IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.20/573/2018

Date of Order: 14.10.2019

Between:

T.V.P.Latha
W/o P. Subba Rao
Aged 52 years, Group A
Occ. Joint Commissioner of Incometax,
TDS Range, Vijayawada
R/o Door No.20-3/1-20/12
Geetha Apartments
New Ayodhya Nagar
Vijayawada – 520 003. … Applicant

AND

1. Union of India
   Rep. by the Secretary, Ministry of Finance
   Department of Revenue
   North Block
   New Delhi – 110 001.

2. The Principal Chief Commissioner of Incometax
   10th Floor, C Block, Income Tax Towers
   10-2-3, AC Guards
   Masab Tank
   Hyderabad – 500 004.

3. The Chief Commissioner of Incometax
   2nd FDloor, Aaykar Bhavan, Dabagardens
   Vishakhapatnam – 530 020.

4. The Commissioner of Incometax (TDS)
   3rd Floor, SVR Plaza
   Door No.40-6-15 Sidhartha Public School Road

Moghalrajpuram
Vijayawada – 520 010.

5. The Administrative Officer and Drawing and Disbursing Officer
Office of the Commissioner of Income Tax (TDS)
3rd Floor, SVR Plaza
Door No.40-6-15 Sidhartha Public School Road
Vijayawada – 520 010. … Respondents

Counsel for the Applicant … Mr. Siva
Counsel for the Respondents …Mr. M. Brahma Reddy, Sr.PC for CG

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

2. The OA is filed in regard to recovery of excess payment made to the applicant.

3. Brief facts of the case are that the applicant joined respondents organization in 1987 as Lower Division Clerk and gradually rose to the ranks of Joint Commissioner of Incometax in 2016. Applicant submits that with the implementation of the 6th Central Pay Commission (CPC) an increment was paid to her, which, after a lapse of 10 years, was objected to by the Zonal Accounts Officer in 2016. Consequently, the pay of the applicant was re-fixed vide order dated 07.09.2017. Further, a Show Cause Notice was also issued in regard to recovery of excess amount paid

due to wrong fixation of increment. Applicant claims that the recovery of any excess amount paid is fully covered of the Judgement of the Hon'ble Supreme Court in **State of Punjab & Ors.** v. **Rafiq Masih (White Washer),** (Civil Appeal No.11527 of 2014, decided on 18.12.2014), and that she has represented to the 3rd and 4th respondents with no fruitful results. Hence, the OA.

4. The contentions of the applicant are that the erroneous fixation of pay has come to light only after 10 years of the fixation, therefore, applicant was no way responsible for the wrong fixation. The cause of the applicant is fully covered by the **Rafiq Masih** Judgement. The Show Cause Notice proposed to recover Rs.9900 in 24 instalments, implying a recovery of Rs.2,37,600/-, is far in excess of the amount of Rs.1,12,364/- paid. Applicant submits that this itself is an indication that the respondents have not applied their mind in proposing the recovery. The amount paid to the applicant has already been utilized, and that there was no cause to set apart a portion of the salary assuming prospective recovery after a decade.

5. Respondents in their reply statement opposed the contentions of the applicant by stating that the increment was wrongly drawn on 01.07.2006 though the officer was on Extra Ordinary Leave from 1.4.2003 to 31.7.2005 and from 02.08.2005 to 31.01.2006 and also for having not completed 6

months of service by 01.07.2006. When the applicant sought voluntarily retirement, Service Register was verified and in the process, Audit has objected to the wrong drawal of the increment. Accordingly, Show Cause Notice was issued to the applicant and recovery of overdrawn amount commenced from the month of February, 2018. The matter was also taken up with the Audit for dropping the objection, but the later negated the proposal. Hence, DDO on 25.01.2018 was directed to recover the excess amount paid after following duly laid down procedures, instructions and Court orders. For waiver of recovery of excess amount paid, approval of the Department of Expenditure has to be obtained. Neither the applicant nor the respondents have obtained the waiver from the Department of Expenditure. The DoPT OM dated 06.02.2014, provides the scope to recover such excess payments made. Respondents have stated that in **Rafiq Masih** case, it was observed that interference would be called for only in such cases where it would iniquitous to recover the excess payment made. The amount was ordered to be recovered in 24 months which is neither harsh nor arbitrary. The respondents have cited the Judgement of Hon'ble Supreme Court in **Chandi Prasad Uniyal and Others** v. **State of Uttarkhand & Ors.,** (Civil Appeal No.5899 of 2012 (SLP (C) No.30858/2011), in support of their contention(s).

