

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD
(CIRCUIT SITTING AT NAINITAL)**

This is the 14th day of **FEBRUARY, 2020.**

ORIGINAL APPLICATION NO. 331/1126/2018

HON'BLE MS. AJANTA DAYALAN, MEMBER (A).
HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).

1. Arun Kumar Saxena Retired Accountant All India Radio Dehradun S/o Late A.B. Lal Saxena R/o 31/36 Purvi Nath Nagar in Front of Saini Ashram Jwalapur Road, Haridwar, District Hardiwar.

.....Applicant.

VERSUS

1. Union of India through Secretary, Ministry of Information and Broadcasting Shastri Bhawan New Delhi.
2. The Chief Executive Officer Prasar Bharati Secretariat 2th Floor PTI building Sandad Marg New Delhi-110001.
3. Director General, All India Radio, Akashwani Bhawan Sansad Marg, New Delhi-110001.
4. The Assistant Station Director, All India Radio Dehradun.
5. The PA Accounts Officer Pay and Accounts Office, All India Radio Aakash Vani, 18 Vidhan Sabha Marg, Lucknow. PIN 226001.

.....Respondents

Advocate for the Applicant : Shri Kishore Rai

Advocate for the Respondents : Shri T C Agrawal

O R D E R

(Delivered by Hon'ble Ms. Ajanta Dayalan, Member-A)

Shri Kishore Rai, learned counsel for the applicant and Shri T C Agrawal, learned counsel for the respondents are present.

2. The present OA has been filed by the applicant A K Saxena seeking setting aside of the order dated 01.06.2017 (Annexure No. 1) by which a sum of Rs. 2,55,048/- was ordered to be recovered from the retirement gratuity of the applicant. The applicant is seeking disbursement of full pensionary benefits including gratuity and refund of amount recovered from his gratuity along with 12% interest thereon.

3. The bare facts of the case are not disputed. The applicant was initially appointed as Lower Division Clerk in All India Radio and retired on 31.07.2017 from the post of Accountant. Two months prior to his retirement, the respondents department vide order dated 01.06.2017 ordered recovery of an amount of Rs. 2,55,048/- from his retirement Gratuity. The excess payment was on account of over payment of pay and allowances in his salary. This was with regard to fixation of pay w.e.f., 01.01.2006 after implementation of Sixth Pay Commission's recommendations. The recovery has been made from the Gratuity paid to the applicant on his retirement. These facts are not disputed.

4. The case of the applicant is that the amount of over Rs. Two Lacs has been recovered from him just prior to his retirement and no notice has been served to him in this regard. Learned counsel for the applicant has relied on guidelines laid down by the Hon'ble Apex Court in the case of Rafiq Masih (White Washer) etc in CA No. 11527 of 2014 (arising out of SLP (C) No. 11684 of 2012). Learned counsel for the applicant further stated that the Government of India itself has issued circular dated 02.03.2016 (Annexure No. 07) in the light of the Apex Court judgement. As such, according to the applicant there was no logic in recovery of amount from the Gratuity of the applicant who was a Group-C employee just prior to his retirement.

5. The respondents have strongly contested the claim of the applicant. They have stated that consequent to the implementation of Sixth Pay Commission, pay of certain employees was fixed

incorrectly whereas some other regional Kendras of All India Radio/Doordarshan calculated the pay correctly. The details of employees with correction calculation as per right interpretation and incorrect calculation are annexed at Annexure No. CA-1 to the counter affidavit.

6. The respondents have also stated that consequent to implementation of the Sixth Pay Commission, the DG: AIR issued orders for fixing pay of officers posted in various grades/posts in their respective offices w.e.f., 01.01.2006. However, some of the employees of the Directorate represented for refixation of their pay as per Note 2A read with illustration 4A in part-B Section II of the Gazette Notification.

7. The issue was examined by the Prasar Bharati Secretariat with Department of Expenditure and instructions were issued to DG: AIR vide letter dated 31.12.2015 which stated as under:-

"The pay in pay band will be determined by multiplying the existing basic pay as on 01/01/2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. To ease the complexity of multiplication and rounding off, the fitment tables of pre-revised scales of pay in which the officer has drawn his pay as on 01.01.2006 has to be used for arriving at the pay in the pay bank and thereafter, the grade pay corresponding to the upgraded scale as indicated in Column-6 of Part -B or Part-C of CCS (Revised pay) Rules, 2008 will be payable in addition."

