

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.3482 of 2017

Orders reserved on : 07.08.2019

Orders pronounced on : 08.08.2019

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

Naveen Kumar Jain, (Aged about 53 years)
(Voluntarily Retired)
S/o Shri Shiv Narain,
r/o G-1, Delhi Administration Government Officers Flats,
Model Town-I, Delhi-110009.

....Applicant

(By Advocate : Shri C. Rajaram)

VERSUS

1. GNCT of Delhi,
Through Chief Secretary,
Level 5, 'A' Wing,
Delhi Secretariat, IP Estate,
New Delhi-110002.
2. The Medical Superintendent,
Aruna Asaf Ali Hospital,
Rajpur Road, Delhi-110054.
3. The Pay Accounts Officer-XI,
GNCT of Delhi, Old Secretariat,
Delhi-110054.

.....Respondents

(By Advocate : Shri Ramesh Shukla for Mr. Amit Anand)

ORDER

Heard learned counsel for the parties.

2. By filing this OA the applicant is seeking the following reliefs:-

“(a) Issue appropriate order(s) or directions to the Respondents to quash the impugned order dated 07.09.2017 passed by the Respondents as the same is non-est, void ab-initio, discriminative and arbitrary.

- (b) Issue appropriate order(s) or directions to the Respondents to refund the illegally recovered amount of Rs.1,38,778/- (Rupees One Lakh thirty eight thousand seven hundred seventy eight only) along with interest for delay in payment of retirement Gratuity.
- (c) Issue directions to hold the concerned Officer/Official liable, recover interest for delay in and Government of India, Ministry of Personnel payment from the salary of the erring officer/official and for not complying with the directions of the Apex Court, Public Grievances & Pensions, Department of Personnel & Training vide OM NO. F.No.18/03/2015-Estt.(Pay-I) dated 2nd March, 2016.
- (d) Pass any order/direction in favour of the Applicant and against the Respondents which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.
- (e) Award cost of the proceedings."

2. When this matter is taken up for consideration, counsel for the applicant submitted that the applicant was working as Pharmacist Group 'C', Non-Gazetted Official, with respondent no.2 and opted for voluntary retirement from Govt. service with effect from 27.4.2017 due to personal and health reasons, which application was accepted by the competent authority as per order dated 22.4.2017. After completion of codal formalities, the respondent no.3 allotted Pension Payment Order No.67099-17-0064-9 and issued authority for commutation and retirement gratuity after alleged arbitrarily and illegally deducting a sum of Rs.1,38,778/- from the applicant's gratuity amount without issuing any show cause notice, therefore, it has thus been a flagrant violation of the

principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the employee concerned to notice and giving him a hearing in the matter.

3. Counsel for the applicant also placed reliance on the decision of the Apex Court in *State of Punjab and others vs. Rafiq Masih (White Washer)* and also DOP&T OM dated 2.3.2016 on the subject of recovery of wrongful/excess payments made to Government Servants.

4. This Court specifically raised a query to the learned counsel for the respondents that whether before giving effect to the aforesaid recovery from the amount of gratuity of the applicant, the respondents have issued any notice to the applicant. Although counsel for the respondents has not disputed the fact that no show cause notice was issued to the applicant before giving effect to the aforesaid recovery from the amount of gratuity of the applicant, but he submitted by referring to the counter affidavit that applicant opted for voluntary retirement on 27.1.2017, which was duly accepted by the competent authority and the applicant was stands retired on 27.4.2017 after completion of notice period. His pensionary benefits were duly calculated and the bill was sent to PAO-XI which was returned back with remarks that the

pay fixation of concerned official may be reviewed. Accordingly, the concerned officials visited the office of the applicant where all the relevant orders and service book were scrutinized and it was opined that the 2nd MACP granted to the concerned official appears to be erroneous and may be revised. The case of the applicant was discussed with the DCA (Tech), Principal Accounts Officer, ITO, Vikas Bhawan, Delhi-11002, according to the respondents, in the presence of the applicant and held an appropriate proposal of authorization of pensionary benefits as per the entitlement of the retiree may be submitted to PAO-XI for consideration/authorization and the incident of erroneous grant of MACP in case of the applicant be brought to the notice of the Secretary, Health & Family Welfare Department, Govt. of NCT of Delhi for review of similar cases in other officers of the department, if any to avoid the overpayment of pensionary benefits. Counsel also submitted that case of the applicant was also sent to MACP Committee and after examining all the relevant documents, the Committee was of the opinion that the order dated 4.10.2012 has to be cancelled the 2nd MACP, which was due after 20 years of service and given to the concerned official vide order dated 29.9.2012 and 3rd MACP has to be granted after 30 years of service that is w.e.f 20.1.2016. After the recommendation of the MACP Committee of the respondents' organization, all the retirement benefits were recalculated as

per revised pay fixation and the bill was placed before PAO-XI for payment of revised gratuity amount of Rs.94302/- after effecting recovery of Rs.138778/- on account of wrong pay fixation done earlier besides other retirement benefits.

5. Having regard to the submissions of the learned counsel for the parties, it is an admitted position that before giving effect to the recovery from the gratuity amount of the applicant, the respondents have not issued any show cause notice. Even if it is assumed that applicant was wrongly granted 2nd MACP, which was rectified by the respondents, but the fact is that since the said recovery has the effect of an employee suffering civil consequences the same should not have been passed without putting the employee concerned to notice and giving him a hearing in the matter. Hence, it is clear that respondents have violated the principles of natural justice as no prior notice was issued to the applicant before ordering the alleged amount of recovery from the gratuity amount of the applicant.

6. Further the Apex Court in ***Bhagwan Shukla Vs. Union of India & others***, 1994 (6) SCC 154, in similar circumstances, has held that an order passed in violation of principles of natural justice cannot be sustained. In para 3 of the judgment, the Apex Court observed as under:

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause ...Fair play in action warrants that no such order which has the effect of an employee suffering

civil consequences should be passed without putting the concerned to notice and giving him hearing in the matter."

6. In the result, the respondents are directed to issue a show cause notice to the applicant and thereafter after considering his reply to the said show cause notice, pass appropriate reasoned and speaking orders in respect to the alleged recovery and accordingly take final decision in the matter in accordance with the rules and latest law on the subject.

7. The OA is disposed of in above terms. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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