

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE
ORIGINAL APPLICATION NO.170/00769/2019**

ORDER RESERVED ON 16.12.2020

DATE OF ORDER: 27.01.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(On video conference from Central Administrative Tribunal, Bangalore Bench at Bangalore)

N.M.Mujawar

Age: 61 years

S/o Mahamad

Retired as stenographer Grade I

O/o Superintendent of Post Offices

Gokak Dn., Gokak-591307.

Residing at:

Block 87/88, 4th Cross

Renuka Clinic Road

Shahanagar

Belgaum-590010.

.... Applicant

(By Advocate Shri P.Kamalesan – through video conference)

Vs.

1. Union of India

Represented by Secretary.

Department of Post

Dak Bhavan

New Delhi-110001.

2. Chief Post Master General

Karnataka Circle

Bangalore-560001.

3. Post Master General

N.K.Region

Dharwad-580001.

4. Superintendent of Post Offices
Gokak Postal Division
Gokak-591307.

5. General Manager
(Postal accounts & Finance)
Karnataka Circle
Bangalore-560001.

....Respondents

(By Advocate Shri V.N.Holla – through video conference)

ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

- a. Quash the superintendent of Post Offices, Gokak, Postal Division, Gokak-591307 letter No.C2/1/NMM/2019 dated: 29-3-2019 (Annexure-A5) and Chief Post Master General, Karnataka Circle, Bangalore-560001 letter No.AP/Pen/NK/Genl/XIII dated: 20-5-2019 (Annexure-A9).
 - b. Consequently, direct the respondents to refund or release the recovered amount of Rs.1,86,443=00 from gratuity with interest.
 - c. Direct the respondents to restore the reduced basic pay from 23.10.2007, and settle pension and other retiral benefits, accordingly with interest.
 - d. Grant any other relief as deemed fit into the facts and circumstances of the case, in the interest of justice and equity.
2. The facts of the case as pleaded by the learned counsel for the applicant, Shri P.Kamalesan, are as follows:

- a) The applicant was appointed as Stenographer on 12.10.1983. He was granted 1st financial upgradation under Assured Career Progression(ACP) Scheme on

09.08.1999 and was granted the 2nd financial upgradation under ACP on 23.10.2007. He was granted due increments from 01.07.2007.

- b) The applicant was granted MACP-II on 01.09.2008 vide Memo No.STA/4-3/MACPS/Steno/2010 dated 21.5.2020. Subsequently vide Memo No.STA/4-3/MACPS/Steno dated 20/24.1.2014, the date of grant of MACP-II was changed from 01.09.2008 to 23.10.2007. The applicant had exercised option regarding pay fixation from the date of promotion. The Director of Accounts (Postal), Karnataka Circle, Bangalore vide its letter dated 14.3.2019 during account enforcement of applicant sought clarification regarding granting of two increments to the applicant from 23.10.2007. Based on this clarification, the basic pay of the applicant was reduced from Rs.68000 to Rs.66000 along with the order of recovery of Rs.1,84,443/-.
- c) The applicant submitted a representation on 28.3.2019 to CPMG, Karnataka Circle regarding the reduction in basic pay and order of recovery of Rs.1,86,443/-. The Superintendent of Post Office, Gokak Division vide letter dated 29.03.2019 informed the applicant to credit Rs.1,86,443/- or otherwise the excess paid pay and allowances will be recovered from the Gratuity. The applicant submitted a representation to the authorities vide his letter dated 29.04.2019. However, his representations was rejected and it was stated that the Post Master, Belagavi had refixed his pay, and excess of Rs.1,86,443 of pay and allowances is to be credited or recovered from gratuity, for which notice has been issued vide letter dated 29.03.2019. The applicant had stated that he was due to retire on 31.03.2019. His representation against recovery was not considered before his retirement nor any formal show cause notice

was issued regarding recovery or re-fixation of pay from 23.10.2007. This is against the principles of natural justice. The applicant further submitted that in accordance with the provisions of Rule 9 of CCS(Pension) Rules, the only authority who can order recovery from gratuity or pension is the President of India, that too in cases of departmental proceedings or judicial proceedings which are pending against the Government servant.

