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O.A. 177 of 2014

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

No. O.A. 177 of 2014

Reserved on 19.9.2019

Date of order: 05.11.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Manik Bhattacharjee (Age: 45 yrs.),
S/o Late Harisadhan Bhattacharjee,
Working as High Skilled - I (Mech),
Under G.M. Rifle Factory Ishapore,
Residing at Lichu Bagan Maniktola,
P.O. Ishapore, Nawabganj,
Dt. 24 Pgs (N)
Pin -

Applicant

1. Union of India,
Service through the Secretary,
Ministry of Defence,
Govt. of India,
South Block,
New Delhi - 110 001.

2. The General Manager,
Ishapore Rifle Factory,
P.O. : Ishapore,
Dist. 24 Pgs (North),
Pin - 743144.

... Respondents

For the Applicant : Mr. J.R. Das, Counsel

For the Respondents : Mr. B.B. Chatterjee, Counsel
Mr. M.K. Ghara, Counsel

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ORDER**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:

"(a) To pass order and or time bound direction to the authority as General Manager /RFI the respondent No. 2 to refund the recovered amount of Rs. 23,500/- as excess amount paid to the applicant due to the fault of the respondents, the applicant being in no way responsible for the same.

(b) To pass such other further order/or orders as your Lordships may deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record. Written notes have been filed by Ld. Counsel to the applicant.

3. Ld. Counsel for the applicant would submit that the applicant is a High Skilled 1 (Mech.) employee with the respondent authorities, who had been served with a show-cause notice dated 24.10.2013 for recovery of excess amount on account of allegedly incorrect pay fixation. That, although the period of excess payment was not mentioned in the notice, the applicant was directed to deposit the entire amount of Rs. 23,500/- failing which the said amount would have to be deducted from his salary. According to the applicant, although an advocate's notice was sent to the respondent authorities citing the ratio of Hon'ble Apex Court in ***Shyambabu Verma - vs. - U.O. I & ors. (1994) 2 SCC 521, Sahib Ram v. State of Haryana 1995 Supp.(1) SCC 18, Babulal Jain v. State of MP (2007) 6 SCC 180, Syed Abdul Quadir v. State of Bihar, (2009) 3 SCC 475***, the respondents responded to such legal notice, and, after observing that the ratio of the judgments of Hon'ble Apex Court and other courts of law, as mentioned in such legal notice, were not applicable in his case as he is not a similarly circumstanced employee, reiterated their decision of recovery and recovered the so-called excess payment from the salary of the applicant.

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Hence, challenging such allegedly illegal recovery, the applicant has approached the Tribunal seeking refund of the same.

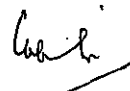
4. The respondents have vociferously disputed the claim of the applicant stating that the applicant had been penalized by withholding of one increment for a period of one year with cumulative effect vide penalty order dated 17.3.2011 on the basis of charges proved against him. A periodical increment certificate was also thereafter issued (Annexure R-1 to the reply) in which it was clearly stated that his incremental benefits were withheld in the year 2011 and were thereafter restored w.e.f. 1.7.2012.

While implementing cadre restructuring of Artisan Staff with consequent pay fixation, his penalty was overlooked inadvertently amidst innumerable sanctions issued for revised fixation of pay in four grades following the recommendations of 5th CPC.

The respondents have also affirmed in their reply dated 12th June, 2014 that the applicant chose not to appeal against the penalty of withholding his increment. Resultantly, the penalty orders reached a finality. The applicant was also informed, in response to his RTI application dated 16.8.2013, that recovery was directed vide orders dated 24.10.2013, which the applicant has challenged in the instant O.A.

5. According to the respondents, as the recovery was made on the basis of a penalty, erroneously overlooked during his pay fixation, the applicant is not in a position to challenge his recovery after having foregone his right to statutory appeal.

The applicant in his rejoinder, however, would dispute the fact that he had foregone his opportunity of statutory appeal by furnishing as Annexure R-2 to the rejoinder, his appeal dated 18.4.2011. In the written notes, the applicant has brought forth on record the orders of the



Appellate authority dated 23.2.2012 whereby his appeal was rejected. The applicant, however, has not brought before us any successful challenge to the orders of the appellate authority. Accordingly, the orders of the Appellate authority continues to hold good.

While the respondents have disputed the fact that an appeal was preferred by the applicant but, the applicant has brought the orders of the appellate authority on record, the dispute is rendered largely infructuous at this stage as because, the penalty order served on the applicant has reached a finality. We also notice that the applicant has not chosen to challenge the said penalty order in the instant O.A.

6. The applicant has not challenged the penalty order which had led to recovery, but only the consequent order of recovery. Hence, we are of the considered view that there are no reasons to intervene in the show cause notice of the respondent authorities dated 24.10.2013.

7. To claim waiver of recovery, the applicant has relied on the ratio in ***State of Punjab & ors. v. Rafiq Masih (White Washer) CA-No. 11527 of 2014 (Arising out of SLP (C) No. 11684 of 2012*** wherein the Hon'ble Apex Court had laid down as follows:-

"It is not possible to postulate all situations of hardship which would govern employees on the issues of recovery, where payments have mistakenly been made by the employer, in excess of their entitled 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 duties of a higher post, and has been paid according, 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,

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The applicant claims that serving Group-C and Group-D employees are equally exempt from such recovery in addition to other conditions of exemption so allowed. The applicant avers that he was not guilty of furnishing any incorrect information, misrepresentation, or fraud, and that such recovery would be violative of Article 14 of the Constitution of India, causing immense hardship to the employee as such an amount, if recovered in one lump sum, violates all principles of justice. According to the applicant, such recovery is not part of any imposition of punishment but admittedly the result of a mistake on the part of the respondents, which the applicant has been made to bear unjustly.

8. The applicant is therefore granted liberty to represent to the respondents, citing the ratio of judicial pronouncements, within a period of four weeks from the date of receipt of a copy of this order. Once such representation is received, the authority shall decide on his prayer in accordance with law within 12 weeks thereafter. The applicability of ratio in *Rafiq Masih (supra)* to be considered by respondents while deciding on the prayer of the applicant.

In case of a favourable decision, the amount so recovered shall be refunded to the applicant within a further period of 16 weeks therefrom.

9. This O.A. is disposed of with the above directions. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP