

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(orders reserved on 30.9.2019).**

O.A.NO. 060/01322/2018 Date of order:- 10.10.2019.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J).**
Hon'ble Ms. Archana Nigam, Member (A).

Sumanta Ghosh son of Shri Sourindra Mohan Ghosh, aged 51 years, substantive SSA, office of Regional Provident Fund Commissioner-I, Regional Office, Chandigarh, SCO 4-7, Sector 17-D, Chandigarh, now working as Section Officer (on deputation basis), Unique Identification Authority of India, Department of Electronics & Information Technology, Regional Office, SCO 139-141, Sector 17-C Chandigarh – 160017.

....Applicant

(Present: Mr. Anil Bhardwaj)

Versus

1. Union of India through the Secretary to Government of India, Ministry of Labour & Employment, Govt. of India, Employees Provident Fund Organization, Head Office, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi – 110066.

2. Central Provident Fund Commissioner, Employees Provident Fund Organization, Head Office, Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi – 110066.

3. Regional Provident Fund Commissioner-I, Employees Provident Fund Organization, Regional Office, SCO 4-7, Sector 17-D, Chandigarh – 160017.

4. Deputy Director, Unique Identification Authority of India, Regional Office, SCO 139-141, Sector 17-C, Chandigarh – 160017.

..... Respondents

(Present: Mr. Aseem Rai, Advocate)

O R D E R

Sanjeev Kaushik, Member (J):

Applicant has challenged the order dated 26.7.2017(Annexure A-1), letter dated 6.2.2018 (Annexure A-2) with

calculation sheet of recovery amounting to Rs.3,19,287/-, order dated 30.5.2018 (Annexure A-3) whereby his representation against the impugned recovery has been rejected on the ground that the SSAs who retired earlier from the defence services and not holding commissioned officer rank at the time of their retirement will not be eligible for protection of pay in accordance with instructions dated 5.2.2010 and letter dated 1.6.2018 (Annexure A-4). Applicant has further sought quashing of order dated 18.6.2018 (Annexure A-5) whereby alleged excess payment of Rs.3,19,287/- is to be recovered from him.

2. The issue that arose for consideration in the present OA is whether the applicant, who earlier worked in non-commissioned cadre and was discharged from military service and re-deployed in the civilian post under the Central Government, is entitled to pay-protection in the respondent organization on the basis of last pay drawn by him in the armed forces or not ?

3. The facts are not in dispute. Learned counsel for the parties are in agreement that the issue as noticed herein above, has already been settled against the category of the applicant claiming protection of pay by a coordinate Bench of the Hyderabad Bench of the Tribunal in the case of **A.Dhruva Kumar & Ors. versus Union of India & Ors.** (O.A.No.020/00037/2014) decided on 9.1.2018 and an order dated 10.9.2018 passed by the Chandigarh Bench of the Tribunal in the case of **Sahib Singh versus Central Board of Trustees (CBT) & Another** (O.A.No.060/00858/2017).

4. On the basis of the orders passed by the Hyderabad Bench & Chandigarh Bench of the Tribunal, learned counsel for the respondents states that the present OA also deserves to be dismissed. Learned counsel for the applicant could not dispute this fact. However, he submitted that the order dated 31.7.2018 has since been modified by this Court vide order dated 10.9.2018 in the case of Sahib Singh(supra) to the extent that the respondents cannot effect recovery of the excess payment made to the applicant (therein) in terms of the decision rendered by the Hon'ble Apex Court in the case of **State of Punjab versus Rafiq Masih & Ors.** (2015(1) S.C.T. Page 195, therefore, he prayed that the impugned order of recovery in the present case Annexures A-2 & A-5 be quashed and set aside. This fact has also not been disputed by the learned counsel for the respondents. The relevant paras of orders dated 31.7.2018 & 10.9.2018 are reproduced hereunder :-

13. The fixation of pay of the re-employed Defence personnel is notified under CCS (Fixation of pay of Re-employed Ex-servicemen) Orders 1986 and the latest clarifications received vide OM dated 5.4.2010. The office memorandum dated 5.4.2010 states that after the issue of the OM dated 11.11.2008, the DOPT has been in receipt of certain references seeking clarification regarding the manner of fixation of pay of retired Defence Forces personnel/officers reemployed in Central Government civilian posts after the implementation of the CCS (Revised Pay) Rules 2008. This OM dated 5.4.2010 was issued in view of the need to amend the relevant provisions of CCS (Fixation of Pay of Re-employed Ex-Servicemen) Rules after the introduction of the system of running Pay Bands and Grade Pays during the VI CPC.

