

\$~57

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of decision : 25.02.2019

+ W.P.(C) 1946/2019

DR. H. D. RIKHADI

..... Petitioner

Through: Ms.Prabha Shrma, Adv.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Amit Mahajan, CGSC with
Mr.Randeep Sachdeva, Mr. Olson
Nair and Mr. Dhruv Pande, Advs. for
R-1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K.CHAWLA

VIPIN SANGHI, J. (ORAL)

C.M. No. 9073/2019

Exemption allowed, subject to just exceptions.

W.P.(C) 1946/2019

1. The petitioner assails the order dated 16.01.2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal'). The petitioner's claim is that his pension be re-fixed and he be paid arrears of pension for the period 11.01.2016 to 31.12.2017 and other consequential reliefs, which had been rejected by the Tribunal. The petitioner retired from

the post of Assistant Secretary on 31.01.2012. At the time of retirement, his pay was Rs.29810 with Grade Pay Rs.5400. On the basis that his last pay was Rs.35210/-, his basic pension was fixed at Rs.17606/- and monthly pension was fixed at Rs.22007/- with 65% DR. The petitioner drew the same from 01.02.2012 to 30.01.2018. The same came to be revised downwardly in the circumstances noticed herein-after.

2. The respondents had upgraded the pay scales of some of its employees, including the petitioner, on 28.08.1996, when the petitioner was in service. The upgraded pay scale was, however, withdrawn on 20.07.1999 as the said upgradation was granted without proper sanction. The petitioner and some other affected employees preferred WP(C) 4667/1999 before this court, which was transferred to the Tribunal and numbered TA 1098/2009. The same was decided on 04.10.2010. The Tribunal directed the respondents to re-consider the issue of upgradation of pay scales of the applicants from 1986 onwards within a period of four months. The Tribunal directed that if the case of the applicants does not find favour with the respondent, it should pass a detailed order giving cogent reasons for its decision. It was further directed that no recovery shall be made from the salaries of the applicants till a decision is taken by the respondent, and for a period of ten days thereafter. The government took a decision rejecting the petitioner's claim for retention of the upgraded pay. Consequently, the petitioner and others preferred OA No. 291/2011 (Dr. Lalit Verma & Ors. vs. Secretary, Ministry of Health and Family Welfare & Anr.). In those proceedings, the Tribunal passed an interim order staying the recovery of the excess amount from the petitioner. The OA was disposed of on 28.02.2012. The operative part of the

said order, reads as under :

“22. Though the illegality has crept in by not getting the prior sanction of the Government as per the statutory provision but with regard to the issue of recovery of amount already paid to the applicants, it is noted that revised pay scale was given effect to from the year 1986 vide the 2nd respondent’s order dated: 28.01.1998. It is the first respondent which intimated about the irregularity committed by the second respondent in granting the revised pay scale. The first respondent vide its communication dated: 11.01.1999 intimated the said irregularity, and recovery of the excess pay was directed. Consequent to the said direction of the 1st respondent, the recovery order was passed by the 2nd respondent in the order date: 20.07.1999 against the applicants. The applicants cannot be blamed for the enthusiastic resolution passed by the Council of the CCH. They have not played any fraud on the respondents to get higher pay. It is therefore, appropriate to direct the respondents not to recover the amount that they have received by the applicants due to revised pay scales w.e.f. 1986 as they were not instrumental to get higher pay scales. As the stay was granted by this Tribunal against recovery of excess amount, for reasons stated above, the stay is declared absolute.”

(emphasis supplied)

3. Thus, while the Tribunal found merit in the decision of the respondents to downgrade the petitioners pay – as the upgradation itself was unauthorized, the Tribunal protected the petitioner/applicant against recovery of the excess amount. Against the said order dated 28.02.2012 passed in OA No. 219/2011, the respondents have preferred WP(C) No. 3489/2012, which is still pending for the consideration before this court.

