

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00867/2019

DATED THIS THE 25th DAY OF FEBRUARY, 2020

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

G.Gopinath, S/o A.Govinda Rao
Admn. Officer (Retd)
Residing at No.21, Sri Sai Krupa
Behind New Railway Colony
Lottegollahalli, Bengaluru-560094.

....Applicant

(By Advocate Sri N.Obalappa)

Vs.

1. The Union of India
Represented by its Secretary
Ministry of Information and Broadcasting
'A' Wing, Shastry Bhavan
New Delhi-110 001.

2. The Chief Executive Officer
Prasar Bharati, II Floor
PTI Building, Parliament Street
New Delhi-110 001.

3. The Director General
Doordarshan, Doordarshan Bhavan
Copernicus Marg, Mandi House
New Delhi-110 001.

....Respondents

(By Advocate Sri H.R.Sreedhara, ACGSC)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he was appointed as LDC on 13.4.1981, got promotion as UDC during October 1987, got 2nd ACP w.e.f. 13.4.2005 vide order dtd.26.4.2005 & 10.5.2005(Annexure-A5) and thereafter he was appointed as Head Clerk/Accountant w.e.f. 4.5.2009(Annexure-A6) and again promoted as

Administrative Officer for a short period and retired from service on 30.4.2019. The respondents without considering the DOPT clarification on ignoring the 2nd ACP w.e.f. 13.4.2005, proposed recovery from the retiral benefits of the applicant and not responded to his representation and hence he filed the present OA seeking the following relief;

- a. *Call for records leading to the issuance of the Order No:DDK/BNG/14(6)(B)/2016-A dated: 23.02.2016 Annexure-A13 and Annexure-A15 dated 30.04.2019.*
 - b. (i) *To quash the order No.PAO/DDK/CHN/PEN/1920/136/2791 dated 30.04.2019 to the limited extent of recovery of Rs.3,88,273/-(impugned order)(Annexure-A15)*
 (ii) *To quash the order No.DDK/BNG/14(6)(B)/2016-A dated 23.02.2016 at Annexure-A13 passed by the 4th respondent as the fixation is illegal(Impugned order).*
 - c. (i) *To direct the respondents not to recover Rs.3,88,273/- from the retirement benefits of the applicant in view of the Hon'ble Apex Court order Annexure-a18 dated 18.12.2014 and to release the balance amount of DCRG of Rs.7,27,919/- to the applicant vide Annexure-A15 dated 30.04.2019.*
 (ii) *To direct the respondents to refix the pay of the applicant in pursuance of Annexure-A9 dated 09.09.2010.*
2. The applicant submits that as per the DOPT OM dtd.10.2.2000(Annexure-A3), ACP is to be granted ignoring the promotions/upgradation granted in the merged pay scales. As per clarification point No.52 of DOPT OM dtd.18.7.2001(Annexure-A4), if as a restructuring feeder and promotional post are merged to constitute one single level in the hierarchy, then in such a case, next financial upgradation will be in the next hierarchical grade above the merged levels and if any promotion has been allowed in the past in grades which stand merged, it will have to be ignored. The applicant got 2nd ACP in the pay scale of Rs.5500-9000/- w.e.f. 13.4.2005. Consequent on merger of pay scales of Rs.5000-8000, Rs.5500-9000, Rs.6500-10500 & Rs.7450-11500 as per DOPT FAQ dtd.9.9.2010(Annexure-A9) isolated cases have been merged into a single Grade Pay of Rs.4200/- & Rs.4600 respectively w.e.f. 1.1.2006, the benefit of 1st

and 2nd financial upgradation under ACP scheme should be considered in the Grade Pay of Rs.4600 and Rs.4800 in PB-2 as the case may be due between 1.1.2006 and 31.8.2008 in respect of isolated cases in terms of para 5 of Annexure-1 of MACPs dtd.19.5.2009. Accordingly, the applicant is entitled to the Grade Pay of Rs.4600 from 1.1.2006. The applicant who joined as LDC on 13.4.1981, got promotion as UDC in 1987 which is adjusted against 1st ACP and after completion of 24 years of service, he got 2nd ACP w.e.f. 13.4.2005. And after completion of 30 years of service, he got 3rd MACP w.e.f. 13.4.2011 vide order dtd.28.6.2011 & fixation statement dtd.12.7.2011(Annexure-A10). As per the clarification dtd.3.10.2012, the pay of the applicant has been refixed from 1.1.2006 with pay of Rs.12090 with GP 4200 vide re-fixation statement dtd.13.12.2012(Annexure-A11). The respondents vide order dtd.23.2.2016(Annexure-A13), refixed the pay of the applicant from Rs.12090 to Rs.10560 with GP 4200 w.e.f. 1.1.2006 and issued a due drawn statement towards recovery of Rs.3,88,273/-. The applicant got promotion as Administrative Officer w.e.f. 30.6.2017 vide order dtd.4.7.2017(annexure-A14). Since the applicant got 3rd MACP w.e.f. 13.4.2011, there is no fixation benefit to the applicant. The applicant retired from service w.e.f. 30.4.2019 and the 6th respondent vide order dtd.30.4.2019(Annexure-A15) instructed the 5th respondent to recover the excess payment of Rs.3,88,273/- from the DCRG bill. The applicant submitted representations dtd.10.5.2019(Annexure-A16) and dtd.3.6.2019(Annexure-A17) requesting not to recover the amount from DCRG and stating that similar recovery has not been made in the case of Sri T.S.Sadashiva, Retd. Sr.AO who is similarly placed employee like the applicant. The applicant relied on the Hon'ble Apex Court judgment in *Rafiq Masih's* case

