

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Allahabad This the 24th day of December 2018

PRESENT:

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No.330/00237 of 2018

Lal Singh Varun, aged about --- years, S/o Late Sh. Bhadailal, R/o Gali No. 5, Nagla Karan Singh, Firozabad 283203 (U.P).

..... Applicant

By Adv: Shri S.N. Chatterji

V E R S U S

1. Union of India through Secretary, Department of Posts Dak Bhawan, Sansad Marg, New Delhi 110001.
2. The Post Master General Agra Region, Agra 282001.
3. The Director of Accounts (Postal), U.P. Circle, Sector -D, Aliganj, Lucknow 226024.
4. The Superintendent of Post Office, Mainpuri Division, Mainpuri (U.P 255001).

..... Respondents

By Adv: Shri L. P Tiwari

O R D E R

- 1) The present O.A. has been filed by the applicant Lal Singh Varun U/s 19 of the Central Administrative Tribunal's Act seeking the following relief:
 - (i) Quash and set aside the order of recovery of Rs.71,233/- from the Applicant, as contained in the letter of Intimation of Gratuity dt. 15.9.2017.
 - (ii) Pass any other and/or further order(s) as may be deemed appropriate".

- 2) It be noted that originally the O.A. was filed before the Principal Bench, New Delhi from where it was transferred to Allahabad Bench, which has a jurisdiction to hear the application. Applicant's case is that he retired on 31.01.2012 from the respondents' department as a Grade 'C' employee and received his gratuity. However, vide impugned order dated 15.09.2017, the respondents have ordered recovery of Rs.71233/- being his gratuity amount, on the ground of "Government dues".
- 3) Further case of applicant is that as per the law laid down by the Hon'ble Apex Court, the respondents cannot recover the gratuity amount from him since he is a Grade 'C' employee and that too after his retirement, therefore, the recovery ordered to be made from the applicant is impermissible in law. Hence, the present O.A.
- 4) In the Counter Affidavit, it has been averred that "The applicant was discharged from his duty (retired) 31.01.2012, after attaining the age of superannuation. The pension papers of the applicant were got prepared and sent to the Director of Accounts (Postal), Lucknow for sanction of PPO, during calculation of pension and other benefits it came to light his stepping up fixation was not approved by the competent authority, therefore, excess payment which had already been paid to the applicant was ordered vide order dated 22.09.2017 to be recovered from the DCRG of the applicant. It is requested to the applicant to refund the excess paid amount of Rs. 71,233/- in compliance of the directions contained in DAP, Lucknow letter dated 25.09.2012. The excess payment amount of Rs. 71,233/- made to the applicant due to awarding 2nd MACP vide memo dated 21.07.2011 and also due to wrong fixation of his pay.

- 5) The learned counsel for the applicant besides reiterating the pleadings in the OA submitted that before ordering and effecting recovery for alleged excess payment made to him, the respondents did not put the applicant on notice, which is a gross violation of principles of natural justice. He further submitted that the applicant has not indulged into any Act of concealment, fraud or misrepresentation for securing more pension than what he was entitled to. He submitted that in terms of law laid down by the Hon'ble Apex Court in State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors. [(2015) 4 SCC 334], no such recovery can be made from the applicant.
- 6) Per contra, learned counsel for respondents argued that the applicant has been paid excess amount towards his pension due to wrong fixation of his pay scale and MACP explained by the respondents in the reply. Hence, this excess amount paid to the applicant is required to be recovered from him. He further argued that Hon'ble Apex Court in case of High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh [AIR 2016 SC 3523] has held that the mistakes committed while granting financial benefits to the Government servant can be rectified and excess amount paid can be recovered. He further submitted that the Hon'ble Apex Court has distinguished its judgment in Rafiq Masih (supra) case in its judgment in Jagdev Singh.
- 7) I have considered the arguments of the learned counsels for the parties and I have also perused the pleadings and documents annexed thereto.
- 8) It is an admitted fact that the applicant had no role to play in the issuance of the PPO to him at any point of time. He has also not indulged into any Act of concealment or misrepresentation. Admittedly, he retired from a post falling in Group 'C' category.

- 9) As explained by the respondents, it is an admitted fact that the excess payment was made due to awarding of second MACP and due to wrong fixation of the pay of applicant. Thus, I do not find any fault in the action of the respondents in rectifying the mistake, which was committed in fixation of the pension of the applicant at the time of revising his pension.
- 10) Undisputedly, rectification by respondents has entailed into a recovery of Rs.71233/- from the applicant as communicated to him vide impugned order (Letter of Intimation of Gratuity) dated 15.09.2017. In this regard, I would like to mention here that the Hon'ble Apex Court in the case of Rafiq Masih (supra) has clearly held that no such recovery can be made from Group 'C' employee, also particularly, in view of the fact that excess payment has been made due to the mistake of the respondents and not due to any misrepresentation or concealment on the part of the applicant. I, therefore, hold that no recovery should be made from the applicant for any excess payment made to him towards his pension.
- 11) In view of the discussions made by me in the aforesaid paragraphs, I dispose of this OA in the following term: The recovery of Rs. 71233/- ordered vide impugned letter of respondent dated 15.09.2017 held illegal and is hereby quashed and set aside. The amount recovered from the applicant so far on this account shall be refunded to him by the respondents within three months from the date of this order. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

Manish/-