4. The petitioner then filed OA No. 3522/2010 tilted *H.D. Rikhadi vs. Central Council of Homeopathy* for restoration of five advance increments

granted to him for additional work done by him. This was allowed by the Tribunal on 08.12.2011. On 01.03.2012, respondent no.2 provisionally fixed the pay of the petitioner, granting him five advance increments w.e.f. 01.07.2010, subject to the decision of OA No. 291/2011.

5. The respondents also fixed the monthly pension of the applicant at Rs.22007/- after commutation of last drawn pay of Rs. 35210/- w.e.f. 01.03.2012. The petitioner then preferred OA No. 256/2016 (**H.D. Rikhadi vs. Secretary, Dept. of AYUSH & Anrs.**). The dearness relief was released since July 2012 with arrears. The same was disposed of by the Tribunal on 16.05.2016, asking the respondent to consider the petitioner's representation and pass a speaking order within sixty days. The respondent No.2 vide a letter dated 01.08.2017, decided that as per the direction of the Tribunal dated 28.02.2012 in OA No. 291/2012 and office letter dated 01.10.2012, the provisional pension of the petitioner is also required to be re-fixed after the upgraded payment to the petitioner is re-fixed, which was revised from 13.03.1992. On 31.10.2017, respondent No.2 passed an office order to recover the amount of Rs.87400/- from the pension of the petitioner in twenty installments at Rs.4370/- per month. The petitioner then approached the Tribunal with the aforesaid Original Application.

6. The foundation of the petitioner's claim in the OA was that on account of the interim order passed by the Tribunal in OA No. 291/2011, the upgraded pay of the petitioner continued to be drawn till the date of petitioner's superannuation, and when the Tribunal disposed of the said OA, the recovery of the excess amount was not permitted. The petitioner claims that the pension has to be fixed on the basis of the last drawn pay and,

consequently, the petitioner's pension should also be re-fixed on the basis of upgraded pay.

7. This submission needs only to be taken note of, to be rejected. In our view, the submission is most unreasonable. The upgradation of the petitioner's pay was found to be unauthorized and the Tribunal held against the petitioner on the said aspect. In fact, the Tribunal, despite the aforesaid position, protected the petitioners against recovery of excess amount. Merely because recovery may not have been permitted – by invoking the principles laid down in ***State of Punjab vs. Rafiq Masih***, (2014) 8 SCC 883, it does not follow that the petitioner can seek to perpetuate the illegality by claiming that his pension should also be fixed on the wrongly upgraded pay. All that the respondents have done is to withdraw the wrong upgradation of pay, and on that basis, to re-fix the pension of the petitioner. From the excess amount of the pension paid to the petitioner, recovery is sought to be made, since that recovery was not protected by the decision in ***State of Punjab vs. Rafiq Masih*** (supra). That recovery came to be made in respect of the period after the issue of excess payment to the petitioner arose and, therefore, the petitioner had sufficient notice thereof. The Tribunal in the impugned order has observed as follows :

“13. I have gone through the facts of the case carefully and considered the rival contentions of both sides.

13.1 The applicant in the OA has claimed reliefs, purportedly flowing from the order dated 28.02.2012 of the Tribunal. Reliance has been placed by the applicant on the aforementioned judgment in OA-291/2001. It has to be understood that in the said order, the Tribunal held that the mandatory provisions of the Act had not been followed by the Council in getting its

resolution passed for the revision of pay of its employees. The action of CCH for revising the pay scales of its employees was termed as “unfortunate”, and on merit, the application (the applicant being one of the applicants therein) was dismissed.

13.2 However, with regard to recovery of the excess payment, it was held that any amount already paid to the applicants w.e.f. 1986 onwards was on account of the misplaced enthusiasm of CCH for which the applicants could not be blamed. Since the applicants had not played any fraud to get the higher pay, the respondents were directed to ensure that no recovery of the excess amount should be made from them (applicants).

14. The amount of Rs. 87,400/- has been recovered from the applicant based on the CAG objection regarding incorrect availment of rebate claimed from income tax by the applicant (Dr. H.D. Rikhadi). The observations of Audit report are available in the foregoing Para-10, above.