14. Admittedly, the applicants fall in the category of Ex.Servicemen who held posts below Commissioned Officer rank in the Defence Forces and retired before attaining the age of 55 years. As per their averments, applicants 1 to 7 retired after 2006 and were re-employed in 2010 and 2012. Applicants 8 to 10 retired prior to 2006 and were re-employed during 2006. In view of the fact that they belong to the Non- Commissioned Officer rank, their entire pension and pension equivalent to the

retirement benefits shall be ignored. In a scenario, where the pension is fully ignored, Sub-Para 4 (b) (i) of the Office Memorandum as extracted below would come into operation:

Existing Pension	Proposed Revised Pension
Para 4(b)(i) : In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the reemployed post.	Para 4(b)(i) In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed as per entry pay structure of the re-employed post applicable in the case of direct recruits appointed on or after 1.1.2006 as notified vide Section II, Part A of First Schedule to CCS(RP) Rules, 2008.

15. The respondents have rightly pointed out that Para 3 (v) of the OM relied upon by the applicants relates to those persons whose pay is fixed taking into consideration the non-ignorable part of pension as in the case of Commissioned Officers. As such these instructions do not apply to the applicants whose entire pension has to be ignored for the purpose of pay fixation in the re-employed post. There cannot be any doubt in this regard in view of the last sentence in this Para which reads as follows:

"In all these cases, the non-ignorable part of the pension shall be reduced from the pay so fixed." Reduction of non-ignorable part of the pension from the pay would arise only in the case of Commissioned Officers.

16. In view of this position, it is clear that in cases where the pension is fully ignored, the initial pay on re-employment shall be fixed as per the entry pay in the revised pay structure of the reemployed post only and not on the basis of the last pay drawn by them in their earlier re-appointment. Thus, there is no basis at all for the applicants' contention that they are entitled for pay fixation on the basis of the last pay drawn by them in their previous service.

17. The applicants have cited the case of Sri Harischandra D Ghag, who had approached the Central Administrative Tribunal, Mumbai, with a prayer to fix his pay on the basis of the last pay drawn as Ex.Serviceman and also ignore the Military Pension while fixing his pay after he joined the respondent-department as LDC. However, it is observed that the said OA was allowed on the ground that the applicant therein was re-employed with effect from 12.7.1985, and that the OM of the DOPT, which was issued on 31.7.1986, cannot have any retrospective operation. Para 6 of the aforesaid judgment is extracted hereunder:

“6. The facts relating to Shri Dhupkar are not before me but I have no doubt that the applicant is similarly situated to Shri SK.Nair working in the same organization. Shri S.K.Nair got the benefit on the basis of Full Bench decision which had gone into the question of retrospective operation of DOP instruction which was circulated in Department of P&T in December'85. It is not in dispute that the applicant is re-employed w.e.f. 12-7-1985 i.e. prior to the clarificatory instructions of the DOP. Therefore, as held by the Full Bench in O.A.3/89 the same would not apply to the applicant pensioner re-employed prior to the issue of those instructions. I am of the view that the issue raised in the matter and prayers made by the applicant are no longer res-integra and I am bound by the decision of the Ernakulam Bench judgment in O.A.754/93 and Full Bench judgment on which it relied.

O.A. is, therefore, allowed with no order as to costs. Respondents are directed to make notional pay fixation from the date of re-employment viz., 12.7.85 and the actual payment of arrears should be made for one year prior to the date of filing of the application viz., 4-4-1994. The payment is to be made within four months from the date of receipt of a copy of this order. No order as to costs.”