8. This clarification was circulated to All India Radio/Doordarshan offices vide letter dated 05.01.2016 and it was directed to fix the pay as per clarification and recover the excess amount paid, if any, immediately. Consequently, pay fixation was

done and excess payment was sought to be recovered from the serving employees and from retiring employees, the recovery was to be made from their pensionary benefits.

9. The respondents have further stated that the judgement dated 18.10.2014 passed by Hon'ble Supreme Court in the case of Rafiq Messiah (supra) circulated vide their OM dated 02.03.2016 cannot apply to the situations where the officials are clearly aware that any payment found to be made in excess would need to be refunded. The respondents have also stated that the Hon'ble Apex Court vide judgement dated 29.07.2016 in Civil Appeal No. 3500/2016 in Hon'ble High Court of Punjab & Haryana and ors Vs Jagdev Singh has observed in para no. 11 that the principle enunciated in the case of State of Punjab Vs. Rafiq Masih (white washer) cannot be applied to a situation where the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded.

10. The respondents have stated that in this case also, the applicant furnished an undertaking while opting for the new pay scale and hence, the applicant is therefore bound by this undertaking now. The O.M. dated 16.05.2017 issued by the Prasar Bharati, DG:AIr issued in this connection is at CA-2.

11. The respondents have further quoted the case of R Vimala Bai Vs Union of India in OA No. 170/00813/2016 wherein the Bangalore Bench of this Tribunal had held that the action of respondents to

recover the excess amount paid to the applicant towards pay and allowances on account of wrong fixation cannot be considered as unjustified. The Bench has also held that the action taken by the respondents to recover the amount from the applicant's DCRG dues was perfectly in order. Similarly, in another case of Smt Padma Sadashiva Inspector of Accounts (Retd) in OA No. 215 of 2017, the Bangalore Bench of this Tribunal had dismissed the similar OA relying on the judgement dated 29.07.2016 in the case of High Court of Punjab & Haryana and ors Vs Jagdev Singh.

12. The respondents have averred that prior to taking a view in this case, the Legal Affairs Department of Government of India was consulted and it expressed its opinion supporting this view.

13. In the light of the above averments, the respondents have concluded that they have not committed any irregularity in passing the recovery order. Hence, the OA being devoid of merit deserves to be dismissed.

14. We have heard the counsels for both the parties and perused the pleadings available on record. We have also given our thoughtful consideration to the entire matter.

15. We observe that the matter basically relates to refund of Rs. 2,55,048/- recovered from the applicant's gratuity due to excess payment of pay and allowances consequent to fixation of his pay after implementation of Sixth Pay Commission recommendations

w.e.f. 01.01.2006. We observe that the respondents have very categorically stated that the applicant was placed under notice dated 10.12.2012, and further vide order dated 22.12.2015 whereby it was clearly mentioned that the applicant's fixation of salary was subject to audit and if found excess, the same was to be refunded or adjusted. Copies of the two notices are available as Annexure CA-3 and 4 to the counter affidavit. Hence, the contention of the applicant that he was not given any notice prior to recovery having been made from him is not brought out from the facts of the case.

16. We also observe that the Hon'ble Apex Court vide judgement dated 29.07.2016 in Civil Appeal No. 3500/2016 in the case of High Court of Punjab and Haryana and ors Vs Jagdev Singh has already held that the principle enunciated in the case of State of Punjab Vs. Rafiq Masih (white washer) cannot be applied to a situation where the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The applicant also furnished an undertaking as per Annexure No. CA-3. Hence, the applicant's case is covered by the judgment dated 29.07.2016 of Hon'ble Apex Court.

17. The applicant is now bound by the undertaking given by him at the time of fixation of his pay. Even subsequently on 22.12.2015, at the time of grant of Second ACP and Third MACP, the order granting upgradation to the applicant clearly stated that the pay fixation is

subject to audit and if found excess, the same was to be refunded or adjusted.

18. Accordingly, the plea of the applicant that he was not given any notice or that he is covered by the case of Rafiq Messiah (supra) and DoPT guidelines, is not as per the facts of the case. The applicant was clearly given notice even at the time of fixation of pay itself. His case is covered by Hon'ble Supreme Court's judgement dated 29.07.2016 in the case of High Court of Punjab & Haryana Vs Jagdev Singh. Some other Benches of CAT have also followed this judgement as discussed above.

19. We, therefore, do not find any ground for refund of the excess payment already recovered. Accordingly, the OA is dismissed being devoid of merits.

(RAKESH SAGAR JAIN)
MEMBER-J

(AJANTA DAYALAN)
MEMBER-A

Arun..