

**CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH**

Original Application No. 040/00166/2019

**THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER**

**THE HON'BLE MR.N. NEIHSIAL, ADMINISTRATIVE MEMBER**



Shri Ajendra Nath Sarma  
Son of Late Sarbananda Sarma  
Officer Surveyor, Survey of India  
Assam & Nagaland Geo Spatial Data  
Centre, Government of India  
Nidhi Bhawan, 2<sup>nd</sup> Floor  
Lalmati, National Highway-37  
Guwahati-781 029.

... Applicant

- Versus -

1. The Union of India,  
represented by the Secretary,  
to the Government of India  
Ministry of Science & Technology  
Technology Bhawan, New Mehrauli Road  
PIN: 110016.

2. The Director General of India  
Rajpur Road, Haphibarkala  
Dehradun, Uttarakhand  
PIN: 248001.

3. The Director,  
Survey of India  
Assam & Nagaland Geo Spatial Data Centre  
Government of India, Nidhi Bhawan  
2<sup>nd</sup> Floor, Lalmati, National Highway  
Guwahati-781 029.

4. The Senior Accounts Officer  
Regional Pay & Accounts Office

OA.040/00166/2019

Survey of India, Kolkata  
15 Wood Street, PIN: 700016  
West Bengal.

Respondents

For the Applicants: Sri A Ahmed, Smt D Goswami &  
Ms A Theo

For the Respondents: Sri R Hazarika, Addl. C.G.S.C.

Date of hearing: 12.06.2020 Date of order: .07.2020



### **ORDER**

**MANJULA DAS, MEMBER (J):**

By this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant is seeking following relief(s):-

"8.1] To direct the Respondents not to recover Rs.1,56,398/- (One Lakh Fifty Six Thousand Three hundred & Ninety Eight) only from the Applicant from his Death-Cum-Retirement Gratuity (in short DCRG) benefit who is going to retire from service on superannuation on 30.06.2019.

8.2] To pass any other appropriate relief or relief(s) to which the Applicant may be entitled and as may be deemed fit and proper by this Hon'ble Tribunal.

8.3] To pay the costs of the application."

2. The facts, in brief are that applicant initially appointed as Topo Trainee Type "B" in Survey of India. He

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was promoted to the post of Plan Tabler Grade IV in 1983, to the post of Plan Tabler Grade II in 1987, and further to the post of Survey Assistant Division I in 2004. Lastly he was promoted to the post of Officer Surveyor in 2013. He retired as such from the office the respondent no.3.



3. While serving as Survey Assistant under the respondent no.3, the applicant along with 25 other similarly placed employees approached this Tribunal vide OA.52/2009 praying for direction to the respondents to grant them the pay scale of Rs.5500-9000/- for the period from 01.01.1996 to 31.12.2015 with all other consequential benefits. This Tribunal vide order dated 05.03.2012 had allowed the OA directing the respondents to grant the pay scale of Rs.5500-9000/- to the applicants for the period from 01.01.1996 to 31.12.2005 with consequential benefits. The respondents had assailed the said order before the Hon'ble Gauhati High Court vide WPC No.6040/2010. The Hon'ble High Court vide judgment and order dated 26.07.2012 dismissed the said writ petition upholding the order of this Tribunal. Accordingly, vide order dated 21.03.2013 (Annexure-A/2 of the OA), sanction of the President of India was conveyed for implementation of the aforesaid order dated 05.03.2012 and

to grant higher pay scale of Rs.5500-9000/- to the Survey Assistants for the period from 01.01.1996 to 31.12.2005 with consequential benefits by refixing the pay on notional basis. According to the applicant, said benefits were granted to the present applicant and 25 others – the applicant of OA.52/2009.



4. According to the applicant, he was drawing basic pay of Rs.70,000/- till the month of December, 2018, however, without any prior notice, his basic pay was reduced to Rs.68,000/- along with other allowances from the month of January, 2019. The applicant has submitted representation dated 07.02.2019 against such reduction of pay and allowances without any prior notice. When he was informed vide letter dated 21.02.2009 that that his pay and allowances had been reduced as the advice of RPAO Kolkata, the applicant had requested for supply of RPAO's observation vide his application dated 21.02.2009, but the said copy was not made available to him. According to the applicant, without supplying the RPAO, Kolkata's observation, the respondents have issued a statement from 10.10.2006 to 31.12.2018 seeking to recover an amount of Rs.156398 from the applicant's DGRG. Hence this OA.