In the present case, the question of any retrospective application does not arise and therefore the ratio in the Harishchandra Ghag” case has no relevance to this OA.

18. Similarly, in the case of Markandeya Sharma in O.A.No.456/2003, dated 3.5.2006, the question that was decided was whether the action of the respondents in ignoring only Rs.15 per month as ignorable pension and then deducting the balance as nonignorable pension, is in order. The applicant's case was that his entire pension has to be ignored as he belonged to the category below the Commissioned Officer rank. The OA was allowed by granting the benefits as prayed for. The applicants in this OA do not have a case that their pension was not ignored. Their grievance is with regard to the non-consideration of the Last Pay Drawn in their previous service, while fixing their pay on re-employment in the respondent Organization. Therefore, the judgment cited has no relevance. Similarly, in the case of Sri Harishchandra Reddy v. NIRD, the issue that was decided was that the office memorandum dated 31.7.1986, according to which persons re-employed after 1.7.1986 will not be entitled to advance increments, will apply only to appointments made on or after 1.7.1986 and that the said OM does not apply to the petitioners as

they were re-employed prior to 1.7.1986. This issue also has no relevance to the present case inasmuch as the matter that has come up for consideration in this OA is as to whether the last pay drawn in the earlier service can be the basis for pay fixation in pursuance of the office memorandum dated 5.4.2010. For similar reasons, the Rajasthan High Court judgment in Union of India v. Mool Singh dated 7.12.2001, which considered the provisions of Order of 1986 cannot come to the support of the applicants as they have admittedly been re-employed between 2006 to 2012, by which time CCS (Revised Pay) Rules have come into force.

19. The applicants have cited some instances of the respondent Organization/other Central Government Departments granting refixation of pay on the basis of the last pay drawn. Even if that be the case, when the respondents herein have acted in accordance with the existing instructions as laid down in OM dated 5.4.2010, we do not find justification for interference. Further, the law is well settled that even if an illegality has been committed somewhere, that cannot be a ground to give a direction to perpetuate illegality. In Union of India v. Arul Mozhi Iniarasu (2011) 7 SCC 397), the Apex Court has observed that "It is trite law that there cannot be equality in illegality."

20. In view of the foregoing discussions, we find no merit in the OA. The OA is accordingly dismissed with no order as to costs."

10. We find that this OA is fully covered by the judgement in OA No. 020/00037/2014 of the Hyderabad Bench of this Tribunal and is disposed off accordingly in the same terms. No costs."

M.A.No.060/01325/2018

" Heard.

2. During the pendency of the OA, applicant has filed an MA that recovery of the amount from the applicant in pursuance of the impugned order dated 05.12.2017 may be stayed.

3. Applicant in this MA submits that he is a Group „C“ employee and seeks a direction that the recovery of over payment made to him be set aside in the light of State of Punjab & Ors. Vs. Rafiq Masih and Others, SCT 2015(1) 195 wherein it was held that there will be no recovery from Group " C " employees.

4. In view of the above, para 10 of the judgement delivered on 31.07.2018 in OA No. 060/00858/2017 is modified to the extent by addition of the following:- "Whereas the revised pay fixation has been upheld, the applicant being a Group „C“ employee, the recovery of

over payment is quashed. The order for recovery of over payment issued by the respondents on 05.12.2017 for the period 09.01.2014 to 12.05.2016 from the applicant is set aside."

5. The above modification be read as part and parcel of para 10 of the judgement dated 31.07.2018.

6. MA stands disposed of accordingly."

5. In the light of the above noted facts, we are left with no option , but to dismiss this petition by upholding the action of the respondents in re-fixing the pay of the applicant by withdrawing the benefit to which he was not entitled to, but simultaneously we invalidate the action of the respondents in effecting recovery of Rs.3,19,287/- for the period from 9.1.2014 to 15.5.2016 of alleged excess payment of salary from the applicant. No costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(ARCHANA NIGAM),
MEMBER(A).**

Dated:- 10.10.2019.

Kks