wherein recovery is not permissible within one year of the retirement and also recovery for more than 5 years is not permissible(Annexure-A18).

3. The respondents, on the other hand, have submitted in their reply statement that the applicant joined the service as LDC on 13.4.1981 and got first promotion as UDC during October 1987. The applicant received first promotion after completion of 6 years of service, and hence, he was not entitled to 1st ACP. He is entitled to 2nd ACP on completion of 24 years of service. Thus the respondents have granted 2nd ACP to the applicant on 13.4.2005 on completion of 24 years of service. The applicant started to receive the pay attached to Group 'B' post from this date. The applicant is entitled to 3rd MACP after completion of 30 years of service i.e. on 13.4.2011. Thereafter, he received promotion to the post of Administrative Officer Group 'B' Gazetted post on 30.6.2017. Thus, he received his due promotions in his career.
4. The respondents submit that the Annexures enclosed by the applicant are clarifications issued by DOPT with regard to various points of doubt received by them from number of departments of Central Govt. The applicant was holding the post in the administrative cadre and it is not an isolated post or merged post. In the pay fixation statement dtd.13.12.2012 issued by DDK, Bangalore, it can be seen that under Sl.No.5, the pay fixed to the applicant is Rs.12090/- as on 1.1.2006 corresponding to Basic Pay of Rs.6500/-. Whereas the applicant was actually drawing a Basic Pay of Rs.5675/- only as on 1.1.2006. The corresponding new pay is Rs.10560/- and not Rs.12090 as shown in Sl.No.5 of the pay fixation statement. The error has taken place on the instance of the applicant in the refixation of his pay and the same was corrected on 23.2.2016. The pay of the applicant was revised on receipt of clarifications from the

competent authorities. Since this erroneous pay fixation has resulted over payments to the applicant to the tune of Rs.3,88,273/-, the Pay & Accounts Officer, Chennai has instructed the respondents to recover the excess payment of Rs.3,88,273/- received by the applicant erroneously. The Pay & Accounts Officer, Chennai has returned the DCRG Bill of the applicant and asked to resubmit the same after adjusting the excess amount drawn by the applicant. Thus the applicant was issued with new pay fixation order dtd.23.2.2016 correcting the erroneous pay fixation made earlier and the applicant has accepted the same without challenging it. The applicant mentioned the name of Sri T.S.Sadashiva, Retd. Sr.AO who was directly appointed to the post of Accountant during 1995. He was drawing a basic pay of Rs.7250 as on 1.1.2006. His new basic pay was fixed to Rs.13490 corresponding to the 6th CPC w.e.f. 1.1.2006(Annexure-R1). Whereas the applicant was drawing basic pay of Rs.5675/- as on 1.1.2006 and his pay was fixed to Rs.10560/- but by error, his basic was fixed to Rs.12090/-(Annexure-A11) which resulted in overpayment to the applicant. Annexure-A11 is subject to post audit and observation if any, any excess payment shall be recovered in lump-sum without any notice and hence, the respondents are entitled for recovery of the same. This aspect is covered by the judgment of the Hon'ble Supreme Court in Civil Appeal No.3500/2006 disposed on 29.6.2016(Annexure-R2). Further the applicant is neither Group 'C' nor Group 'D' at the time of receipt of erroneous fixation of pay. He belongs to Group 'B' category from 30.6.2017 till his retirement. The excess pay recovery suggested by the Audit party is in order and the applicant is bound to pay back the money for which he is not entitled to receive it. The applicant has been granted 3rd MACP w.e.f. 13.4.2011 and he was entitled to GP Rs.4600 and not

Rs.4800. Thus the applicant is not entitled to any relief as prayed by him and therefore, the OA is liable to be dismissed.