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5. When the matter came up for consideration before this Tribunal, this Tribunal while issuing notices to the respondents vide order dated 24.05.2019, stayed the recovery till the next date. The said interim order was extended from time to time.

6. The respondents have filed their written statement. The respondents have stated that the pay of the applicant was fixed wrongly which was detected subsequently. Accordingly, his pay was refixed from the pay of January, 2018. The respondents have submitted that applicant had given undertaking to refund the excess payment if any. Therefore, since the excess payment of Rs.1,56,398/- was made to the applicant, the respondents are entitled to recover the same from his DCRG.



7. Sri A.Ahmed, learned counsel for the applicant submitted that in view of the order of this Tribunal the pay of the applicant was upgraded. But the respondents have not only reduced the pay of the applicant without putting him any prior notice but also going to recover an amount of Rs.1,58,398/- from his retirement benefits (DCRG). Learned counsel further submitted that though the applicant prayed

for a copy of the RPAO Kolkata observation, on the basis of which, his pay and allowances were reduced and recovery to be made, said copy was not supplied to him.

8. Learned counsel submitted that proposed recovery is from 01.01.2006 to 31.12.2018, if there was in fact any excess payment the respondents could have recovered it at an early date, but they have waited till the retirement of the applicant which is not permissible in the eyes of law.



According to the learned counsel, applicant had not furnished any incorrect information leading to payment of any excess payment. Learned counsel further submitted that order of recovery from retired employees or employees who are going to retire within one year of the order of recovery is violative of the decision rendered by the Hon'ble Supreme Court in the case of **State of Punjab & Others vs Rafiq Masih (White Washer) & others, 2015 (4) SCC 334** and also the DoPT OM No.18/03/2015-Estt. (Pay-I) dated 02.03.2016 (Annexure-A7).

9. Learned counsel further submitted that almost a year's time have passed after his retirement, but till date, his DGRC, leave encashment, Group Insurance etc have not

been released to the applicant due to pendency of this OA and since recovery is stayed by this Tribunal. Learned counsel therefore prayed that applicant may be disbursed all his retirement dues expeditiously to mitigate his hardship.

10. Mr.R.Hazarika, learned Addl. C.G.S.C. appearing for the respondents submitted that pay of the applicant was fixed wrongly which was later on detected and therefore, the department has the right to recover the excess payment made to the employees mistakenly and the decision of the Hon'ble Supreme Court as relied upon by the learned counsel for the applicants is not applicable in this case. According to the learned counsel, since the excess payment was made the respondents have rightfully issued the recovery orders. Learned Addl. CGSC forcefully contended that the applicant had given undertaking to refund any excess payment subsequently, the respondents are entitled to recover the amount of Rs.1,56,398/- from the DCRG of the applicant. In his support learned counsel has drawn our attention to the order dated 04.09.2018 passed by the Jodhpur Bench of this Tribunal in OA.481/2016 which was annexed with the written statement as Annexure R/3.



11. We have heard learned counsel for the parties, perused the available pleadings and the documents annexed by both the parties.

12. Admittedly, sanction to implement the order of this Tribunal dated 05.03.2012 in OA 52/2009 was conveyed vide order dated 21.03.2013. The applicant has submitted undertaking on 06.05.2013 which would imply that for the purpose of getting the benefit of the upgraded pay scale of Rs.5500-9000/- from 01.01.1996 notionally and from 01.01.2006 actually, he submitted the undertaking. On perusal of the written statement it is seen that according to the respondents, applicant's pay was wrongly fixed at Rs.284/- instead of Rs.276/- way back on 01.10.1981, which was rectified only in 2019. Further, the respondents have stated that on 01.01.2000, applicant's pay was fixed at Rs.6025 erroneously which ought to have been Rs.5850/- on the date of DNI. Accordingly, respondents stated that one increment (along with other allowances) drawn from the date of 1<sup>st</sup> ACP from the date 09.08.1999 to 31.12.2018 was to be adjusted from his DCRG. Now, the respondents are seeking to recover that excess payment in 2019 taking aid of the undertaking given in 2013 that too at the time of



retirement. For the lapse of the respondents the applicant is going to suffer huge financial hardship after his retirement.