- d) The applicant further submitted that the Hon'ble Apex Court in order dated 18.12.2014 in Civil Appeal No.11527/2014 in the case of State of Punjab & others vs. Rafiq Masih & others held that recovery from retiring or retired Government servant is unsustainable under law.

3. Shri V.N.Holla, learned counsel for the respondents in his reply has averred as follows:

- a) The applicant was appointed as Stenographer on 12.10.1983 in the respondent's department. He was granted first financial upgradation under the then Scheme called ACP (Assured Career Progression Scheme) on 09.08.1999, i.e. ACP I. Thereafter he was granted ACP II with effect from 23.10.2007 vide Postmaster General, N K Region, Dharwad (Respondent No:3) memo No.NKR/STA-2/164/Steno/2007/KW dated 08.08.2007.
- b) The applicant was granted benefit of financial upgradation under the MACP Scheme (Modified Assured Career Progression Scheme), i.e. MACP II with effect from 01.09.2008, vide Chief Postmaster General, Karnataka Circle, Bengaluru (Respondent No:2), letter No.STA/4-3/MACPS/Steno/2010 dated 21.05.2010, as per Postal Directorate (Respondent No: 1) OM NO.4-

7/MACPS/2009-PCC dated 18.09.2009.

- c) The above drawn MACP-II which was granted with effect from 01.09.2008, was amended and the applicant was placed in the pay band of Rs.9300-34800 with Grade Pay of Rs.4600/- with effect from 23.10.2007, in accordance with Respondent No:2 (CPMG Bengaluru) memo No.STA/4-3/MACPS/Steno dated 24.01.2014, consequent to clarifications issued by Postal Directorate (Respondent No: 1) vide letter No.4-7/MACPS/2009-PCC dated 23.05.2011 and No.4-7/MACPS/2009-PCC dated 02.05.2012.
- d) Finally, the applicant was granted benefit of financial upgradation-MACP-III with effect from 21.10.2013 with Grade Pay Rs.4800, vide Respondent No: 2 (CPMG Bengaluru) Memo No.STA/4-3/MACPS/Steno dated 28.03.2014. Since the applicant had already got ACP-II with effect from 23.10.2007, hence, MACP-II granted to him was withdrawn and the same was set off against ACP II simultaneously granting the benefits with effect from 23.10.2007 the date of ACP II. Since the MACP-II was withdrawn, there would be no re-fixation of pay on 01.09.2008 and the same was rightly pointed out by Pension Section in the verification memo and the same was raised in the Account Enfacement Para.
- e) As per FR 31-A, the pay of a Government servant whose promotion or appointment to a post is found to be or to have been erroneous, shall be regulated in accordance with any general or special orders issued. Further Rule 71(2) of CCS Pension Rules 1972, states that 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. As per Rule 71(3) (b) (Annexure-R1A) of these rules, government dues include overpayment of pay and allowances. As such the action of respondents in directing the applicant to credit the amount of Rs.1,86,443/- is in order.

- f) The applicant was due to retire on 31.03.2019. As per the prescribed procedure, the pension papers were calculated well in advance and were forwarded to respondent No.5. However, at that time, the respondent No.5 mentioned that two increments were given on 23.10.2007 and had sought clarification on the same. The Postmaster, Belagavi, after examining the issue in detail, had prepared a due and drawn statement and forwarded vide letter dated 27.3.2019 to respondent No.4 for recovering an amount of Rs.1,86,443/- since the applicant had wrongly been given two increments to which he was not entitled. Subsequently a letter dated 28.03.2019 was issued to the Postmaster Belagavi HO directing him to effect recovery of the amount from DCRG due to the applicant. Simultaneously, the applicant was also directed, vide letter dated 29.03.2019, to credit the said excess amount. He was also informed that if he fails to credit the amount, the same will be recovered from his DCRG amount. However, paying no heed to the directions of respondent No.4, the applicant adopted delay tactics in the issue and represented directly to respondent No.2 vide his representation dated 28.03.2019 which was forwarded by respondent No.4 to respondent No.2 on 02.04.2019. By this time, the applicant had retired on superannuation on 31.03.2019.

g) The above events which have been elaborated chronologically clearly show that the applicant was in service when the issue was raised and it was well within his capacity to credit the amount to the department. The applicant cannot be considered as pensioner as far as his case of recovery is concerned. The orders of Hon'ble Apex Court wherein recovery from certain categories of Government servants is prohibited by the Hon'ble Apex Court do not apply to the applicant on the following grounds.

