

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR**

ORIGINAL APPLICATION No.211/00109/2018

Dated this Friday, the 20th day of December, 2019

CORAM : DR. BHAGWAN SAHAI, MEMBER (A)

Deepak S/o Upasrao Moon, Aged about 61 years,
Occu : Retired, R/o Plot No.198, Untkhana Road,
Near State Bank of India, Medical Square,
Nagpur 440 024.

- Applicant

(By Advocate Shri Atul Mahajan)

Versus

1. Union of India, Through its Secretary,
Ministry of Mines, Shashtri Bhavan,
Dr. Rajendraprasad Road, New Delhi 110 001.
2. Controller General, Indian Bureau of Mines,
Indira Bhavan, Civil Lines, Nagpur 440 001.
3. Superintending Ore Dressing Officer,
Regional Mineral Processing Laboratory,
Indian Bureau of Mines, 29, Industrial Suburb,
Tumkur Road, Gorngunpatalya, Yeshwantpur Post,
Banglore 560 022.

- Respondents

(By Advocate Ms. Renuka Puranik Nalamwar)

Order reserved on 06.11.2019

Order pronounced on 20.12.2019

ORDER

Shri Deepak Upasrao Moon, resident of Plot No.198,
Untkhana Road, Medical Square, Nagpur has filed this OA on
04.06.2018 seeking quashing and setting aside of orders of
recovery in letter dated 19.09.2017 and 12.07.2017 [Annex
A-1 and A-1(i)] and direction to the respondents to release
Rs.1,86,065/- with interest, deducted from his gratuity. He
also seeks cost of this application from the respondents.

2. Summarized facts:

2(a). The applicant has stated that he was promoted as Deputy Ore Dressing Officer (DODO) and transferred to Bengaluru vide order dated 19.05.2015 and he retired from there on 31.07.2017. By order dated 12.07.2017, respondent No.2 (Controller General, Indian Bureau of Mines, Indira Bhavan, Civil Lines, Nagpur) refixed his pay from 01.09.2008 when he had been granted financial upgradation under second MACP in pay Band 2 Rs.9,300-34,800/- with Grade Pay of Rs.4,800/-. However, he was not communicated the rules pertaining to MACP under which his pay was refixed and reduced. That order he received on 17.07.2017 i.e. within his last two weeks in service, (his retirement was due on 31.07.2017).

2(b). Then he submitted his representation on 19.07.2017 informing the respondents that in view of his retirement on 31.07.2017, his pay cannot be refixed to recover any excess amount paid to him. With his representation he also enclosed a copy of DOPT OM dated 02.03.2016 which stipulates that recovery is impermissible in law from employees who are due to retire within one year of the order of recovery (Annex A-2).

2(c). However, his representation was rejected by the respondents vide order dated 10.08.2017 (Annex A-3). His subsequent representations dated 10.08.2017, 18.08.2017 and 21.08.2017 also pointed out that refixation of his pay from

01.09.2008 as per the objection of Pay and Accounts Officer, Indian Bureau of Mines (IBM) dated 04.07.2017 was illegal. By the impugned order dated 19.09.2017, he was informed by the respondents that Rs.1,86,065/- had been recovered from his gratuity.

2(d). The applicant again submitted representations on 11.12.2017 and 26.02.2018 demonstrating how the recovery is illegal (Annex A-6). However, the respondents again replied on 22.03.2018 rejecting his representations (Annex A-7). Therefore, this OA has been filed.

3. Contentions of the parties:-

In the OA and during arguments of his counsel on 06.11.2019, the applicant has submitted these grounds:

3(a). the respondents have illegally initiated recovery of excess payment by refixing his basic pay from 01.09.2008 i.e. after nine years, that too when he was to retire within next two weeks of the refixation order. This refixation of his pay and recovery have been ordered by the respondents in spite of stipulations under DOPT OM dated 02.03.2016, which was issued in pursuance to the Apex Court decision in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer), (2015) 4 SCC 334, Civil Appeal No.11527 of 2014.**

In that Apex Court decision, five situations have been listed in which recovery by employers from employees would be

impermissible. The applicant's case falls under situations Nos.2 and 3 in that decision. As he was due to retire on 31.07.2017, the respondents should not have issued the order of recovery on 12.07.2017 and as per the situation No.3, when the excess payment had been made to him for a period of more than five years before the order of recovery was issued;

3(b). his pay had not been wrongly fixed due to any misrepresentation or fraud by him and it must have been fixed by applying wrong method of calculating pay and allowances of which the applicant had no knowledge;

3(c). the recovery of Rs.1,86,065/- from his gratuity has caused financial hardship to him. Therefore, the impugned order of recovery should be set aside by allowing the OA.

In their reply and during argument of their counsel on 06.11.2019, the respondents have contended that -

3(d). pay of the applicant was revised from 01.09.2008 vide office order dated 12.07.2017 based on observations of the office of Pay and Accounts Officer, Indian Bureau of Mines, Nagpur and a copy of that order was received by the applicant on 12.07.2017. Therefore, the applicant cannot claim that he was not informed about refixation of his pay and resultant recovery from payment of gratuity to him;

3(e). as per Rule 62 (1) of Central Government Accounts (Receipts and Payment) Rules, 1983, objections and orders received from the Accounts Office, Internal Check Inspecting Officers and Statutory Audit Officers have to be attended to promptly. As per Rule 62 (2) of those rules, when the Accounts Officer disallows the payment as unauthorized, the Disbursing Officer is bound not only to recover the disallowed amount without listening to any objection or protest but also to refuse to pay it in future till the Accounts Officer authorises the payment to be resumed.