13. During the time of hearing Sri R Hazarika, learned Addl. C.G.S.C. for the respondents submitted that recovery from pensioner also is permissible in view of the subsequent decision of the Hon'ble Supreme Court after Rafiq Masie and accordingly prayed for few days time to produce the law in support of his submission. Therefore, while reserving the matter this court granted one week time to him to submit any subsequent law on the subject. Accordingly, learned counsel submitted few decisions in his support. Since the decision of the Hon'ble Supreme Court in **High Court of Punjab & Haryana v. Jagdev Singh, (2016) 14 SCC 267**, is subsequent to Rafiq Masie (supra) and is relevant we will deliberate on the said judgment in the context of this case.



14. We have gone through the judgment rendered on Jagdev Singh (supra). The Hon'ble Apex Court in the said case was dealing with Civil Judges Junior Division who had been promoted as Additional Civil Judge. Under the Rules, he was required to submit an undertaking that any excess

which may be found to have been paid, will be refunded to the Government either by adjustment against future payment due or otherwise. The said employee had furnished such an undertaking. Subsequently, revised pay scale, which was granted, was found to be recoverable. The employee cited the decision rendered by the Hon'ble Supreme Court in Rafiq Masih's case. The Hon'ble Supreme Court in Jagdev Singh, however, held in paragraphs 11 to 13 in the following terms;



"11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, 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 officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.

13 The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs."

The other order relied on by the learned Addl. C.G.S.C. in the written statement was a decision rendered by the Single Bench of the Jodhpur Bench. The Division Bench of this Tribunal had occasion to deal with recovery from employees belonging to Class III and IV in OA.156/2018. In view of the law laid down in Rafiq Masih and para 4(i) of DOPT OM dated 02.03.2016, this Tribunal held that recovery cannot be effected and accordingly disposed of the said OA No.156/2018. Said decision of this Tribunal was challenged by the Union of India before the Hon'ble Gauhati High Court vide WP(C) No.8437/2019. In the said writ petition the Union of India relied on the Jagdev Singh, as quoted above and submitted recovery is permissible. The Hon'ble High Court had considered the judgment of the Apex Court in Jagdev Singh in the context of the said case and ultimately passed following orders:-



" ...

A perusal of the above extracted portion of the judgment indicates that the Hon'ble Supreme Court of India was dealing with the cases of Additional Civil Judges. It would further be evident that the Hon'ble Supreme Court of India considered that the employees were put to notice that any payment found to have been made in excess would be required to be refunded, and the officers furnished the undertaking accordingly.

8. On questioning by this Court in context of law laid down by the Hon'ble Supreme Court of India in Rafiq Masih's case, learned counsel for the writ petitioners admits that no show cause notice was issued to the respondent employees. Recovery notice has been issued straightaway.

9. In the peculiar facts and circumstances of the case, we are faced with a situation that the writ petitioners as employers had initiated recovery proceedings from the pension and salary of the employees without giving them a show-cause notice. As per the undertaking taken by the writ petitioners/employers from the employees (writ respondent), in case amount released is inadmissible or the employees are ineligible to receive the amount as SDA, the same may be recovered.



10. Because the recovery from the pension or salary entails civil consequences, in the considered opinion of the Court, the employees were required to be issued show-cause notices by the employer/writ petitioners. Every employee is required to be given an opportunity of hearing to demonstrate that he or she would not fall within the category of a person who is not eligible to receive SDA. Every such employee is required to be given an opportunity of hearing to show that the SDA paid to him is admissible. It is only thereafter the recovery could be effected.

11. In this respect, we also take note of the undertakings given by the respondent employees for refund which provides that the undertaking for refund is given in the event of any ineligibility/inadmissibility. Obviously, before effecting any refund a determination as regards the ineligibility/inadmissibility would also have to be done which again warrants show cause notice being issued. In paragraph 3 of Maharashtra State Financial Corporation Vs. M/s. Suvarna Board Mills And Another reported in (1994) 5 SCC 566 it is held as under:

"3.....All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form is notice is the demand of law. All will depend on facts and circumstances of the case."

12. Considering the peculiar facts and circumstances of the case, we find no error in the order passed by the Administrative Tribunal. So far as Group 'C' employees are concerned, the Tribunal has taken refuse under law laid down by the Hon'ble Supreme Court of India in Rafiq Masih's case. Clearly the cases of Group 'C' employees would not be covered within the four corners of law laid down in Jagdev Singh's case (supra).

