

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No.180/00397/2016

Wednesday, this the 3rd day of February, 2021

CORAM:

Hon'ble Mr. P.Madhavan, Judicial Member

Hon'ble Mr.K.V.Eapen, Administrative Member

A.G Mohan, aged 60 years,
S/o Late Sri.A.S.Govindan
Retired Assistant Engineer
CPWD, Thrissur, Residing permanently at Arattupuzha House
Chelakkottukara, Kulamuttam Temple Road,
Thrissur-680 005.

Applicant

(Advocate Mr.M.R.Hariraj)

Versus

1. Union of India represented by the
Secretary to Government of India
Ministry of Urban Development and Poverty Alleviation
New Delhi – 110 001
2. Director General, CPWD, Nirman Bhavan
New Delhi-110 001
3. Executive Engineer, CPWD, Thrissur
Central Division, Mundassery Memorial Hall
Chembukavu, Thrissur
Pin 680 020
4. Pay and Accounts Officer, Pay and Accounts Office
CPWD, South Zone, Rajaji Bhavan, Chennai-600 090
5. Senior Accounts Officer, Internal Audit Wing
Ministry of Urban Development, 2nd Floor,
Shastri Bhavan Annex Building,
26, Haddow Road, Nungambakkam
Chennai- 600 006

Respondents

(Advocate : Mr.A.S.Brijesh,ACGSC)

The OA having been heard on 28th January, 2021, the Tribunal delivered the following order on 03.02.2021:

ORDER

P.Madhavan, Judicial Member

This is an OA filed seeking the following reliefs:

- "i. Quash Annexures A8, A9, A12, A14 and A18;*
- ii. Call for the records leading to recovery of a sum of Rs.2,22,214 from the DCRG of the applicant and quash the same;*
- iii. Declare that the applicant is entitled to be granted increments in the pay scale 10000-15200 without insistence of passing the departmental test and to direct the respondents to grant such increments to the applicant with all consequential benefits;*
- iv. Declare that no recovery of excess amounts allegedly paid to the applicant from the retiral benefits or pension of the applicant can be made and direct the respondents to refund the sum of Rs.2,22,214 with interest @ 12% per annum for delayed payment to the applicant forthwith;*
- v. Direct the respondents to draw and disburse arrears of monthly pension due to the applicant with interest @ 12% per annum for delayed payment and to direct the respondents to ensure that monthly pension is paid to the applicant in a timely fashion without any delay;*

2. The brief facts of the case are as follows:

The applicant was appointed as direct recruit Junior Engineer in CPWD in the year 1976 and he passed the simple Accounts Test for Junior Engineer within 2 years of his service. When he entered service, there existed Efficiency Bar for the post of Assistant Engineer. On promotion as Assistant Engineer, a Junior Engineer would be permitted to draw increment only if he passed the simple Accounts Test for Junior Engineers. He has also to pass Accounts Test in 3 papers if Efficiency Bar in the pay scale has to be crossed. In the year 1996, when the 5th CPC recommendations were implemented, the Efficiency Bar in the pay scales applicable to the Assistant Engineer was dispensed with. So, from 1.1.1996, there was no insistence for passing departmental test for drawing increments for crossing

Efficiency Bar. The applicant was given two ACPs as per Annexures 2 & 3 and he was also given functional promotion as Assistant Engineer as per Annexure A4. While he was working as Assistant Engineer, an order was issued by the department to the effect that for getting second increment for Assistant Engineer, he should pass the departmental test for Assistant Engineer. The said order is dated 5.1.2006 and is marked as Annexure A5. It was also clarified by the department that Annexure A5 order has only prospective operation and this gives two year period for passing the examination. The applicant passed 2 out of 3 papers of the departmental test prescribed for Assistant Engineers in the year 2007. But he could not complete the 3rd paper. He completed the 3rd paper in the year 2009. According to him, the increments were drawn on the due dates without any delay. This was granted to him without any representation on his side and without making any misrepresentation. In the year 2014, an internal audit team raised an objection regarding the granting of increments for the period 2002 to 2009 and they sought for recovery of the said excess amount paid to the applicant as per report marked as Annexure A8. Based on the said report, the respondents prepared a Due-Drawn statement and the third respondent issued a copy of the order for recovery as Annexure A9. Immediately the applicant gave a representation pointing out the clarification issued by the department that the requirement of a pass in departmental examination was prospective in nature and hence demanding recovery from 2002 onwards is illegal. Thereafter, the respondents issued a fresh order limiting the recovery from 2008 to 2009. According to them, only an amount of Rs.8897/- has to be recovered and he is not liable to pay for the increments drawn from 2002 onwards. The applicant again filed objections and the applicant retired from service on 29.2.2016. The respondents granted Rs.10 lakh as DCRG as per Annexure A17 dated 24.2.2016 and they recovered an amount of Rs.2,22,214

from the DCRG towards the excess amount. The applicant was not given any calculation statement or details of the period for which the recovery was effected. According to him, the action of the respondents is highly unjust, illegal and arbitrary. Hence the applicant filed the present OA seeking the above reliefs.

3. The respondents appeared and filed a detailed reply statement admitting the audit report and the proposal for recovery of the excess amount paid from 2002 onwards. In the case of the applicant, the department had referred the matter to the Directorate and Director General in his reply had clarified that there is no need of recovery of the amount paid as increments to the applicant between 2002 and 30.6.2008. According to the respondents, the respondents admit that the applicant is eligible for getting increments up to 30.6.2008. So, they seek recovery only from 1.7.2008 to 31.1.2009 in this case, which comes to an amount of Rs..8897 only.