As per Rule 73 of the above rules, if the amount of sums disallowed during post check or when the deduction could not be made for any reason during pre-checking of the bill, it has to be done as per his instructions. The earlier fixed pay of the applicant from 01.09.2008 was subsequently disallowed by the Accounts Office and therefore, refixation of his pay was made and the recovery of excess payment made earlier was ordered. The respondents replied to the applicant's representations vide letter dated 22.03.2018 as per DOPT OM dated 19.04.2010 when he did not bring out any new fact;

3(f). the applicant was holding a Senior Time Scale post in Group A and he was expected to be aware of various rules and regulations of the Government on the subject of pay fixation. He should have checked wrong fixation of pay and brought

that fact to the notice of the office, but he did not do so. Moreover, even when he himself worked as Officer In-charge of Regional Ore Dressing Laboratory and Pilot Plant, Indian Bureau of Mines from 21.12.2015 to 19.04.2017 but he did not do so. Therefore, the refixation of his pay and recovery made from his gratuity are correct and the OA should be dismissed.

4. Analysis and conclusions:

I have carefully perused the contents of the OA, reply of the respondents and arguments of both counsels. The issue involved in this OA is analyzed as follows:

4(a). The applicant retired as a Group 'A' Officer from the post of Deputy Ore Dressing Officer (DODO) on 31.07.2017. The applicant's pay was earlier fixed from 01.09.2008 with grant of second MACP from that date vide order dated 20.04.2010 as per CCS (Revised Pay) Rules, 2008. Subsequently, based on the objections received from the Pay and Accounts Office, Indian Bureau of Mines dated 04.07.2017, the applicant's pay was refixed and regularized as per CCS (Revised Pay) Rules, 2008 and CCS (Revised Pay) Rules, 2016 and recovery of Rs.1,86,065/- were made from his gratuity as the time of his retirement on 31.07.2017. This shows that while his pay had earlier been revised from 01.09.2008, it was refixed by order dated 12.07.2017 which

resulted in recovery of Rs.1,86,065/- . Hence the order of recovery has been issued by the respondents on 12.07.2017.

4(b). The respondents in their reply have not been able to point out any misrepresentation or fraud committed by the applicant while his pay was fixed earlier from 01.09.2008 by the order dated 20.04.2010. The order of recovery has been issued only 18 days prior to the applicant's retirement.

4(c). For refixation of the pay of the applicant, the reason submitted by the respondents is only the observation / communication of the Pay and Accounts Office, Indian Bureau of Mines dated 04.07.2017. They have tried to justify the refixation of the pay as per the stipulations of Central Government Accounts (Receipts and Payment) Rules, 1983.

4(d). When the pay of the applicant was fixed earlier, it must have been fixed by the Pay and Account Office only. However, they have not been able to explain as to why the earlier wrong fixation of pay of the applicants was not objected to by the Pay and Accounts Office.

4(e). In the present case, the recovery of excess payment of pay made to the applicant as per the earlier pay fixation order has been made from the amount of gratuity paid to him at the time of his retirement. In the context of the present case, it is apt to refer to Apex Court decision in case of **Chandi Prasad**

Uniyal & Ors. Vs. State of Uttarakhand & Ors., 2012(7)

Scale 376 (17.08.2012), (in Para 15) holding that except for few instances pointed out in Syed Abdul Qadir case and in Col. B.J. Akkara case, the excess payment made due to wrong or irregular pay fixation can always be recovered.

4(f). Here it is also appropriate to mention the stipulation under Rule 71 of the CCS (Pension) Rules 1972 - It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement. The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the [retirement gratuity] becoming payable, and Government dues also include overpayment of pay and allowances.

In view of the above Apex Court decision and stipulations under the pension rules, there was no bar on recovery of the excess payment made earlier by the respondents due to wrong pay fixation.

4(g). However, in the context of the present case, the respondents have not brought on record any details of fixation of responsibility on those who were responsible for the earlier wrong fixation the applicant's pay before issuing the refixation

order before 18 days of the applicant's retirement, they did not even issue any show cause notice to him explaining how the wrong fixation of his pay had been done earlier and why the recovery of the excess payment was necessary thereby providing him an opportunity to submit his say. The recovery of Rs.1,86,065/- from gratuity of the applicant certainly has caused hardship to him.

4(h). In view of these factual details, it seems the respondents themselves wrongly paid to the applicant higher amount of pay as per earlier wrong fixation and that excess amount of pay seems to have been received by the applicant for a period of more than five years before the order of recovery was issued on 12.07.2017.

In these facts peculiar to the present case, in my opinion it would be more appropriate to extend to the applicant benefit of the Apex Court decision in case of Rafiq Masih and restrict the recovery of excess payment to the period of five years prior to the order of recovery and the excess payment received by the applicant prior to 12.07.2012 should be refunded to him. Hence the following order.

5. Decision:

The OA is partly allowed and the amount of excess pay received by the applicant prior to 12.07.2012 should be refunded to him from the recovery made from his gratuity. However, he is not entitled for payment of any interest. No costs.

*(Dr. Bhagwan Sahai)
Member (Administrative)*

kmg/H.

