taking note of these anomalies had on an earlier occasion, by itself therefore moved an amendment w.r.t order dated 25.04.2014 in which the amendment was sought to included. That however, the same was rejected by this Tribunal vide order dated 28.03.2017 and hence, also the O.A. of the applicant needs to be dismissed.

7. I have heard the parties at length. An examination of the order dated 06.08.2014(Annexure-1) with respect to which the Respondents has stated that it is not an order but only a communication, reveals that it does have in its first para(not numbered) reference to the order dated 25.04.2014 which concerns the recovery of the excess amount paid to the applicant. In the second para, it states that the representation of the applicant dated 27.5.2014 had been considered and the decision on the same has been communicated vide letter dated 06.06.2014. An examination of the letter dated 06.06.2014 which is from the Accounts Officer (Respondent No. 4) on behalf of Chief PMG (Respondent N0.2)} states that on the applicant's representation letter dated 27.05.2014, after due consideration, it has been found that it is not possible to reduce the recovery instalments.

8. In this context, it needs to be clearly understood that while it is true that the relief sought vide Para-8 of the O.A. does not explicitly contain reference to the recovery order dated 25.04.2014 and the fact that application for amendment had been rejected by this Tribunal vide its order dated 23.08.2017, it should not be

lost sight of that, firstly, the amendment application was rejected on the simple ground that the copy of the annexed order was not included which is thus not truly a rejection on grounds of merit, but perhaps a rejection on grounds of non conclusion of a certain document. The orders did not go into the merits of the argument themselves. Similarly, as regards the non inclusion of the recovery order dated 25.04.2014 as part of the relief n O.A., it needs to be appreciated that the Annexure-1 which is communication dated 06.08.2014 does mention the order of 25.04.2014. Similarly, in the prayer dated 26.03.2015, the recovery order of 25.04.2014 has been referred to and relief sought by way of setting aside the order of recovery. In this connection, the Learned Counsel for Applicant has submitted the ruling of Hon'ble Apex Court dated 19.07.2000 in the case of **Kunhayammed Vs. State of Kerala,** wherein, the doctrine of merger has been visited upon for its applicability and it has been held that "***where an appeal or revision is provided against an order passed by a Court, Tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms decision put in issue before it, decision by subordinate forum mergers in decision by superior forum and it is latter which subsists, remains operative and is capable of enforcement in eye of law...".***

9. In the above case also , while being admitted that the Para-8 of the O.A. does not include the debatable order of 25.04.2014, it cannot be hidden or put under the carpet that the communication dated 06.08.2014 and 05.10.2015 do have in their content mention of the order

dated 25.04.2014. In fact, the order dated 05.10.2015, clearly alludes to the recoverable amount of Rs. 1,14,702/-. Further given the fact that Hon'ble Apex Court has held in its famous ruling in the case of State of Punjab and Others Vs. Rafiq Masih vide order dated 18.12.2014 which reads as under:

> "18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
>
> (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
>
> (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
>
> (iii) Recovery from the 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.

10. In the light of above, it would be gross injustice if the averments of the applicant are not considered in toto in an inter- connected manner as also evident in the spirit of the doctrine of merger referred to in the ruling of the Hon'ble Apex Court above. Therefore, read along with

order of Hon'ble Apex Court in the case of State of Punjab and Others Vs. State of Rafiq Masih in the interest of justice, the order dated 25.04.2014 and 05.10.2015 is set aside and the communication dated 06.08.2014 is thus a nullity. There shall be no recovery from the applicant. Meanwhile, if any recovery has already been given effect to on account of above, the same shall be returned forthwith.

11. Accordingly, the Original Application is allowed. No costs.

(Devendra Chaudhry)
Member (A)

v.