Central Administrative Tribunal
Principal Bench, New Delhi.

OA No.3182/2013

Reserved on: 15.02.2019

Pronounced on: 05.03.2019

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)

Ramjan Khan
S/o Shri Sadiq Ahmad
R/o House No.596
Vijay Vihar, Balram Nagar,
Loni, Ghaziabad, U.P.

Presently Employed at:
Helper
Token No.45290
Central Work Shop-II
Okhla, New Delhi-110022

-Applicant

(By Advocate: Shri Kamran Malik)

Versus

Delhi Transport Corporation (DTC)
Through its Chairman-cum-Managing Director
Indraprastha Estate,
New Delhi-110002

-Respondent

(By Advocate: Shri Manish Garg)

O R D E R

Hon'ble Mr. A.K. Bishnoi, Member (A):

The present OA has been filed seeking the following reliefs:-

> "a) To pass an order instructing the respondent to reimburse the amount deducted from the salary of the applicant with interest @ 24% p.a. and

b) Pass an order in the favour of applicant with cost or

c) pass any such further order or direction as may be deemed fit, proper and necessary".

2. The facts of the present case, as gleaned from the averments made by the two sides are that the applicant has been working with the respondent-Delhi Transport Corporation (DTC) since 1983. During the course of his appointment, he was sent for training under the Territorial Army from 23.09.1999 to 05.08.2000. He was paid Rs. 54,622/- from the Army and Rs. 55,347/- from the DTC as wages. When this came to the notice of the respondents through audit objection, they started making deductions on a monthly basis and recovered an amount of Rs. 44,020/- from the applicant till November 2010. Before further recoveries could be effected, the applicant challenged the action of the respondents before this Tribunal through OA No.1391/2010 in which directions were issued on 22.11.2010 to the respondent-authority to serve a fresh show cause notice on the applicant, giving details of the excess amount to be recovered. The applicant was directed to give his reply within two weeks therefrom. Since it was the contention of the applicant that certain other employees who were similarly placed but no recoveries were effected from them, he was directed to furnish all the details of such employees. The respondents were directed to dispose of the reply by passing a speaking and reasoned

order within two months from the date of receiving the reply and were directed to stop making deductions until the disposal of the reply. Consequently a notice dated 21.12.2010 was issued by the D.T.C.to the applicant giving the requisite details as also seeking information on other workmen, who were similarly placed, as per the applicant, but from whom recoveries were not effected.

2.1 The applicant has raised the issue of promotion but he does not seek this in the relief which he has sought. Hence, in the present OA, we shall confine ourselves to the issue of recovery relating to the amount paid to him while on training under the Territorial Army.

3. In the counter reply, reference has been made to FR-9 clarification No. 4 in FRSR (Fundamental Rules and Supplementary Rules) wherein it is mentioned that the period of training will be treated as on duty and the concerned employee would be entitled to military pay and allowance of the rank plus the difference between civil and military pay and allowances. It has also been submitted that the applicant has not challenged the speaking order dated 23.03.2012 nor communication dated 21.12.2010 and so the present application is not maintainable. No copy of any such speaking order has been put on record by the respondent. However, an order of that date is on file as part of Annexure P-7 (colly) in the context of OA No. 258/2012.

4. Heard the learned counsel for two sides and carefully perused the documents and pleadings placed on record.

5. In the first round of litigation, it was directed to the respondents to issue a fresh show cause notice to the applicant and on receipt of the reply, the respondents were directed to dispose it off by passing a speaking and reasoned order within two month from the date of receipt of such reply.

6. In the present OA, the applicant has made no mention of the previous OA referred above and also not submitted any document in connection with it. However, the respondents have filed an order dated 21.12.2010 (Annexure R-2) in which details of the deductions made by them had been specified. It has also been mentioned that the applicant has not furnished any details in support of his contention that there were four employees who had received salary from the two sources but from whom recoveries were not effected.

7. Fundamental Rule-9 Clarification No.4 in FRSR-**Training in Territorial Army**, reliance on which has been placed by the respondents, reads as follows:-

> "The period of absence of civil Government servants while on training with the provisional units of the Territorial Army will be treated as on duty. During such periods of training, they will be entitled to military pay and allowances of the rank plus the difference between civil and military pay and allowances".

8. It is, thus, clear that it was as per this Rule that an amount of Rs. 44,020/- has been recovered from the applicant till November 2010. It is also on record that as per the directions of this Tribunal in OA No.1391/2010 a notice was issued to the applicant. What further transpired is not clear from the submissions. However, since the applicant has inexplicably failed to make any reference to the previous round of litigation in the matter, there is no reason to get into any detailed discussion on the subject. The position as per rules is abundantly clear that the recovery made was justified. As such, the prayer for seeking refund of Rs.44,020/- deducted from the salary of the applicant is without any merit.

9. It follows from the contents of the pleadings that an amount of Rs. 10,602/- is yet to be deduced. In this connection the present position of law as laid down by the Hon'ble Apex Court in the case of **State of Punjab and Others Etc. vs. Rafiq Masih (White Washer) Etc.** [(2015) 4 SCC 334] is as follows:-

> "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 herein above, we may, as a ready reference, summaries 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."

10. The case of the applicant, as far as the balance amount is concerned, is situated within the specified categories above, and as such is squarely covered by the judgement. Hence, as per the law laid down in **Rafiq Masih (supra)**, no further recoveries from the applicant are permissible.

11. The present OA is accordingly disposed off with a direction to the respondents not to make any further recoveries from the applicant. However, the amount which has already been deducted shall be retained. No order as to costs.

(A.K. Bishnoi)
Member (A)

(V. Ajay Kumar)
Member (J)

cc.