

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 580 of 2016

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Debaraj Singh, retd. Officer Surveyor, aged about 60 years, S/o Late Satrughana Singh, permanent resident of Vill/PO-Malipada, PS – Jankia, Dist. – Khurda.

.....Applicant

VERSUS

1. Union of India represented through its Secretary to Government of India, Ministry of Science & Technology, Technology Bhawan, New Mehrauli Road, New Delhi – 110016.
2. The Surveyor General of India, Surveyor General's Office, Hathibarkala Estate, Post Box No.37, Dehradun, Uttarakhand – 248001.
3. The Director, Survey of India, Chattisgarh Geo-Spatial Data Centre, Reena Apartment, 3rd Floor, Panchpedinaka, Raipur, Chhattisgarh – 492001.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Mr.S.B.Mohanty, counsel

Heard & reserved on : 18.1.2019 Order on : 24.1.2019

ORDER

Per Mr. Gokul Chandra Pati, Member (A)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- "(i) To quash the letter dtd. 29.9.2015 (Annexure A/3 series), communication made vide letter dated 10/11.5.2016 (Annexure A/5) and speaking order dtd. 4.4.2016 communicated under the letter dtd. 8.8.2016 (Annexure A/8 series) holding that same are contrary to law and outcome of non-application of mind;
- (ii) To direct the Respondent No.2 & 3 to release all the retiral benefits to the applicant forthwith including retiral TA without any deduction;
- (iii) To direct the respondent No.2 to pay the interest @ 12% on the delayed payment of pensionary benefits recovering the salary from the respondent No.3;
- (iv) To pass any other order/orders as deemed fit and proper in the interest of justice."

2. The applicant, before his retirement from service on superannuation on 29.2.2016, was working as Officer Surveyor under the administrative control of

respondent No.3 and was in-charge of the stocks of Maps in the Map Sale Office. Before his retirement on 29.2.2016, reconciliation of map in the stock was undertaken and the respondent No.3 directed the applicant to deposit a sum of Rs.19,646/- towards the shortage of map detected during the reconciliation process. The applicant represented against such demand, on which no action was taken and after retirement of the applicant, respondent No.2 directed recovery of the said amount from the retirement TA of the applicant. Being aggrieved, the applicant filed OA No. 401/2016 before this Tribunal in the first round of litigation and vide Tribunal's order dated 14.6.2016 (Annexure A/6), respondents were directed to consider the representation dated 5.10.2015 of the applicant (Annexure A/4) on this issue within 30 days. Accordingly, the respondents passed the speaking order dated 8.8.2016 (Annexure A/8), enclosing the order dated 4.4.2016, rejecting the representation of the applicant.

3. The grounds advanced in the OA are as below :

- (i) Recovery from the retirement TA is not permissible under law, since recovery of the dues is to be effected from the DCRG. The Board, constituted by the respondents for reconciliation, never reconciled the shortage and surplus of the maps. Only the amount towards shortage of maps was valued without valuing the excess quantity found during reconciliation.
- (ii) Recovery from a retired employee is not permissible as per the law laid down by Hon'ble Apex Court in the case of State of Punjab –vs- Rafiq Masih (White Washer).
- (iii) The speaking order does not reply the points raised by the applicant in his representation.
- (iv) The amount to be recovered from the employee on verge of retirement, should be finalised at least one year before the retirement.

4. The counter has been filed by the respondents, stating that the applicant was in-charge of the physical stock of maps and it is his responsibility to ensure proper maintenance of the stock and he would be responsible for any loss, shortage, surplus if it is detected. If there was any difficulty in discharging the duties, the applicant should have brought it to the notice of the competent authority. The physical verification of the stock and reconciliation was done with due diligence and care and for this purpose, a Board consisting of a group of officials was constituted to reconcile the shortage and surplus and the applicant was given ample opportunity to put forth his point of view before taking the decision. It is also mentioned in the counter that shortage of topographical and other maps from the stock is a major lapse on the part of the applicant in performing the duty and the plea of the applicant for writing of the

loss was not acceptable by the respondent No.2 in the light of carelessness and negligence on the part of the applicant. It is also mentioned in para 4.11 of the counter that there were many entries in the stock register with cutting, re-writing and other irrelevant entries in various pages of stock register, amounting to the carelessness/negligence on the part of the applicant and falsification of the record. It is stated that all retirement claims of the applicant have been settled except for the amount of Rs.19,646/-, which is deducted from the retiral benefits paid to the applicant vide order dated 25.8.2016 of the Tribunal in this OA.

5. The applicant has also filed a rejoinder broadly reiterating the contentions in the OA and denying the averments in the counter. The contention in para 4.11 of the counter is mentioned to be incorrect and baseless, but no document in support of the said contention was enclosed with the Rejoinder by the applicant.