(emphasis supplied)



15. From the perusal of the above order, it is apparent that Hon'ble High Court distinguished the case with Jagdev Singh (supra) because no show cause notice was issued before issuing recovery orders and clearly held that Group C employees would not be covered within the four corners of law laid down in Jagde Singh's case (supra). In the present case also, no show cause notice was issued to the applicant before initiating recovery from the pensionary benefits. Despite applicant's representation for supply of basis of re-fixation downgrading his pay no document has been supplied to the applicant. Thus applicant is absolute in dark on what basis recovery is being attempted from his DCRG.

As already held by the Hon'ble Gauhati High Court, before effecting recovery a determination as regards the inadmissibility would also have to be done. Unfortunately, such exercise has not been taken in the case of the applicant. As already held in para 11 above of this order, undertaking was submitted by the applicant on 06.05.2013 in order to get the benefit of upgraded pay scale in terms of the order dated 21.03.2013 conveying sanction for implementation of the order of this Tribunal dated 05.03.2002 in OA.52/2009. The purpose of the said undertaking was that in the event of any excess payment made while granting upgraded pay scale of Rs.5500-9000/- the same could be recovered subsequently. However, on perusal of para 5 of the written statement it is quite clear that respondents have erroneously fixed the pay of the applicant way back on 01.10.1981. According to them, applicant's pay was fixed at Rs.6025/- on 01.01.2000 wrongly, which actually ought to have been fixed on the date of DNI at Rs.5850/-. The respondents were waiting to take remedial measures after 19 years that too at the time of his retirement. They are trying to make recovery after his retirement from his DCRG. In the case of **Shankar**



**Narayan Chakrawarty vs State Of Chhattisgarh,**

involving similar issue of recovery after retirement the Hon'ble Chhattisgarh High Court vide its judgment and order dated 30.01.2020 has held as under:-



"4. The reliance placed by the State in case of High Court of [Punjab & Haryana v. Jagdev Singh](#) (supra) would show that in such case the Supreme Court permitted the recovery to be made on the basis of undertaking given earlier. In the said case, the respondent was appointed as Civil Judge and Rules governing the service were namely Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules, 2001. Under those Rules, each of the officers were required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise. Therefore, there was a mandatory requirement under the Rules itself. The Supreme Court while deciding the said case emphatically referred to the service rules and held that undertaking given in such circumstance would be executable and observed it that the ratio of [State of Punjab & Ors. v. Rafiq Masih](#) (supra) cannot be applied uniformly. It was held in case of High Court of [Punjab & Haryana v. Jagdev Singh](#) (supra) that 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. Consequently, the officer furnished an undertaking while opting for revised pay-scale.

5. In the instant case, as per Annexure P-2, the recovery has been sought to be made for the period of revised pay scale from 1986 till 01.07.1913. The undertaking on which the State placed reliance is of 01.07.2017 i.e. much after the amount of revised pay-scale was calculated and paid. Reading of



undertaking further would show that the petitioner was put to notice that the excess payment made after 1 st January, 2016 i.e. one other revised pay scale and thereby consented and undertook to make the payment, if it has been made excess. The undertaking was specially for the specific period starting from 01.01.2016; consequently, it cannot take into sweep the past payment made from 1986 till 2013. The law laid down by the Supreme Court in High Court of [Punjab & Haryana v. Jagdev Singh](#) (supra) also clearly marks a distinction as in that case, the officer in the "first instance" was placed on notice that in case excess amount is paid then it would be recovered on account of revised pay scale paid. In the instant case, for the payment made from 1986 to 2013, no such undertaking exists which postulates that petitioner was put on guard and was noticed that excess payment made would be recoverable. Therefore, it cannot be stated that the revised pay scale when was given in 2017, it would include the past pay scale which was paid uptill 2013 as it cannot be applied retrospectively.

6. Therefore, the ratio of judgment of High Court of Punjab & Haryana v. Jagdev Singh (supra) will not be applicable to the case of the petitioner as also the ratio laid down by the Hon'ble Division Bench of this Court in W.A. No.376 of 2019 cannot be applied universally to the facts of case of the petitioner...

7.....

