

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/21/00297/2020

HYDERABAD, this the 4th day of February, 2021

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**



M.Sai Ashok S/o Late M.Jaganatham (Group-B),
Aged 59 yrs, Occ : Section Officer / Court Officer,
CAT Hyderabad Bench, Hyderabad,
R/o H.No.17-41/2, Jyothi Nagar, Lalaguda,
Sec'bad-500 017.

... Applicant

(By Advocate: Mr.N.Vijay)

Vs.

1. Union of India, Ministry of Personnel,
Public Grievances and Pensions,
Department of Personnel and Training,
North Block, New Delhi – 110001,
Represented by its Secretary.
2. The Principal Registrar,
Central Administrative Tribunal,
Principal Bench, Copernicus Marg,
New Delhi 110001.
3. The Registrar,
Central Administrative Tribunal,
Hyderabad Bench, HACA Bhavan,
Hyderabad-500004.
4. The Pay & Accounts Officer,
Central Administrative Tribunal,
Old CIS Building, Old CIS Campus,
Munirka, New Delhi – 110 065. ... Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

O R D E R (ORAL)**Hon'ble Mr. B.V. Sudhakar, Admn. Member**Through Video Conferencing:

2. The OA is filed challenging the Office Order NO. 20/2020 dt. 25.06.2020 issued by the 3rd respondent refixing and downgrading the pay of the applicant and also proposing recovery of amounts from his retirement benefits. The applicant sought consequential direction to the respondents to restore his pay to his existing pay prior to the downgrading and settle his pension and pensionary benefits on the existing pay and not to recover the alleged excess payment from him.

3. Brief facts of the case are that the applicant joined the respondents organization as LDC on 31.03.1983 and rose to the rank of Section Officer. While he was due to retire on superannuation on 30.06.2020, he was issued the impugned office order dt. 25.06.2020. According to the applicant, just before issue of the said order, his pay was Rs.70,100/-. However, by virtue of the Office Order dt.25.06.2020, it was proposed to downgrade and refix the pay of the applicant from 01.01.2006 onwards and his pay was sought to be re-fixed at Rs.64,100/- as on 01.07.2019 and fix the pension accordingly, along with recovery of the excess amount paid due to wrong fixation of pay hitherto. Aggrieved by the same, the applicant filed the OA on 29.06.2020. When the matter came up for admission on 01.07.2020, this Tribunal granted an interim order.

4. The contentions of the applicant are that, upon grant of revised GP of Rs.4600/- in PB-2 Rs.9300-34800 (i.e. pre-revised pay scale of Rs.5500-9000 revised to Rs.7450-225-11500) to the Assistants, etc. of the respondents organization, w.e.f. 01.01.2006, vide DOPT Order dt. 6.7.2010 issued in

pursuance of the order of the Principal Bench of this Tribunal in OA No. 1165/2010 dt. 09.04.2010, his pay was re-fixed w.e.f. 01.01.2006 vide order dt. 14.02.2011 (Annexure A-VI), in accordance with the clarifications issued by the Department of Expenditure vide UO Note dt. 14.12.2009. The said benefit was also granted to similar others. Some of them have even retired with the benefit referred to without there being any recovery or refixation. The Hon'ble Principal Bench is adjudicating upon the issue in OA 1558/2015 and therefore, the refixation of pay can be done based on the outcome in the cited OA. The applicant further contends that recovery from his pension is against the law laid down in State of Punjab & Ors v. Rafiq Masih (White Washers) etc. in Civil Appeal No. 11527/2014.

5. Respondents filed reply statement opposing the OA, inter alia, stating that the DOPT vide letter dt. 10/13.05.2013 has clarified that the provisions contained in UO note dated 14.12.2009 are not extended to CAT officials in regard to fixation of pay. The respondents further submit that the issue is sub-judice before the Hon'ble CAT, Principal Bench in OA No. 1558/2015.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about the revision of the pay of the applicant just before his retirement and consequent pension fixation, with attendant recovery of the alleged excess amount paid. The pay of the applicant while working as Assistant was fixed in PB-2 Rs.9300-34800 with GP of Rs.4600/- (pre-revised pay scale of Rs.5500-9000 revised to Rs.7450-225-11500) w.e.f. 01.01.2006 vide order dt.14.02.2011. However, it was clarified vide DOPT memo dated 10/13th May,

2013 that the provisions contained in their UO note dated 14.12.2009 are not extended to the employees of Administrative Tribunal. The relevant portion of the memo is extracted hereunder:

“...Department of Expenditure has further clarified that provision contained in their UO note dated 14.12.2009 are not extended to CAT (This provision is applicable only for CSS/CSSS and not to other employees) and as such pay of CAT employees are to be fixed in accordance with OM dated 13.10.2008 of Department of Expenditure...”

II. Respondents traced the history of the dispute in different forums and contended that the applicant is ineligible for the relief sought by the applicant in view of the DOPT instructions in the Memo cited. Respondents and the applicant have averred on many issues, but we have confined our observations to those relevant to the dispute. The crucial aspect is that the issue is under adjudication before the Principal Bench in OA No.1558/2015.

III. Based on the re-fixation of pay, respondents proposed to recover the alleged excess amount paid from the pension of the applicant. The same was stayed by the Tribunal vide interim order dated 01.07.2020, keeping in view the law declared by the Hon’ble Supreme Court in Rafiq Masih Case 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.

(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."

DOPT also issued Office Order dt. 02.03.2016 advising the Ministries/ Departments to deal with the issue of wrong/ excess payments in accordance with the said judgment of the Hon'ble Supreme Court. The case of the applicant is fully covered by the clauses (ii) & (iii) of the verdict, in so far as recovery is concerned. Hence, any recovery from the pension of the applicant would be illegal.

IV. Another contention made by the applicant is that many other similarly placed employees have been granted similar benefit. It may be true, but it is well settled in law that any illegality committed cannot be perpetuated.

V. Therefore, in view of the aforesaid circumstances, respondents may refix the pay of the applicant as per Office Order No. 20/2020 dt. 25.06.2020 and regulate the pension accordingly. However, the said pay fixation is subject to the decision of the Hon'ble Principal Bench in OA No.1558/2015. In regard to recovery, the interim stay granted on 01.07.2020 is made absolute. Time granted to fix the regular pension as directed and release the consequential pensionary benefits thereof, is 3 months from the date of receipt of this order.

VI. With the above directions, the OA is disposed of with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER (JUDL.)

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