4. We have heard both sides and the counsel for the applicant submitted that the respondents have substantially admitted the mistake committed by them. The applicant is entitled to get all the retiral benefits without any recovery. They also cited the decision of the Hon'ble Supreme Court in *State of Punjab and others vs. Rafiq Masih (Whitewasher)* reported in 2015 (4) SCC 334. According to him, the applicant is within the third limb of the directions issued by the Hon'ble Supreme Court. The counsel for respondents, in accordance with the reply statement filed, submitted that the respondents have already released all other amounts except Rs.8897/- recovered for the excess payment from 1.7.2008 to 30.1.2009.

5. We have carefully gone through the pleadings and we find that the Efficiency Bar for the Assistant Engineer was taken away in the year 1996 and thereafter there was no mandatory provision for passing departmental test for the post of Assistant Engineer. Subsequently, the department had issued another O.M., marked as Annexure A5 dated 5.1.2006 stating that an Assistant Engineer has to clear all three

papers in the departmental test for getting his second increment. Later, the department clarified the same by saying that an employee can take 2 years for passing the examination and the Office Memorandum has only prospective operation. In view of the above OM, it is crystal clear that an Assistant Engineer has to pass department examination within a period of two years for getting the second increment. There is no question of any Efficiency Bar and there is no consideration given for crossing the Efficiency Bar in the said OM.

6. The principle of Efficiency Bar was taken away long back in the year 1996. Audit objection raised as per Annexure A8 dated 25.6.2014 was later modified and the Directorate has admitted that the excess payment of increments between 1.7.2008 and 30.1.2009 alone need to be recovered in the case of the applicant. So in a way, the respondents have also conceded the mistake committed by them in recovering a huge amount from the applicant's gratuity. It was also brought to the notice of the Tribunal that the respondents have started payment of pension to the applicant subsequently. The counsel for the applicant mainly relied upon the dictum laid down in *State of Punjab vs. Rafiq Masih* wherein recoveries by the employers, would be impermissible in law under the following circumstances:

“(i) Recovery from the employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) 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.

(v) *In any other case, where the Court arrives at the conclusion, 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."*

7. On a perusal of the above directions, it can be seen that in the case of the applicant, the excess payment had happened in between 1.7.2008 and 31.1.2009, i.e., more than 5 years of the finding of irregularity by the Audit Team in 2014. So the case of the applicant squarely comes within the 3rd direction of the Hon'ble Supreme Court. The Hon'ble Supreme Court held that recovery from the employees when excess payment has been made more than 5 years ago before the order of recovery cannot be effected. So we find merit in the contention put forward by the applicant in this case.

8. The respondents are directed not to recover any amount from the applicant, as claimed by them. **In the result, we direct the respondents to pay to the applicant the entire amount withheld along with other pensionary benefits, if any, which were not given to the applicant, within a period of three months from the date of receipt of a copy of this order. The OA is disposed of. No order as to costs.**

(K.V.Eapen)
Administrative Member

(P.Madhavan)
Judicial Member

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List of Annexures

Annexure A1	-	A true copy of relevant portion of the CPWD manual Volume I.
Annexure A2	-	A true copy of order No.170/2000 dated 11.9.2000
Annexure A3	-	A true copy of order No.1/2001 dated 1.1.2001.
Annexure A4	-	A true copy of order No.31/2001 dated 16.2.2001.
Annexure A5	-	A true copy of OM No.23/15/1998/EC III(Pt) dated 5.1.2006 issued by the second respondent
Annexure A6	-	A true copy of OM No.23/15/1998/EC III (Pt) dated 4 .4.2006 issued by the second respondent.
Annexure A7	-	A true copy of order No. 02/2009 dated 15.6.2009.
Annexure A8	-	A true copy of letter No.DCA/IAW/MOUD/CH/2014-15/Pay-Fixation/63 dated 25.6.2014.
Annexure A9	-	A true copy of O/o No.12/11/TRCD/2015/3304-3310 (H) dated 20.10.2015.
Annexure A10	-	A true copy of representation dated 22.10.2015.
Annexure A11	-	A true copy of representation dated 28.10.2015.
Annexure A12	-	A true copy of order no.12/11/TRCD/2015/3559-3565(H) dated 16.11.2015.
Annexure A 13	-	A true copy of representation dated 21.12.2015.
Annexure A14	-	A true copy of letter No.DCA/IAW/MOUD./2015-16/CHN/627 dated 4.1.2016.
Annexure A15	-	A true copy of representation dated 13.1.2016 .
Annexure A16	-	A true copy of representation dated 18.1.2016.
Annexure A17	-	A true copy of PPO No.439511600225 dated 24.2.2016.
Annexure A18	-	A true copy of order no.PAO/CPWD/SZ/3609/2015-2016 dated 24.2.2016 issued by the fifth respondent.
Annexure A19	-	A true copy of representation dated 10.3.2016 to the second respondent.

- Annexure A20 - A true copy of relevant portion of the pass book of the applicant's bank account.
- Annexure A21 - A true copy of letter no.P-175-77 dated 26.4.3016 issued by the 4th respondent.
- Annexure A22 - A true copy of final order dated 4.3.2020 in OA 148/2015 of Central Administrative Tribunal Principle Bench.
- Annexure R1 - Confirmation letter in respect of pension payment to applicant issued by State Bank of India.
- Annexure R2: Representation received from the applicant dated 21.12.2015
- Annexure R3: Letter to the Internal Audit Wing by referring the representation of Sri A.G.Mohan.
- Annexure R4: Decision communicated by the Internal Audit Wing on the representation.