CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI

O.A. NO.2665 of 2018

Orders reserved on : 08.08.2019

Orders pronounced on : 14.08.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Radha Krishanan Nair, Store Attendant,
P.T. No.9562, Group 'C',
Aged about 61 years,
S/o Sh. Sukumaran Nair,
R/oB-76, Mansa Ram Park,
Uttam Nagar, Delhi-110059.

....Applicant

(By Advocate : Shri Anil Mittal)

VERSUS

Delhi Transport Corporation,
I.P. Estate,
New Delhi-110002.

.....Respondents

(By Advocate : Shri Chander Shekar Goswami for Shri Karunesh Tandon)

O R D E R

The applicant has filed this OA seeking the following reliefs:-

"(i) Quash order dated 30-10-2017 (Annexure-A.1) and order dated 21-12-2017 (Annexure-A.2)

(ii) direct the respondents to calculate the Gratuity of the applicant on the basis of the basic pay of Rs.38,600/- which comes to Rs.7,87,440/- and to refund him to amount of Rs.1,07,326/- (as calculated in paras 4.6 and 4.7 above) along with interest;

(iii) direct the respondent to pay arrears of 7th Pay Commission to the applicant calculating the same on the basis of basic pay of Rs.38,600/-."

2. Brief factual matrix of the case are that the applicant was appointed as Store Attendant with the respondent – DTC on 20.10.1983. The respondent implemented the ACP Scheme to the employees of DTC from August 2002. However, on 1.9.2008, the applicant was given the benefit of annual increment and the same was wrongly fixed to Rs.38,500/- instead of 37,500/-. However, at the time of calculating the gratuity of the applicant, it was found out that the basic pay fixed on 1.9.2008 to 1.7.2017 was not in order. Accordingly, the basic pay was re-fixed to RS.37,500/- in place of Rs.38,500/-. The difference of pay fixation between 1.9.2008 to 31.10.2017 come out to Rs.84,886/- in excess and the same was deducted from the gratuity amount of Rs.7,65,000/- and the balance amount of Rs.6,80,114/- has been paid to the applicant.

2.1 Applicant preferred his representation dated 15.11.2017 against the aforesaid recovery but the respondents by its order dated 21.12.2017 rejected his representation.

2.2 Thereafter applicant made an application under RTI application which was replied by the respondents vide reply dated 25.1.2018 stating therein that since his basic pay had been wrongly fixed on 1.9.2008 and this mistake was discovered in the month of October, 2017, as such his basic pay was re-fixed at Rs.37,500/- instead of Rs.38,600/- and

therefore, the gratuity was calculated on the basis of Rs.37,500/- and a sum of Rs.84,886 being difference from 1.9.2008 to 30.10.2017 was deducted from gratuity amount. Applicant's arrears of the recommendations of the 7th Pay Commission w.e.f. 1.1.2016 till 31.10.2017 will also be calculated and paid on the basis of Rs.37,500/- and not on the basis of Rs.38,600/-.

2.3 Being aggrieved by the aforesaid recovery from his gratuity, the applicant has filed this OA seeking the reliefs as quoted above.

3. When this matter is taken up for consideration, counsel for the applicant submitted that the alleged increment that had been fixed by the respondents on 1.9.2008 was on their own accord without any misrepresentation from him and the applicant was paid salary and earned annual increments from September, 2008 till 31.10.2017 during his service tenure and as such the respondents cannot be permitted to recover the same. In support of applicant's claim, the applicant has placed reliance on the decision of this Tribunal in OA 3523/2016 in the case of ***Neelam vs. DTC*** dated 22.5.2017.

4. On the other hand, counsel for the respondents submitted that in each and every case when an employee is going to retire, the respondents are duty bound to check the records of the employee before determining the retiral dues

and as such at the time of calculating the gratuity of the applicant certain discrepancies were observed, as it was found out that the pay of the applicant, which was fixed on 1.9.2008 to 1.7.2017, was not in order and therefore, the basic pay was re-fixed to Rs.37,500/- in place of Rs.38,500/-. The difference of the basic pay and DA was calculated which comes to Rs.84,886/- and the same was deducted from the gratuity of the applicant. Counsel also submitted that upon representation received from the applicant against the aforesaid re-fixation of his pay, the competent authority examined the matter and found that the deducted amount is in order.

4.1 Counsel for the respondents further submitted that undertakings were already taken from the applicant while fixing his pay in accordance with the recommendations of 6th CPC as well as subsequently on 4.10.2017 in which applicant has specifically gave his undertaking that any amount on account of overpayments of Pay & allowances, P.F., Pension, Gratuity etc. detected by audit or any authority of DTC, he will refund the same in lump sum, without any delay with interest as applicable from time to time. Counsel for the respondents submitted that the aforesaid decision of this Tribunal as relied upon by the applicant in this case is not relevant to the facts of this case.

4.2 Lastly, counsel for the respondents submitted that in the entire OA the applicant has not been able to demonstrate that the aforesaid re-fixation was wrong but his only contention is that there was no misrepresentation on his part and the same was continued to be given to him till his retirement. This contention is not sustainable in view of the fact that at the time of retirement of each and every employees, the respondents are duty bound to check the records of the employee before determining the retiral dues of employees and in this before fixing his pay and allowance in terms of recommendations of the 6th CPC, the undertaking was given by the applicant that any amount on account of overpayments of Pay & allowances, P.F., Pension, Gratuity etc. detected by audit or any authority of DTC, he will refund the same in lump sum, without any delay with interest as applicable from time to time. As such there is nothing illegal in the action of the respondents and the present OA deserves to be dismissed by this Tribunal.

5. Having heard learned counsel for the parties and carefully perused the pleadings available on record, it is observed that in the pleadings of the applicant, there is no averment that his pay fixation fixed earlier w.e.f. 1.9.2008 was right but his only contention is that there is no misrepresentation on his part and the same he continued till his retirement and as such his retirement benefits have to be

calculated/determined on the basic of basic pay he was drawing on the date of his retirement. This contention is not sustainable in the eyes of law in view of the latest judgment of the Hon'ble Supreme Court, in which the Apex Court again considered the issue of recovery in the case of ***High Court of Punjab and Haryana and others vs. Jagdev Singh*** in Civil Appeal No.3500/2006 decided on 29.7.2016, in which held as follows:-

> "9 The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.
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> 10 In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc., (2015) 4 SCC 334, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:
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> "(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
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> (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
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> (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.
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> (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." (emphasis supplied).
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> 11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.
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> 12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.
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> 13 The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs."

6. So far as reliance placed by the applicant on the decision of this Tribunal in ***Neelam vs. DTC*** (supra) is concerned, the same is not applicable in the present case as in that case the issue was of erroneous fixation of pay on grant of third financial upgradation under MACPS whereas in the instant case pertains to fixation of his pay on account of recommendations of VIth Pay Commission and while fixing his pay and determining his retiral benefits, undertakings were taken. A copy of such undertaking is at page 15 of the paperbook.

7. In the result, for the foregoing reasons and in view of the aforesaid observations of the Apex Court in ***Jagdev Singh*** (supra), this Tribunal does not find any illegality in the action of the respondents of recovery of excess payment from the gratuity of the applicant. Accordingly, the instant OA being devoid of merit is dismissed. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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