

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

OA No. 4040/2017

New Delhi this the 06th day of August, 2019

Hon'ble Sh. Pradeep Kumar, Member (A)

Muninder Singh
Son of Shri Ved Prakash Bana,
Aged about 47 years,
Employee Code-89938450
Designation-Trained Graduate Teacher (Mathematics)
At Rajkiya Sarvodaya Bal Vidyalyaya, Gr. B
Mandawali, Delhi-110092,
Resident of H.No. 94
Near City Care Hospital, Niwari Road,
Modinagar, Ghaziabad, UP-20120 ...Applicants

(By Advocate : Sh. Bajrang Vats with Ms. Geeta Gopal)

Versus

1. GNCTD of Delhi through
Chief Secretary, New Secretariat, ITO Delhi,
2. Principal
Rajkiya Sarvodaya Bal Vidyalyaya (GNCTD)
Mandawali, Delhi-110092. Respondents
(By Advocate : Sh. H A Khan)

ORDER (ORAL)

Hon'ble Sh. Pradeep Kumar, M(A)

Sh. Bajrang Vats, learned counsel represented the applicant and Sh. H A Khan, learned counsel represented the respondents.

2. The applicant was appointed as Assistant Teacher in MCD in the year 1998. He was promoted as TGT in the year 2010. At the time of 6th CPC implementation in the year 2008, the applicant was granted certain pay fixation to PB-II + (GP) Rs. 4600/- which was made effective w.e.f. 01.01.2006. The pay fixation continued up to 31st July, 2017 when one audit party conducted an inspection. It was seen that the original fixation given in the year 2008 which was to take effect from 01.01.2006, was erroneous and certain excess payments had taken place. Accordingly, one memorandum was

issued to the applicant by the School authorities on 25.07.2017 which reads as under :-

"As Per Audit Memo No. 09 dt 16/05/2017, Sh. Muninder Singh, TGT is hereby directed to deposit an amount of Rs. 95063/= (By Audit) by challan immediately on account of wrong pay fixation from 1/1/2006 to 1/7/2016, otherwise the amount will be deducted from the salary bills of August 2017."

However, since excess payment continued up to 31st July, 2017, when this excess payment came to the light, the payable salary w.e.f. 01.08.2017 was corrected and recoveries for past period were to be effected against the applicant.

3. The applicant preferred the OA, feeling aggrieved that the recoveries have been ordered even though he had not misrepresented anything, at any stage.

4. The applicant pleads that in accordance with DOP&T Office Memorandum dated 02.03.2016, which was issued in follow up to the Hon'ble Apex Court's directions in the case of **State of Punjab & Ors vs Rafiq Masih (White Washer) in CA No. 11527 of 2014** and in the case of **Chandi Prasad Uniyal And Ors. Vs. State of Uttarakhand And Ors.**, recoveries from Group 'C' and Group 'D' staff are barred in certain circumstances and specially so, if excess recoveries had continued for a period of more than five years. The applicant further mentioned that he does not have a grievance with respect to the correct fixation that was granted to him w.e.f. 01.08.2017. The grievance relates to the unjust recoveries for past only.

5. The respondents opposed the OA. It was brought out that at the time of pay fixation in 2008, the applicant had given an option form wherein consent was given by the applicant to the effect that he undertakes that in the event of his pay having been fixed in a manner, contrary to the provisions

under Rule 6 (2) of 7th CPC, Revised Pay Rules, 2016, any excess payment shall be refunded.

6. The respondents drew attention to para 4 (i) to (v) of DOP&T's Office Memorandum dated 02nd March, 2016 which reads as under :-

"4. The Hon'ble Supreme Court while observing that 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 has summarized 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 dues 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."

7. Matter has been heard. This is the admitted case where certain erroneous pay fixation was given in the year 2008 and which was to take effect from 01.01.2006. The erroneous payment of salary continued up to 31st July, 2017 and it came to light during audit inspection. The respondents have not been able to bring out any misconduct or misrepresentation by the applicant.

8. In view of the foregoing, the ratio given by Hon'ble Apex Court in the case of Rafiq Masih (supra), since there has not been any misrepresentation, is attracted and the said recoveries are accordingly debarred.

9. The OA is accordingly allowed. The respondents are directed not to give effect to the recoveries which are reported to actually amounting to Rs.

1,00,985/- in respect of excess payment for the period from 1.1.2006 to 31.07.2017. It is made clear that this order does not, in any way, preclude the respondents to regulate the due payment w.e.f. 01.08.2017. In case certain recoveries, have already been made, the same shall be refunded to the applicant within a period of three months. No costs.

(Pradeep Kumar)
Member (A)

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