

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2158/2017

Reserved on : 10.04.2018.

Pronounced on : 26.04.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Om Prakash Chopra, 62 years
S/o Sh. Khairati Lal,
Retired as Pharmacist from the
Delhi Govt. Dispensary-Shahzada Bagh,
Delhi.

R/o H.No. 1636, (FF) Multani Mohalla,
Rani Bagh, Delhi-110034.

.... Applicant

(through Sh. S.N. Pandey, Advocate)

Versus

1. GNCT, Delhi through
Chief Secretary,
GNCT, Delhi, Delhi Govt. Secretariat,
I.P. Estate, New Delhi.
2. Principal Secretary,
Health & Family Welfare,
9th Floor, Delhi Govt. Secretariat,
I.P. Estate, New Delhi.
3. Finance Secretary,
Delhi Govt., 4th Level, A-Wing,
Delhi Govt. Secretariat,
I.P. Estate, New Delhi.
4. Director General Health Service,
GNCT, Delhi,
F-17, Karkardooma,
Delhi-110032.
5. CDMO (Central),
Dte. of Health Services (GNCTD),

Nabi Karim, Paharganj,
New Delhi-55.

..... Respondents

(through Sh. K.M. Singh, Advocate)

ORDER

Briefly stated, the facts of the current O.A. are that the applicant was appointed as Pharmacist (Group-C) in the Directorate of Health Services, Govt. of NCT Delhi on 29.10.1976. He retired from a Group-C post on 31.10.2015.

2. The applicant states that after two years of regular service, vide order dated 01.06.2011, he was given the Grade Pay of Rs. 4200/-. After completion of 10, 20 and 30 years of regular service respectively, the applicant's Grade Pay was fixed at Rs.4600/- (1st ACP/MACP), Rs.4800/- (2nd ACP/MACP) and Rs.5400/- (3rd MACP). The applicant was given Grade Pay of Rs.5400/- on July, 2011 which he continued to receive upto June, 2015. Vide their order dated 16.06.2011, the respondents reaffirmed the approval of aforesaid Grade Pay of Rs.4600/-, Rs. 4800/- and Rs. 5400/- stating therein that:-

"Consequent upon approval of the Grade pay of Rs.4600/-, 4800/- and 54,00/- under 1st, 2nd and 3rd MACP respectively to the Pharmacist by the competent authority, all the Pharmacists who were earlier granted MACPs in the grade Pay of Rs.4200/-; 4600/- and 4800/- under the 1st, 2nd and 3rd MACPs respectively, may be given the new Grade Pay as per the date from which they were granted MACPs."

Vide Office Order dated 31.07.2013, the respondents notified that the Pharmacists should be given the Grade Pay of Rs.4800/- on

account of 3rd MACP instead of Rs.5400/-. Vide order dated 20.09.2013, the respondents further clarified that the change of Grade Pay from Rs.2800/- to Rs.4200/-, which was given after completion of two years of service, will be treated as 1st MACP and the Pharmacists would be entitled only for up-gradation of Rs.4600/- and Rs.4800/- in IInd and IIIrd MACP respectively. Pursuant to this order, the respondents issued Office Order dated 23.07.2015 to re-fix the Grade Pay of applicant from Rs.5400/- to Rs.4800/- made applicable w.e.f. 01.09.2008. Pursuant to the order dated 23.07.2015, an amount of Rs.4,44,827/- was deducted from the amount of gratuity of the applicant.

3. The applicant states that the respondents implemented the order of this Tribunal passed in OA-98/2015 (Som Prakash Vs. GNCTD & Ors.) on 26.11.2015, which was decided relying upon the judgment of Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih & Ors.**, 2014(8)SCALE 613 and also DoP&T O.M. dated 02.03.2016 holding that any recovery from the Class-III and Class-IV (Group-C & D Services) retired employees or the employees due to retire within one year, would be impermissible. Therefore, the respondents were directed not to recover any amount from the applicant herein and in case they have recovered some amount, the same should be refunded within 15 days. An identical issue came for adjudication before this Tribunal in OA-2083/2015 (Jai Singh

Jain Vs. GNCTD & Ors.) decided on 20.08.2016 wherein it was held that any recovery from the gratuity of applicant is impermissible and it was directed that the respondents therein should refund the amount of Rs.3,69,587/-, which was already deducted.