5. The applicant has filed rejoinder submitting that the recovery is not permissible in view of the fact that the applicant belongs to erstwhile Class III/Group 'C', the recovery is proposed after retirement of the applicant and the order of recovery is made after 10 years from 2006 to 2016 and hence recovery is not permissible. The OA is squarely covered by the orders of this Tribunal in OA.No.189/2018 dtd.26.11.2019(Annexure-A19).
6. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. Both the parties have filed their written arguments note. The issue in this case has arisen because of the erroneous fixation of the pay of the applicant at Rs.12090 instead of Rs.10560 in the new pay scale after the 6th CPC on 1.1.2006. The applicant was drawing basic pay of Rs.5675 in the pay scale of Rs.5500-9000 at that point of time and he should have been fixed in the new pay scale in the 6th CPC at Rs.10560. The respondents by mistake had erroneously fixed the pay at Rs.12090 thereby benefitting the applicant by Rs.1530 in the basic pay itself. This has been done vide Annexure-A11 which is dtd.13.12.2012. Subsequently the mistake was found out and vide Annexure-A13 dtd.23.2.2016, the same was refixed as Rs.10560 with GP Rs.4200 w.e.f. 1.1.2006. He has also been given MACP w.e.f. 13.4.2011 with GP Rs.4600. The applicant retired on 30.4.2019. Along with Annexure-A13, a due drawn statement was also given showing that an excess of Rs.3,88,273/- has been paid to the applicant. It is not clear as to why this excess discovered was not recovered from his salary during the period from 2016 till April 2019 when the applicant actually retired on superannuation. As mentioned

by the respondents, the applicant had also not objected to this re-fixation which was ordered vide Annexure-A13. This was sought to be recovered vide Annexure-A15 which is sought to be challenged in this application. The applicant would claim that he has to be given the benefit of *Rafiq Masih(White Washer)* judgment since the same was done in May 2019. The applicant would say that even at the time of erroneous fixation in 2012, he was a Group-B (Non-Gazetted) officer and with effect from 2017, he became a Group-B(Gazetted) officer. The applicant would claim that since erroneous fixation is with effect from 1.1.2006 and the excess has been paid for more than 5 years, as per the *White Washer* judgment, this cannot be recovered from him. As already seen, the wrong fixation was done on 13.12.2012 and this was corrected on 23.2.2016. Therefore, it cannot be said that he was drawing this excess pay for more than 5 years since it had been modified within four years of the original wrong fixation. Further, the Annexure-A13 which was issued in February 2016 was not challenged by the applicant at all. This leads to the suspicion that the re-fixation was done correctly and that prima-facie the applicant had no objection to it. We fail to understand as to how the respondents did not take any action to recover whatever the excess that had been paid to him between 2012 and 2016. It is possible that being an Accountant in the same office, the applicant could have had juncture in the non-recovery also. Be that as it may, it is clear that he is clearly not eligible for non-recovery based on the *White Washer* judgment. His other contentions relating to the higher Grade Pay vide Annexure-A9 and subsequent higher Grade Pay in 3rd MACP etc., do not deserve any consideration since the concerned instructions are not relevant in his case. His citing the case of one more person also namely Sri Sadashiva has also been replied to by the respondents in para-25 of the reply

statement wherein they had shown that Sri Sadashiva was actually drawing the Basic Pay of Rs.7250 as on 1.1.2006 while the applicant was drawing Rs.5675 on the same date. Therefore, this also will not help the applicant.

7. The OA is therefore dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred by the applicant in OA.No.170/00867/2019

Annexure-A1: Standard pay scales from 4th to 6th CPC
Annexure-A2: DOPT OM dtd.9.8.1999
Annexure-A3: DOPT OM dtd.10.2.2000

Annexure-A4: DOPT OM dtd.18.7.2001
Annexure-A5: Order dtd.26.4.2005
Annexure-A6: Order dtd.4.5.2009
Annexure-A7: DOPT OM dtd.19.5.2009
Annexure-A8: Min. of Finance OM dtd.13.11.2009
Annexure-A9: DOPT FAQ dtd.9.9.2010
Annexure-A10: Fixation statement dtd.12.7.2011
Annexure-A11: Re-fixation statement dtd.13.12.2012
Annexure-A12: Order in OA.3038/2013 of CAT, PB, N.Delhi
Annexure-A13: Refixation of pay vide order dtd.23.2.2016
Annexure-A14: Promotion order dtd.4.7.2017 of the applicant as Admn.Officer
Annexure-A15: Recovery order dtd.30.4.2019
Annexure-A16: Representation dtd.10.5.2019
Annexure-A17: Representation dtd.3.6.2019
Annexure-A18: Apex Court order in Rafiq Masih case

Annexures with reply statement:

Annexure-R1: Pay fixation statement of Sri T.S.Sadashiva
Annexure-R2: Order in CA.No.3500/2006

Annexures with rejoinder:

Annexure-A19: Order in OA.No.189/2018 dtd.26.11.2019

Annexures with written arguments note filed by the applicant:

Annexure-A20: MIB OM dtd.25.2.1999
Annexure-A21: LPC dtd.27.9.2017

Annexures with written arguments note filed by the respondents:

-NIL-
