

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/440/2020

HYDERABAD, this the 21st day of January, 2021



Hon'ble Mr. Ashish Kalia, Judl. Member

K. Chandrasekhar
S/o K. Narayana,
Aged about 63 years, Gr.'C',
Occ : Driller-cum-Mechanic (Retired),
Central Ground Water Board,
R/o H.No.2-3-343, Sai Nagar Colony,
Nagole, Hyderabad – 500068. ...Applicant

(By Advocate : Mr. B. Pavan Kumar
& Dr. A. Raghu Kumar)

Vs.

1. Union of India rep by its Secretary,
Ministry of Water Resources,
Central Ground Water Board,
Bhujal Bhavan , NH-4, Faridabad-121001.
2. The Director (Admn),
Central Ground Water Board,
Bhujal Bhavan , NH-4, Faridabad-121001.
3. The Senior Accounts Officer,
Pay and Accounts Office,
Central Ground Water Board,
Bhujal Bhavan , NH-4, Faridabad-121001.
4. The Assistant Executive Engineer and
Head of Office, Central Ground Water Board,
Division IX, GSI Bandlaguda Post,
Hyderabad – 500068.Respondents

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

ORAL ORDER
(As per Hon'ble Mr.Ashish Kalia, Judicial Member)

Through Video Conferencing:



The OA is filed seeking the following relief:-

“to call for the records pertaining to the respondents Lr.No.WR/PAO/CGWB/S-II/Pension/2017-18/726 dated 02.08.2017 and quash and set aside the same to the extent of recovery of Rs.3,02,165/- as bad in law and arbitrary and violative of the provisions and law relating to recoveries and consequently direct the respondents to repay the recovered amount of Rs.3,02,165/- with interest at the rate of 12% PA in the interest of justice.”

2. The applicant was initially appointed as Welder on 17.01.1986. Thereafter, in the year 1998, he has been promoted as Assistant Driller-cum-Mechanic. He was further promoted as Driller-cum-Mechanic in the year 2006. Earlier to that, he was granted 2nd MACP in the pay scale of Rs.4500-12-7000 w.e.f. 09.08.1999. The same has been sought to be withdrawn by the respondents vide order dated 17.09.2003. The applicant has made a representation on 15/24.10.2003. However, he did not receive any communication from the respondents on his representation, as per the pleadings. Lastly, the applicant has received 3rd financial upgradation under MACP on 17.01.2016. The grievance of the applicant is that the cancellation of 2nd MACP by the respondents is not in accordance with law and was done without giving notice.

3. Notices were issued and the Respondents put appearance. They contested the matter stating that the applicant was not due for the 2nd financial upgradation but the same was erroneously granted to him. Hence,

the department is having right to recover the benefit granted to the applicant and they have acted accordingly.

4. Heard Sri B. Pavan Kumar, learned counsel for the applicant and Smt. K. Rajitha, learned Senior Standing Counsel appearing for the respondents.



5. After hearing the learned counsel for the parties at length, this Tribunal is of the view that the applicant has received 3 financial upgradations and two promotions. The department, to some extent is right in recovering the excess amount paid to the applicant on account of grant of 2nd MACP. However, learned counsel for the applicant has relied on the judgement of the Hon'ble Supreme Court in **State of Punjab and others vs. Rafiq Masih (White Washer)** dated 18.12.2014 in which the Hon'ble Supreme Court held that recovery is impermissible in the following situations:-

- 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 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.

Learned counsel for the applicant argued that the applicant is a Class-III employee and as such he has prayed for extending the benefit of the above judgement of the Hon'ble Supreme Court to the applicant.



6. In view of the above, the respondents are directed not to recover the amount, which is erroneously paid to the applicant. They are further directed to refund the amount already recovered from the applicant, within 90 days from the date of receipt of a copy of this order. However, in case any other consequential effects are there, the respondents are bound to take action on those aspects i.e. revised pay fixation etc. Accordingly, the O.A. is partly allowed. No order as to costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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