6. Learned counsels for the applicant and the respondents were heard and pleadings perused by me. The applicant's counsel, besides reiterating the stand taken in the OA, has argued that the excess/surplus stock of maps shown in the reconciliation statement, copy of which is at page 25 of the OA, has not been taken into account while working out the amount shortage to be recovered from the applicant. It was further argued that the speaking order mentioned about the carelessness and negligence on the part of the applicant, which are unsustainable since no disciplinary proceeding has been initiated against the applicant or the applicant has not been given any opportunity to defend such charges. It was further submitted that the release of retirement benefits was delayed and it was released only after passing of the interim order dated 25.8.2016 of the Tribunal.

7. It is seen that vide order dated 25.8.2016 passed in this OA, the following direction was given to the respondents:

".....Ld. Counsel for the applicant has also prayed that interim direction be issued to the Respondents to release the balance retirement T.A. after retaining the disputed amount of Rs.19,646/-.

The above prayer being a reasonable one, is allowed and the respondents are directed to release whatever balance retirement T.A. admissible to the applicant within a period of six weeks, after retaining the disputed amount of Rs.19,646/-, which will be decided at the final hearing of the OA."

8. Admittedly, there was shortage of maps, which has been assessed during the reconciliation by a Board which was constituted by the respondents and that the applicant was in-charge of such stock of maps. The contention that the entries in the stock book have not been properly maintained and a number of cuttings and over-writings including irrelevant entries were identified during

reconciliation has not been denied by the applicant. Hence, it is clear that the shortage of the maps and improper maintenance of stock book are inter-related and it cannot be said that the applicant was not responsible for the same. Further, the amount to be recovered has been assessed through the reconciliation process well before the retirement of the applicant. Hence, the objection raised by the applicant on account of delay in assessing the amount is not tenable. Further, the judgment of Hon'ble Apex Court in the case of Rafiq Masih case, referred to in the OA for not effecting recovery, is applicable to the recovery of excess payment made to the employee due to mistake on the part of the employer. The ratio of this judgment is inapplicable to the case of the present applicant under who was the custodian the stock of maps, where shortage was detected. Hence, I am of the considered view that the shortage amount, as assessed by the authorities in the reconciliation process, is recoverable from the applicant.

9. However, the contention of the applicant that during the reconciliation process, some surplus stock of maps was identified and that surplus was not taken into account while assessing the loss on account of shortage of stock. The reason for not considering the value of the excess stock of maps identified during reconciliation, while assessing the loss on account of shortage, has not been explained by the respondents in the pleadings. Hence, it is necessary to assess the cost of such surplus maps and the value of these maps which are found in surplus/excess should be considered while working out the shortage amount recoverable from the applicant.

10. It is noted that one of the relief sought by the applicant in the OA is for payment of interest on the delayed payment of pensionary benefits to the applicant. It is not understood why for a recovery of Rs.19,646/-, the retirement benefits of the applicant were held up in full. It was released only after the order dated 25.8.2016 passed by the Tribunal in this OA, which has been also confirmed in para 5(b) of the counter. The counter does not mention any reason for delaying the payment till passing of the said interim order by the Tribunal. Hence, while assessing the amount to be recovered from the applicant towards shortage of stock of maps, the amount of interest payable to the applicant should also be taken into account. Under the rule 68 of the CCS (Pension) Rules, 1972, the applicant is entitled for interest at the same rate as applicable for GPF deposit for delay in release of gratuity for which the applicant was not responsible. In this case, no disciplinary action was initiated by the respondents against the applicant, which could have justified delay in release of gratuity. Also, the amount towards shortage of maps was recovered from the TA claim payable on retirement. Hence, no amount was recoverable

from the gratuity. Therefore, there is no justification on the part of the respondents to have delayed the release of gratuity to the applicant, for which, the applicant is entitled for payment of interest at the rate of 8% per annum for the period of delay in payment of gratuity from the date of retirement till the date of actual payment. Similarly, interest is payable for delayed release of the GPF amount, if any, at the rate applicable for the GPF. The interest amount payable to the applicant, is to be sanctioned in accordance with the rule 68 of the CCS (Pension) Rules, 1972.

11. In view of the discussions above, the OA is allowed in part. The respondents are directed to pay to the applicant the interest on the delayed payment of gratuity and the GPF as stated in para 10 above and the value of surplus/excess stock of maps identified in the reconciliation process, as discussed in para 9 above, from out of the amount of Rs.19,646/- withheld/recovered from the applicant towards shortage of stock of maps as per the interim order dated 25.8.2016 of this Tribunal in this OA. This order is to be complied by the respondents within two months from the date of receipt of a certified copy of this order. There will be no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

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