

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 11193/2018

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. P. S. Singh, Senior Panel Counsel
for R-1 to R-3 with Mr. Rajpal Singh
and Mr. Raman Kr. Bharti,
Advocates.

JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

ORDER
04.02.2019

W.P.(C) 11193/2018

2. The brief facts are that the Petitioner was enrolled as a Constable/GD in the CRPF on 15th September 1995. He completed the D&M course in July 2000 and was converted from the GD cadre to the MT cadre. In November 2014, the Petitioner, who had been promoted to Head Constable, was posted to the 86 battalion which was placed at Imphal, Manipur. In August 2016, the Company of the Petitioner was sent from Imphal to Srinagar for certain operational duty.

3. In December 2016, while returning to Imphal, the Petitioner's Company halted in Delhi. Whilst in Delhi, on 23rd December 2016, while travelling on the official motorcycle for some work, the Petitioner met with an accident and was seriously injured. He was accordingly admitted to the Composite Hospital of the CRPF.

4. After treatment and recovery, the Petitioner was discharged on 5th May 2017. The Petitioner immediately reported to his Unit on 7th May 2017, but since his condition was not good due to the accident, he submitted an application on 13th May 2017 for voluntary retirement. This application was accepted by the Respondents by letter dated 26th May 2017. He was informed by the same letter that he would be deemed to have superannuated on 13th August 2017. This order was later amended on 31st August 2017 with the direction that the date of superannuation would be read as 31st August 2017 instead of 13th August 2017.

5. It is stated that though the Petitioner superannuated on 31st August 2017, the Respondents did not immediately release the pension and other

retirement benefits due to him. The Petitioner submitted a representation dated 15th June 2018 followed by a legal notice dated 24th July 2018. The Respondents issued an order dated 23rd July 2018 enclosing the impugned PPO. On a perusal of the said PPO, the Petitioner noticed that the Respondents had deducted Rs. 3,04,864/- from the gratuity of the Petitioner without having issued any show cause notice ('SCN') to him. When despite inquiries the Petitioner received no reply from the Respondents, he filed the present petition.

6. On 16th October 2018, notice was issued and the Respondents were asked to clarify whether before making such deduction from the gratuity of the Petitioner, any notice was issued to him, and if so, whether he was afforded an opportunity to respond. At the hearing on 4th December 2018, the Court noted the submission of the counsel for the Petitioner that in terms of the judgment of the Supreme Court in ***State of Punjab v. Rafiq Masih AIR 2015 SCC 696***, the recovery of the aforementioned sum from the Petitioner nearly a year after he superannuated was impermissible in law.

7. At the hearing on 4th December 2018, the Court whilst staying the recovery order dated 9/10th July 2018, granted the Respondents eight weeks further time to file a parawise reply and also granted the Petitioner permission to file rejoinder before the next date. The Court directed that the sum of Rs. 3,04,864/- deducted from the Petitioner's pension would be deposited in the Court. The delay in the Respondents making the said deposit was condoned by the Court on 28th January 2019.

8. It is seen from the counter affidavit filed by the Respondents that according to them, on 23rd December 2016, the Petitioner “while stationed at Delhi left the campus after evening roll call and sneaked outside the camp without obtaining permission from the Competent Authority where he met with an accident”. The Petitioner then got treatment at Balaji Hospital, Piragarhi, Delhi and remained absent from duty from 23rd December 2016 to 5th May 2017 (total period of 134 days).

9. According to the Respondents, a preliminary inquiry was conducted and the Petitioner was given an opportunity to prove his innocence. He however was found guilty of the charge of unauthorized absence and was awarded punishment of ‘censure’ in the Orderly Room of the Commandant on 29th May 2017. It is pointed out that the Petitioner was given a personal hearing before being awarded the above punishment but he could not disprove his misconduct.

10. It is evident from the reply filed by the Respondents that while there was an inquiry regarding the unauthorized absence of the Petitioner from duty which led to the awarding of punishment of ‘censure’, no separate SCN as such was issued to the Petitioner regarding the proposal to recover the aforementioned sum from his gratuity. This is evident from the reply filed by the Respondents itself which clearly states that this order of recovery was separately passed on 9th July 2018 nearly a year after the Petitioner had ceased to be in service i.e. on 31st August 2017.

11. Learned counsel for the Respondents sought to submit that the Petitioner

was indeed heard in the preliminary inquiry which ended in his being awarded a punishment of 'censure'. However, counsel for the Respondents has not been able to show that at the time of recovery of the aforementioned sum from the Petitioner's gratuity several months later on 9th July 2018, any separate SCN for the specific purpose of such recovery was issued to the Petitioner. There is no explanation for the failure to do so as well.

12. This alone is sufficient for this Court to set aside the PPO dated 9th July 2018 to the extent that it seeks to recover the aforementioned sum from the Petitioner.

13. A consequential order in the normal scheme of things would have been to remand the matter once again to the Respondents to issue to the Petitioner a proper SCN as to why the aforementioned sum should not be recovered from the Petitioner's gratuity. However, in the considered view of the Court, that exercise will prove to be futile if after issuing the SCN, the Respondents simply reiterate their earlier order.

14. On merits, the Court finds that such recovery would be impermissible in terms of the judgment of the Supreme Court in ***State of Punjab v. Rafiq Masih*** (*supra*). In para 18 of the said decision, the Supreme Court set out certain kinds of recoveries which would be impermissible in law to be made. One of these is "(ii) recovery from retired employees, or the employees who are due to retire within one year, of the order of recovery." The expression 'retired employees' would include those who have retired voluntarily as well. In the present case, the recovery was sought to be made in July 2018

within a year of the Petitioner being relieved on voluntary retirement with effect from 31st August 2017. In terms of the above decision, the said recovery was barred. Consequently, there is no point in requiring the Respondents to comply with the principles of natural justice by directing the issuance of a SCN to the Petitioner for the above purpose.

15. For the aforementioned reasons, the Court sets aside the PPO dated 9th July 2018 to the extent it has recovered the aforementioned sum of Rs.3,04,864 from the Petitioner's gratuity. The said sum deposited in the Court together with the interest if any, accrued thereon, shall now be released forthwith to the Petitioner by the Registry upon proper identification.

16. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 04, 2019

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