

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Original Application No.431/2016

Dated this the 6th day of January 2021

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Dr. A.K. Dubey, Member (A)

1. Umedbhai Shankrbhai Vaghela,
Aged:55 years (DoB) being 18.01.1961)
S/o Shri Shankrbhai Kalidas Vaghela,
Presently serving as Multi Task Assistant (MTS),
In the Directorate of Census Operations,
Gujarat, Gandhinagar
& presently residing at No.A/49, Akshardham Society,
Behind Katarpur,
Sardarnagar,
Ahmedabad 382 475.

2. Balaji Mahotji Thakor,
Aged: 59 years (DoB being 21.11.1957)
S/o Shri Mahotji H. Thakore,
Presently serving as Multi Task Assistant (MTS)
In the Directorate of Census Operations, Gujarat, Gandhinagar,
& presently residing at No.1714/,
Navrangpura Gam Thakur Vas,
Navrangpura,
Ahmedabad – 380 009. Applicant

(By Advocate Mr.M.S.Rao)

Vs.

1. Union of India,
(to be represented through
the Special Secretary to the Govt. of India &
Ministry of Home Affairs, North Block,
New Delhi 110 001.

2. The Registrar General & Census Commissioner, India,
O/o The Registrar General, India,

Ministry of Home Affairs,
2A, Mansingh Road,
New Delhi -110 011.

3. The Director of Census Operations,
Gujarat,
Directorate of Census Operations,
Ministry of Home Affairs,
“Census Bhavan”,
Sector-10/A,
Gandhinagar – 382 010.

(By Advocate Ms.R.R.Patel)

Respondents

O R D E R (Oral)

Per: A.K.Dubey Member (A)

1. In this OA, the applicant has approached this Tribunal through OA No.431/2016 for the following reliefs:-

“8A Call upon the respondents herein to place before this Hon’ble Tribunal for its perusal the entire original file/noting file/documents giving rise to the impugned decision of the respondent no.3 herein and also the consequent issuance of the impugned documents at Annexure-A1 to Annexure-A/4 hereto by the respondent no.3 herein;

B. Upon the close scrutiny and perusal of the aforesaid original file/noting file/documents, your Lordships may be graciously further pleased to quash and set aside (i) Office order No.G-12015/1/2015-JAN(Guj)258, dated 07.03.2016 at Annexure-A/1 hereto, (ii) Office Order No.G-12015/1/2015-JAN(Guj), dated 07.03.2016 at Annexure-A2 hereto, (iii) Office Order No.G-12015/1/2015-JAN (Guj)/627 dated 10.05.2016 at Annexure-A/3 hereto and at Annexure-A/4 hereto, declaring and holding the same to be ex facie arbitrary, unreasonable and not permissible in law;

C. hold and declare that the applicants herein are lawfully as of right entitled to continue to draw the pay in the PB-1 scale of Rs.5200-20200/- with GP Rs.1800/- as they were drawing prior to the issuance of the impugned Office Orders both dated 07.03.2016 at Annexure-A1 & Annexure-A/2 hereto;

D. issue appropriate orders directing the respondents herein more particularly the respondent no.3 herein to permanently restrain themselves, their agents, officers, representatives, agents, from proceeding any further against the applicants herein in pursuance of the impugned Office Orders dated 10.05.2016 at Annexure-A/3 & Annexure-A/4 hereto.

E. impose an exemplary cost of Rs.50,000/- on the respondent no.4 herein towards the cost of this litigation;

F. Grant such other and further relief/s as may be deemed fit and proper in the peculiar facts and circumstances of the present case.”

