

CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH, R A N C H IOA/051/00333/2018Date of Order: 12-MAR-2019C O R A M

HON'BLE MR. JAYESH V.BHAIRAVIA, MEMBER (JUDL.)

HON'BLE MR. DINESH SHARMA, MEMBER (ADMN.)

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Vidya Kant Jha, aged about 64 years, son of Late Gopal Jha, resident of Chai Bagan, Namkum, PO-Namkum, PS-Namkum, District-Ranchi (Jharkhand).Applicant.

By Advocate:- Mr. Shahid Khan.

Vs.

1. Union of India through the Director General of Personnel/CSCC, Engineer-in-Chief's Branch, Integrated HQ of MOD (Army), Kashmir House, Rajaji Marg, New Delhi-110 011.
2. The Chief Controller General of Defence Accounts, Ulan Batar Road, Palam, PO & PS- Delhi Cantt., Delhi-110 010.
3. The Chief Engineer, HQ Central Command, Military Engineer Services, PS-Dilkusa, PO-Sadar, District-Lucknow 2, (Uttar Pradesh).
4. The Chief Engineer, Headquarters, Military Engineer Services, Jabalpur Zone, Jabalpur Cantt., PO & PS-Jabalpur, District-Jabalpur (Madhya Pradesh).
5. The Headquarter, Commander Works Engineer (CWE), Military Engineer Services, Dipatoli, Cantt., PO-RMCH, PS-Sadar, District-Ranchi (Jharkhand).
6. The Garrison Engineer, Military Engineer Services, 7th Club Road, PO & PS-Chutia, District-Ranchi.
7. The Controller of Defence Accounts, Rajender Path, Patna-800 019.
8. Office of the Accounts Officer, Garrison Engineer, Military Engineer Services, 7th Club Road, PO & PS-Chutia, Ranchi-834 009.Respondents

By Advocate:- Mrs. Babita Bharti, Addl. Standing Counsel.

O R D E R
(ORAL)

Dinesh Sharma, Member (Admn.):- The prayer of the applicant is for setting aside the order whereby a sum of Rs. 1,82,972/- has been

illegally recovered from retiral benefits (leave encashment) of the applicant vide voucher no. 02/CV/42/E/N dated 14.05.2015, on the pretext that the pay scale of the applicant was wrongly fixed. He has also requested for refund of the same amount to the applicant with interest at the rate of 12%. According to the applicant this recovery, without issuing any show cause notice is in complete violation of the principles of natural justice. Such recovery is also not permissible in the light of the Hon'ble Apex Court verdict in the case of Rafiq Masih (White Washer) & others, where it has been held that such recovery from employees belonging to Group 'C' & 'D' services, specially from those who are retired, is not permissible if there is no misrepresentation or fraud committed by them.

2. The respondents have denied the claim of the applicant in their written statement. According to them excess payment was made to him because of wrongly fixing his pay w.e.f. 01.09.2008 in place of 25.04.2008. By fixing the individual in Pay Band I 5200-20200 @ 2800 was right as pre-revised pay scale after 4000-6000 pay scale is 4500-125-7000 which fall in corresponding Pay Band in PB I 5200-20200 in GP 2800 but amendment issued vide a/c HQ CWE Ranchi letter to review GP and Pay Band is wrong and needs to be reviewed. Since due to this wrong fixation of 2nd ACP w.e.f. 25.04.2008 he has drawn the arrear of 2nd ACP w.e.f. 25.04.2008 to the date of retirement, it is advised by the Audit Authority to resubmit the case along with fresh revised proforma of pay fixation to grant the ACP w.e.f.25.04.2008. Since the department/Audit Authority had only last

option of recovering the amount of Rs.1,82,972/- from the leave encashment of the individual this has been deducted from LEC by their order dated 14.05.2015.

3. We have gone through the pleadings and heard the arguments of the learned counsels of both the parties. There is no major difference in the facts stated by both the parties. The applicant's claim for relief is mainly following the dictum of the Hon'ble Apex Court in the Rafiq Masih case. The order of the respondents deducting this amount which they had paid to the applicant by wrongly fixing his salary w.e.f. 25.04.2008, without even giving him any opportunity to object to such recovery, is patently wrong and is in violation of the orders of the Hon'ble Apex Court mentioned above. The applicant does belong to Group 'C' service (he was recruited as Group 'D' employee) and the wrong fixation was admittedly not done because of any fault on his part. Hence, recovering this amount from his retirement dues without giving any opportunity to show cause against is not at all justified.

Therefore, the order recovering this amount is hereby quashed. The respondents are directed to refund the said amount of Rs.1,82,972/- within 30 days of the receipt of this order failing which they would be liable to pay interest @ 9% per annum for each day of delay in such refund. No order as to costs.

Sd/-
(Dinesh Sharma)
Member (Admn.)
skj

Sd/-
(Jayesh V.Bhairavia)
Member (Judl.)