4. The applicant submitted a representation dated 20.04.2017 against the illegal deduction of the amount of gratuity and requested for refund of the same but the respondents stated that they will not release the withheld amount without orders from the Court. The applicant submits that this action of the respondents is violative of the judicial pronouncements of this Tribunal in OA-864/2014 (Om Prakash & Ors. Vs. Secretary, NCERT) and OA-98/2014 (Pradeep Kumar Vs. Govt. of India & Ors.) and is illegal and arbitrary.

5. In reply, the respondents have stated that this O.A. is time barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985 and is liable to be dismissed on this ground only. The ratio laid down by Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) is not applicable in this case as the judgment was pronounced on 18.12.2014 and accordingly DoP&T issued O.M. dated 02.03.2017 regarding recovery of wrongful/excess payments made to government servants. Prior to this, the ratio laid down by the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal Vs. State of**

Uttarakhand, (2012) 8 SCC 417 prevailed in which the following has been held:-

"The question that arises for consideration in this appeal is whether over payment of amount due to wrong fixation of 5th and 6th Pay Scales of teachers/principals based on the 5th Pay Commission Report could be recovered from the recipients who are serving as teachers. The Division Bench of the High Court rejected the Writ Petition filed by the appellants and took the view that since payments were effected due to a mistake committed by the District Education Officer, the same could be recovered. Aggrieved by the said judgment, this appeal has been preferred."

It was further held that:-

6. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012."

6. The respondents also submit that since the applicant retired during 2014-15, hence the O.M. dated 06.02.2014 would be applicable to the applicant. They have further relied on the following judgments:-

- (a) **Narayan Nair Vs. State of Kerala**,
- (b) **Golaknath Vs. State of Punjab**,
- (c) **UOI Vs. S.R. Dhingra**, (2008)2 SCC 229.
- (d) **Basawaraj & Anr. Vs. The Spl. Land Acquisition Officer**, 2013)14 SCC 811.
- (e) **Chandi Prasad Uniyal Vs. State of Uttarakhand** (supra).

7. The respondents contend that the applicant was duly informed regarding his grade pay vide order dated 31.07.2013, which was subsequently re-fixed by order dated 20.09.2013. The order dated 13.10.2015 to withhold/recover the amount from the gratuity of the applicant was just and issued as per the guidelines prevailing in O.M. of DoP&T dated 06.02.2014. Hence, the O.A. may be dismissed.

8. I have heard the learned counsels for the parties and perused the record. The relief prayed for by the applicant in the current O.A. is primarily to:-

- “(i) To set aside/quash the impugned order dated 13.10.2015 passed by the Pay & Accounts Office of Respondents by which the amount of Rs.4,44,827/- was illegally deducted from the gratuity payable to the applicant.
- (ii) To direct the respondents to refund the sum of Rs.4,44,827/- with reasonable interest from the date of deduction till the regularization.”

9. In the present case, the letter dated 01.06.2011 prescribing Rs.5400/- Grade Pay as the 3rd MACP to the Pharmacists was corrected through a letter dated 20.09.2013 laying down the Grade Pay of Rs. 4800/- as the 3rd MACP. This direction regarding reduction of Grade Pay from Rs. 5400/- to Rs.4800/- was rectification of a mistake on the part of the respondents while interpreting the MACP Scheme, which led to wrong fixation of pay initially.

10. In this regard, the law laid down in **Rafiz Masih** (supra) by the Hon'ble Supreme Court lays down that:-

“12. 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, summarise 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.”

In view of the law laid down in **Rafiq Masih** (supra), such recovery could not have been made from the applicant.

10.1 As regards the reliance placed by the respondents on the judgment of Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal** (supra), needless to state that the judgment of Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) had taken note of the afore mentioned judgments before laying down the law. The plea of the respondents is that the judgment in **Rafiq Masih** came on 18.12.2014, followed by DoP&T Circular dated 02.03.2016, prior to which recovery could be made in terms of Circular dated 06.02.2014

of DoP&T is not tenable. The decision of the Hon'ble Supreme Court came in December, 2014 despite which the respondents chose to go ahead with the recovery, which, in any case, was a result of their own mistake/misinterpretation of the MACP Scheme.

11. In view of the aforementioned facts, the O.A. is allowed. The impugned order dated 13.10.2015 is quashed and set aside. The respondents are directed to refund the amount of Rs. 4,44,827/- deducted from the gratuity of the applicant within a period of three months from the date of receipt of a certified copy of this order. The respondents will, however, fix the pay and pension of the applicant keeping in view the clarification dated 20.09.2013 and the revised pay fixation order dated 23.07.2015. No costs.

(Praveen Mahajan)
Member (A)

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