2. Along with this OA, MA No.234/2016 for permission to file joint applicants was also moved which was allowed on 18.05.2016.
3. The applicants have challenged the orders of pay fixation by which their pay was fixed vide No.G-12015/1/Jan(Guj)/258 dated 07.03.2016 (Annexures A/1 & A/2) and also the order No.G-12015/1/Jan(Guj) 627 dated 10.05.2016 seeking recovery of excess payment due to such pay fixation. Applicants contend that it was a wrong fixation.
4. Briefly their case is that they were engaged as casual labourers in the office of the respondent No.3 in early 1980s. In 1994 these two applicants were granted temporary status vide order dated 20.07.1994 at Annex. 5 (at that time Mr.B.M.Thakor, the 2nd applicant was known as Mr.B.M.Makwana). Later, the service of the applicant No.2 i.e., Mr.B.M.Thakor was regularized vide office order dated 01.05.1998 (Annex.A/6). Thereafter, he became peon in the pay scale of Rs.2550-3200/- (5th CPC scale). The service of the 1st applicant Mr.Vaghela was regularized as watchman vide order dated 05.04.1999. The posts of watchman and peon both carried same pay scale. In the year 2007, the office orders dated 12.03.2007 (Annex.A/8) issued in respect of the 1st applicant and the 2nd applicant respectively indicating that their pay was to be re-fixed for the period from 18.06.1997 to 28.02.2007 and from 05.04.1999 to 28.02.2007 respectively on the grounds of compliance with certain audit objections raised by the audit team with respect to applicants' pay fixation on 10.09.1997. The applicants mentioned that although the orders were served upon them, no other details were given to them. As a consequence of these orders, the pay of the 1st applicant on 28.02.2007 was reduced from Rs.3,200/- to Rs.2,960/- and the pay of the 2nd applicant was reduced from Rs.3,200/- to Rs.3140/-. The applicants being

lowly paid employees and belonging to downtrodden community did not have financial strength to go in for litigation to challenge these actions. Later, with the implementation of 6th CPC recommendations w.e.f. 01.01.2006, both the applicants' pay scale was revised by PB-1 in the scale of Rs.5200-20200/- with GP of Rs.1800/-. In the year 2011, the posts of watchman and peon were re-designated as Multi Tasking Employees vide order dated 23.06.2011 (Annex.A/9). In the month of March 2016, the 1st applicant was drawing the pay of Rs.9160/- in the PB-1 scale of Rs.5200-20200/- with GP of Rs.1800/- and the 2nd applicant was drawing the pay of Rs.9,160/- in the PB-1 scale of Rs.5200-20200/- with GP of Rs.1800/-. The order dated 07.03.2016 of the 3rd respondent (Annexs. A1 & A2) sought to downwardly revise the pay of the applicants to Rs.8900/- in order to implement the audit objection from April 2016. Applicants have since been receiving Basic Pay of Rs.8900/- per month. Copies of their pay slips have been produced before us at Annexs. A/10 & A/11.

5. Aggrieved by the pay reduction mentioned above, the 2nd applicant submitted individual representations dated 05.04.2016 and 06.04.2016 (Annexs. A/12 & A/13), against reduction in their pay. The representations were not responded to. Meanwhile, the applicants came to know that the respondent No.3 was going to recover the past excess payment made to the 2nd applicant. They again submitted individual representations (Annexs. A/14 & A/15). On the basis of this, specific instruction was issued by DoPT OM No.18/03/2015-Estt.(Pay-I) dated 02.03.2016 (Annex.A/16) restraining the recovery. Through subsequent orders dated 18.05.2016, both were informed about the recovery of the excess amount drawn by them on instalment basis. The applicants have mentioned that the impugned orders were arbitrary and unreasonable and it was only to rectify the audit objections. Neither any

reasons have been shown as to why the audit team has made such observation nor is there any explanation to the fact that the applicants are not entitled to the fixation of pay that they had received in the year 2007. Thus, the said recovery after so long time, is both arbitrary and illegal as also un-reasonable. The applicants rely on the Apex Court's decision in State of Punjab vs. Rafiq Masih and also the OM dated 02.03.2016 of DoP&T. According to the applicants, they fall within the exception carved out by the Hon'ble Apex Court as also the above mentioned OM of DoP&T.

6. In their reply, respondents have quoted para 10 of the audit objection which reads as under:-

“As per the GoI decision No.22 given under FR 22, pay of such casual labourers conferred with temp. status, when they are offered regular appointment, shall be fixed at the minimum of the pay scale of the relevant Group D post. But it is seen from their service books, their regular pay and DNI which they were specifically permitted to receive during their temp. status period, still continue in their regular appointment also. This irregularity is brought to notice for suitable action and necessary recovery of overpayment made since the date of their regular appointment.” (Annex.R4).

Respondents maintained that this, being an audit observation, was taken as an irregularity and hence the recovery. The internal audit report had observed break in service of the applicants from 01.01.1993 to 14.07.1994. (Annex R4). Replying to their representations, respondents have explained that the matter was referred to the office of Registrar General of India (2nd respondent). Respondents were seeking to settle the audit objections. Since the audit para was outstanding for settlement of recovery, the respondent vide order dated 10.05.2016 authorised recovery of the excess amount in six instalments. (Annexure R/13). Later, the applicants had approached this Tribunal, which, vide its order dated 18.05.2016, stayed the recovery,

pursuant to which the respondents issued orders not to recover the excess payment (Annex. R/15).