6. Heard the respondents counsel. Applicant's counsel was absent even on second call. It is noticed that the OA was filed on 18.06.2018 and the same was heard on 20.06.2018 and thereafter also it came up on more than 9 occasions. Today, when the case was called, none appeared on behalf of the applicant. The applicant has retired from service and, therefore, it was felt necessary to hear the case and decide the same on merits, as per Rule 15 of the CAT (Procedure) Rules, 1987, after hearing the version of the respondents' counsel.

7. (I) Applicant took Voluntary Retirement from the respondents organization after filing of the present OA. She was paid an increment way back in 2006 by the respondents. Later, in 2016, when the applicant approached for VRS, Audit, on verification of the Service Record, has raised an objection that an increment was wrongly drawn to the applicant in 2006. Based on the objection, re-fixation of pay and recovery of excess paid amount was ordered by issuing a Show Cause Notice. When the applicant approached this Tribunal, an interim order directing the respondents not to make any further recovery was issued on 20.06.2018.

(II) The applicant has cited the Judgement of the Hon'ble Supreme Court in **Rafiq Masih** (supra) wherein it was observed as under:

> "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."

Clause (iii) of the above Judgement, applies to the case of the applicant. In the instant case recovery has been initiated after 10 years, thereby violating Hon'ble Supreme Court observations cited supra. Further, the increment was drawn by the respondents on their own. Applicant did not misrepresent nor misguide the respondents for drawal of the said increment. Therefore, it is a mistake of the respondents and not that of the applicant. The respondents are trying to rub of their mistake on to the

applicant, which is not permissible as per the Hon'ble Supreme Court in a catena of Judgements, which are extracted as under:

(a) **A.K. Lakshmipathy** v. **Rai Saheb Pannalal H. Lahoti Charitable Trust**, (2010) 1 SCC 287

> "they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents."

(b) **Rekha Mukherjee** v. **Ashis Kumar Das**, (2005) 3 SCC 427 :

> "36. The respondents herein cannot take advantage of their own mistake."

(c) The Apex Court in a recent case decided on 14.12.2007 (**Union of India** vs. **Sadhana Khanna** (C.A. No. 8208/01) held that the mistake of the department cannot recoiled on employees.

(d) In yet another recent case of **M.V. Thimmaiah** vs. **UPSC** (C.A. No. 5883-5991 of 2007 decided on 13.12.2007), it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.

(e) It has been held in the case of **Nirmal Chandra Bhattacharjee** v. **Union of India**, 1991 Supp (2) SCC 363 wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."

(III) Respondents claim that the applicant is a senior officer (Group A officer), and, therefore, the recovery is neither harsh nor arbitrary. They have cited DoPT OM dated 06.02.2014 wherein directions were issued to deal with wrongful or excess payments. In the said OM it was also stated as under:

> "(iii) Whenever any excess payment has been made on account of fraud, misrepresentation, collusion, favouritism, negligence or carelessness, ect., roles of those responsible for overpayments in such cases and the employees who benefitted from such actions should be identified and departmental/criminal action should be considered in appropriate cases."

In the present case, the excess payment obviously was paid due to negligence of the respondents. As per the OM, it was open to the respondents to recover from those responsible for the excess payment, but the reply statement is silent in this regard. Respondents even now can examine considering this aspect in order to avoid any loss to the public exchequer.

(IV) Moreover, it should be appreciated that when an employee graduates as a pensioner, take home pension gets reduced to 50% of pay which has a telling effect on the financial resources of the pensioner. Besides, as was submitted by the respondents in the reply statement, the applicant has gone on Earned Leave frequently in regard to her medical

ailment. She has mostly used the Earned Leave and hence could not en-cash the same. From this submission, it may have to be fairly said that her financial position has been under strain. In these circumstances, the Tribunal is not in agreement with the contention of the respondents that the recovery ordered would not be harsh. Therefore, the observation of the Hon'ble Supreme Court in **Chandi Prasad Uniyal** (supra), relied upon by the respondents does not apply to the present case.

(V) Thus, in view of the aforesaid, applicant has made out a case which fully succeeds. Consequently, respondents are directed to consider as under:

(i) To treat the interim order issued on 20.06.2018 as absolute.

(ii) To refund any amount recovered.

(iii) Time allowed for implementation of the Judgement is 3 months from the date of receipt of a copy of this order.

(VII) With the above directions, the OA is allowed with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 14th day of October, 2019

nsn