1. He does not belong to Class III or Class IV service (or Group C and Group D service)

2. He had furnished an undertaking while opting for the revised pay scale which is as follows:

“I, Sri N.M.Mujawar, Steno to SPOs Belagavi hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of MACP or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.”

4. In view of the above, the relief sought by the applicant is not tenable.

5. At the time of preliminary hearing before this Tribunal, an interim order had been issued on 22.08.2019 by this Tribunal that the disputed amount of Rs.1,86,443/- be deposited in a Nationalised Bank in the name of Registrar of the Tribunal at the best possible rates. Accordingly, the disputed amount is currently deposited in the Nationalised Bank on 17.10.2019.

6. The applicant has claimed relief on the following grounds:

- a. That he has retired from service and is currently a pensioner and hence the recovery from him is covered under the *State of Punjab & Others vs. Rafiq Masih (White Washer)*'s case wherein the Hon'ble Supreme Court had held that while it is not possible to postulate all situations of hardships where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer be impermissible in law:

1. Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service)
2. Recovery from retired employees, or employees who are due to retire within one year of the order of recovery
3. Recovery from employees when the excess payment have been made for a period in excess of five years, before the order of recovery is issued
4. Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

7. A casual reading of the conditions mentioned in *Rafiq Masih*'s judgment of the Hon'ble Supreme Court indicates that the current case may be covered under para-2 and 3 above where recovery would be impermissible in law as per the judgment. However, the principle enunciated in these paras cannot be made applicable in this case since the applicant had clearly given an undertaking on 04.04.2014 stating that any excess payment that may be found to have been made as a result of incorrect fixation of MACP or any excess payment detected in the light of discrepancies noticed subsequently will be refunded to the Government either by adjustment against future payment due to him or otherwise. Hence,

keeping in view the undertaking given by the applicant, the judgment of *Rafiq Masih(White Washer)*'s case will not be applicable to him.

8. This is also covered in case in *High Court of Punjab & Haryana vs. Jagdev Singh* in *Civil Appeal No.3500/2006* wherein the Hon'ble Supreme Court has laid down that the principles enunciated in Rafiq Masih's case cannot be applied to a situation where the officer has furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking. Moreover, since the applicant is not a Group-C or Group-D employee, it cannot be concluded that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

9. It is apparent that there was an error made by the Respondents in granting him the benefit of financial upgradation twice under ACP II and MACP II whereas he was entitled to only one financial upgradation under ACPII. This was pointed out by Audit prior to his due date of retirement. The consequent refixation of his pay and allowances from 23.10.2007 and recovery of the excess payment amounting to Rs. 1,86,443/- by the respondents is therefore in order. This was done on 27.03.2019 while he was still in service.

10. It is clearly enunciated under Rule 71 of CCS Pension rules that:

71. Recovery and adjustment of Government dues

(1) It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

(2) 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 ¹[retirement gratuity] becoming payable.

(3) The expression 'Government dues' includes -

(a) dues pertaining to Government accommodation including arrears of licence fee [as well as damages for the occupation of the Government accommodation*

beyond the permissible period after the date of retirement of the allottee] if any;

(b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961).

11. The recovery and adjustment of Govt. dues, on account of overpayment of pay and allowances, was accordingly initiated before the applicant was due to retire. He was asked to credit these dues to the Govt. failing which this sum was to be recovered from his retirement gratuity under these provisions. This recovery cannot be categorized as a recovery from his pension requiring the prior sanction of the President under Rule 9 of CCS Pension Rules.

12. Hence, keeping in view the above, the Original Application being devoid of any merits is liable to be dismissed. Accordingly, the OA is dismissed.

13. The amount of Rs.1,86,443/- was directed to be deposited by the respondents in a Nationalised Bank in the name of the Registrar of the Tribunal at the best possible rates vide interim orders dated 22nd August 2019. The amount in balance in this account is directed to be returned to the respondents.

14. There shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)