14.1 These observations were taken up for clarification by CCH with the Income Tax office asking them to clarify/confirm whether HRA rebate is permissible in such circumstances, followed by various letters and reminders. Not receiving a reply, a clarification was sought by CCH from the Chartered Accountant seeking guidance whether an employee residing in a rented accommodation, owned by his wife, where rent was being paid against proper receipt, can claim tax rebate on the basis of said rent. A legal opinion was also sought by CCH in this regard wherein it was confirmed that no HRA exemption is admissible in the case of the rebate claimed by the applicant. This view also stood confirmed by the opinion of Chartered Accountants vide their letter dated 06.02.2017.

15. The respondents, following the CAG advice/objection and after satisfying themselves of its rationale, took the necessary step of recovering the amount of Rs. 87,400/- from the applicant's pension vide their order dated 31.01.2017. However, before effecting the recovery the respondents issued a show cause notice to the applicant on 16.08.2017 (Annexure-O) explaining the reason as to why a recovery of Rs.87,400/- was

sought to be recovered from him. The applicant represented against this order vide his letter dated 21.08.2017. The respondents after examining his representation issued the recovery order on 31.10.2017. The submissions of the applicant were duly considered after following due process of law. Hence, the action of respondents recovering the rebate amount, wrongly claimed and availed by the applicant cannot be faulted.

16. The other reliefs claimed by the applicant are totally devoid of merit since his basic pension has been fixed by the respondents by taking into account the directions of respondent No.1 and CAT in OA-291/2011 dated 28.02.2012. As already stated earlier, the pay scales of the concerned serving employees were reverted back to the sanctioned pay scale, as per the orders of respondent No.1. The Tribunal, in its order dated 28.02.2012 has held in unambiguous terms that pay revision of the employees of CCH, to give them a higher pay scale was bad in law. The order dated 27.12.2010 of Central Government has been upheld holding clearly that upgradation/revision of pay scales, done by CCH, without approval of the Central Government, is irregular and illegal.

17. The respondents thus have acted as per law by revising the provisional pension granted to the applicant, who is trying to misrepresent the facts to take undue advantage of an illegally upgraded pay granted to him by respondent No.2. The benefits being claimed by the applicant, all flow from the upgraded pay scales, which respondent No. 2 had wrongly allowed to him (& other similarly placed employees), which have been held to be wrong with specific directions to rectify the same.

18. The respondents have stated categorically that they have not made any recovery towards pay and allowances as well as pension received by the applicant till 28.02.2012. The recovery made by them vide order dated 31.10.2017 is not on account of excess amount paid to him because of revised pay scales, but on account of the wrongful rebate claimed by him towards income tax, which is absolutely correct.”

8. We entirely agree by the conclusion drawn by the Tribunal. Learned counsel for the petitioner has submitted that there is no explanation furnished by the respondents with regard to the recovery of an amount of Rs.8740/-.

9. We are not inclined to get into the said claim of the petitioner. In case, the petitioner makes a representation with respect to the said amount of Rs.8740/-, the respondent shall examine the same and pass a reasoned order.

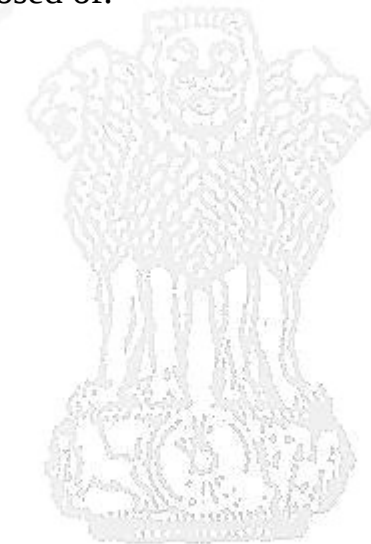
10. Petition stands disposed of.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

FEBRUARY 25, 2019

rc



सत्यमेव जयते