8. Therefore, the ratio of judgment rendered in case of [State of Punjab & Ors. v. Rafiq Masih](#) (supra) would be applicable. To conclude, it is observed that the undertaking given by an employee cannot be used uniformly when the recovery of dues is done after his retirement or otherwise there cannot be a straight jacket formula for such recovery. Rather the execution of undertaking, the time when it was executed would be relevant factor to evaluate whether the State can be allowed to act upon on such undertaking. In the facts of this case, the undertaking given by the petitioner in the year 2017

cannot be allowed to stand to recover the dues for the payment made from 1986 to 2013.”

(emphasis supplied)

16. As already held above, undertaking given by an employee cannot be used uniformly particularly when the recovery is sought to be done from his retirement benefits and that there cannot a straight jacket formula for such recovery. In this case undertaking of 2013 is sought to be used in the year 2019 that too after his retirement to recover the amount due to erroneous fixation of the applicant by the respondents on 01.01.2000.



17. In view of the reasons stated in paras 14 to 16 above, the decision rendered by the Hon'ble Supreme Court in Jagdev Singh(supra) is not applicable in this case as the facts and circumstances of this case are clearly distinguishable from Jagdev Singh (supra).

18. In the case of **Rafiq Masih (supra)**, the Hon'ble Supreme Court has held as under:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein

recoveries by the employers, would be impermissible in law:

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

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

(iii) Recovery from 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."

(emphasis supplied)

On the basis of the aforesaid judgment the DOPT had issued the Office Memorandum No. 18/03/2015-Estt. (Pay-I) dated 02.03.2016 on the subject of "Recovery of wrongful/excess payments made to Government servants". Para 4 of the OM is quoted below:-

"4. The Hon'ble Supreme Court while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement has summarized the following few situations, wherein recoveries by the employers would be impermissible in law:-

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

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

*(iii) Recovery from 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.*



Accordingly, the DOPT vide the aforesaid OM asked the Ministries/Departments to deal with the issue of wrongful/ excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in **Rafiq Masih** (supra).

19. Perusal of the decision of the Hon'ble Supreme Court in Rafiq Masih (supra) would make it clear that recovery is impermissible in law in the five situations quoted above. The DOPT OM dated 02.03.2016 has not been

superseded by any further OM on the subject and therefore still in force. All the Ministries/Department are required to follow the OMs/Circulars issued by the DoPT, Ministry of Personnel, Public Grievances and Pensions being the nodal Ministry. Admittedly, the respondents are seeking to recover the amount of Rs.1,56,398/- at the time of retirement from service on attaining the age of superannuation. The applicant has already retired from service on 30.06.2019.



Besides, on perusal of Annexure- A6 of the OA, it is seen that excess payment sought to be recovered is relating to the period from 01.01.2006 to 31.12.2018 as monetary benefit upgraded pay scale was granted from 01.01.2006 (notionally from 01.01.1996). From the written statement it is clear that the attempted recovery was not because of any erroneous pay fixation while granting upgraded pay scale but a fall out of wrong fixation of pay way back in 2000. That apart, recovery period i.e. - 01.01.2006 to 31.12.2018 is clearly not within five years. Therefore, on this count also, the recovery is not permissible in view of para 4(iii) of the DoPT OM dated 02.03.2016. Present issue is also covered by para 4(ii) and (iii) of the DoPT OM dated 02.03.2016.

20. For the foregoing reasons, and in view of the decision of the Apex Court in **Rafiq Masih** (supra), and the para 4 (ii) and (iii) of O.M. No. 18/03/2015-Estt. (pay-1) dated 02.03.2016, as quoted above, recovery of Rs.1,56,398/- from the applicant, who have retired from service, is not permissible in the eyes of law. Accordingly, the respondents are directed not to recover the amount of Rs.156,398/- from the pensionary benefit (DCRG) of the applicant. Learned counsel for the applicant submitted that because of the pendency of this OA, applicant has not been released his retirement dues like leave encashment, DCRG and Group Insurance even after almost one year of his retirement. Since this issue has decided by this order, there is no hurdle for the respondents to disburse all his retirement benefits payable to the applicant expeditiously.



21. O.A. is allowed in above terms. There shall, however, be no order as to costs.

**(N. NEHSIAL)**  
**ADMINISTRATIVE MEMBER**

**(MANJULA DAS)**  
**JUDICAIL MEMBER**

**/BB/**