7. The applicants have filed their Rejoinder and denied the contention of the respondents.
8. Heard the counsels. The counsel for the applicants reiterated the contentions in the OA. He submitted first that on conferment of temporary status upon them after they had worked as casual labour, their pay was fixed in accordance with then prevailing rules. At that time, the instructions contained in DoP&T OM dated 29.01.1998 (RJ1) were not in force, he argued. When the applicants' services were regularised, it was under the scheme called "Casual Labourers (grant of Temporary Status and Regularization) Scheme of Govt. of India, 1993". The matter of wrong fixation came up only through audit objection in the year 2007 which was based on the instructions contained in the DoP&T OM dated 29.01.1998. It would be erroneous to treat the pay fixation of any period before 29.01.1998 on the basis of this OM dated 29.01.1998; pay fixation predates the OM dated 29.01.1998 and this OM does not have any retrospective effect. Meanwhile, the applicants approached this Tribunal and this Tribunal had stayed the recovery. So the situation that obtained eventually was, that when audit objection came up, at that time 1998 OM was in force but not when pay was fixed. Further, by the time decision on recovery was put to implementation, DoP&T OM itself had changed, and the pay fixation matter is now governed by the OM dated 09.05.2008. On these bases, this recovery has no justification, the counsel argued. Even otherwise, in terms of Hon'ble Supreme Court's judgment dated 18.12.2014 in State of Punjab and Ors. v. Rafiq Masih, (White washer) reported in (2015) 4SCC 334 the case of the recovery abates, he submitted.

9. Learned counsel for the respondents made submission that when audit observation referred to the order of the DoP&T dated 29.01.1998, there was hardly any option left but to proceed to comply with the audit observation and hence, the applicants' pay had to be refixed. Learned counsel for respondents also reiterated that when the audit objection came, at that time, DoP&T order dated 09.05.2008 was not there. That clearly meant that the DoP&T order 29.01.1998 was still in operation and hence from the point view of instructions, there was no ground to question the audit observation.
10. It envisages from the record that the cause of action in this case arose with the audit observation about fixation of pay in excess of the eligible basic pay. At the time of pay fixation, DoPT OM dated 29.01.1998 was not in existence. However, by the time, the respondents proceeded to actually recover the excess payment by re-fixation of their pay, the rules themselves had changed. We see that these two applicants are lowly paid Group D employees. Long after the pay fixation was made, their pay got revised and they were called upon to repay the excess amount even though by that time, the rules themselves had changed.

10.1 In the first round of litigation, this Tribunal had stayed the recovery of excess amount. Be that as it may, it is amply clear from the records that at the time of the impugned pay fixation in 1994, the clarification vide DoP&T OM dated 29.01.1998 was not there, the scheme of 1993 did not specify anything to the effect that later DoP&T OM dated 29.01.1998 prescribed and at present i.e, as on date, DoP&T OM dated 09.05.2008 is in force and applicable which has changed the content of DoP&T OM dated 29.01.1998. Further, para 4 of this OM dated 09.05.2008 reads as follows:-

"All Ministries / Departments including attached / subordinate offices are requested to take necessary action to fix the pay of

such of those casual labourers who have been regularized in terms of the above scheme accordingly and arrears of pay as admissible paid to them.”

11. This OM does not specifically say that it will apply only prospectively. On the other hand, it specifically says that the officers are requested to take necessary action to fix the pay of such of those casual labourers who have been regularized in terms of the scheme and pay the arrears. After taking into account the factual matrix of the case, the rules that were applicable at the time of fixation of pay of the applicants and the subsequent changes as also, the extant instructions, we are of the opinion that recovery in this case will be tantamount to taking away the benefit that has been allowed by an order, which itself is in supersession of the earlier order on the basis of which recovery was sought. Further, the recent order of Hon’ble Apex Court’s order in Rafiq Masih case is very clear in this regard. Under these circumstances, we quash the recovery order and allow the OA by directing the department to fix the pay of the applicants by taking into account the DoPT OM dated 09.05.2008. Needless to say that adjustments, if any, in the total amount may be effected after fixation of the pay as directed above.

No order as to Cost.

A.K.Dubey
(Administrative Member)

Jayesh V. Bhairavia
(Judicial Member)