

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

Original Application No.219 of 2019

Dated this the 28th day of April, 2021

Reserved on :18.03.2021

Pronounced on :28.04.2021

CORAM:

Hon'ble Shri Jayesh V. Bhairavia, Member (J)

Hon'ble Dr.A.K. Dubey, Member (A)

- 1 Sebi Dias S/o Joseph Dias,
Male, Aged 59 years,
Presently posted as Assistant Commissioner,
Ahmedabad.
Residing at:E/4, Mansarova Duplex,
Boringwala Block, B/h Railway Station,
Maninagar (E), Ahmedabad – 380 008.
- 2 Anil Kumar Sharma S/o Har Prasad Sharma,
Male, Aged 59 years,
Presently posted as Assistant Commissioner,
Ahmedabad.
Residing at:E/7, Shyam Sattadhar Society,
Sola Road, Ghatlodia, Ahmedabad 380 061.
- 3 Motilal Meena S/o Harjiram Meena,
Male, Aged 60 years,
Retired (Assistant Commissioner, Ahmedabad),
Residing at :C-192, Jasudnagar Housing Society,
Saraswati Nagar, IOC Road, Chandkheda,
Ahmedabad – 382424
- 4 Mansukh Patel S/o Arjunbhai Patel,
Male, Aged 59 years,
Presently posted as Assistant Commissioner, Ahmedabad.
Residing at:E-29, Sai Prabhu Apartments, Suvas Colony,
Navrangpura, Ahmedabad – 380 014.
- 5 Niranjana Bhatt S/o Durgashankar Bhatt,
Male, Age 59 years,
Presently posted as Assistant Commissioner, Ahmedabad.
Residing at:401, Vaibhav Tower – II, Shreyas Tekra,
Ambawadi, Ahmedabad – 380 015.
- 6 Ram Sahai S/o Dhanphool Meena,
Male, Age 59 years,
Presently posted as Assistant Commissioner,
Central Excise Ahmedabad II,
Residing at: 6, Aishwarya Bunglows,

Nr. Sadhima Petrol Pump,
Motera Road, Ahmedabad – 380005.

- 7 Dhandhuram Meena
S/o Kanjormal Meena,
Male, Age 59 years,
Presently posted as Assistant Commissioner,
Ahmedabad.
Residing at: A-504, Vedmata Society, IOC Road,
Chandkheda, Ahmedabad – 382424. ... Applicants

By Advocate Shri Joy Mathew

V/s

- 1 The Union of India,
Notice to be served through:
The Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi-110 001.
- 2 The Commissioner,
Central Goods and Service Tax, Audit,
301, GNFC Info-Tower, Near Bodakdev,
S.G.Highway, Ahmedabad-380 054.
- 3 The Commissioner,
Central Goods & Service Tax & Central Excise,
Ahmedabad North, First Floor,
Custom House, Navrangpura,
Ahmedabad – 380 009.
- 4 The Central Pension Accounting Office,
Notice to be served through
The Chief Controller (Pensions),
Trikoort-2, Bhikaji Cama Place,
New Delhi – 110 066.
- 5 The Manager,
State Bank of India,
Centralized Pension Processing Cell,
F-4, Siddhraj Zavod, Nr Sargasan Cross Road,
S.G.Highway, Sargasan, Gandhinagar-328421.
- 6 The Branch Manager,
Canara Bank, Chandkheda Branch,
Nakshatra Arcade, Ground Floor,
Shop No.10-12, Chandkheda,
Ahmedabad- 382424.

- 7 The Pay and Accounts Officer,
Central Excise, Ahmedabad
Navgujarat College Building,
Ashram Road, Ahmedabad – 380008. ... Respondents.

(By Advocate : Ms R R Patel – R 1 to 5
Ms K L Kalwani – R-6 & Shri U Gor – R-7)

ORDER (ORAL)

Per Shri Jayesh V Bhairavia, Member(J)

- 1 Aggrieved by the impugned orders (Annexure A/1 to A/20, A/21 to A/27 & A/28 to A/29) whereby the respondent had withdrawn the benefits of 3rd MACP in PB – 3 with GP – Rs. 6600/- and had re-fixed the pay and consequently issued notices for recovery of excess payment as also initiated the recovery by revising the PPO, the applicants herein, who are retired officers, have jointly filed (total seven applicants) the present application under Section 19 of the Administrative Tribunals Act. The applicants are seeking following reliefs:-

- (A) Be pleased to allow the present application.
- (B) Be pleased to quashed and set aside the impugned orders of re-fixation of pay and consequent recovery notices issued to the present applicants at Annexure – A/1 to Annexure A/20 and Annexure - A/21 to Annexure – A/27 & Annexure – A/28 to A/29.
- (C) Be pleased to direct the respondents to revise the PPO of applicants to the position as on December, 2018.
- (D) Be pleased to adjudge and declare that the action of the respondent department in relation to the recovery initiated against the present applicants is bad in law and contrary to the decision of the Hon'ble Supreme Court hence is illegal and impermissible.
- (E) Be pleased to direct the respondents herein to repay to the present applicants the amounts recovered by them till the disposal of the present application in addition to interest at the rate of 12% on account of the patently illegal nature of the said recovery.
- (F) Be pleased to pass any further order or directions as the Hon'ble Tribunal may deem fit in the interest of justice.

2 The brief facts as stated by the applicant are as under :-

- 2.1** It is contended by the applicants that while they were working as Assistant Commissioner (Group-A) under the office of respondent no. 3 & 4, they had approached this Tribunal by way of various OAs (i.e., OA 581/2016, 582/2016 and 247/2017) against the decision of CBEC dated 20.06.2016 whereby the respondents decided to withdraw the grant of 3rd MACP in PB-3 with GP 6600/-to the applicants and other similarly placed officers.
- 2.2** This Tribunal by way of its common decisions/orders dated 28.07.2017 and 22.09.2017 rejected the said group of OAs filed by the present applicants and other similarly placed officers.
- 2.3** By the time this Tribunal dismissed their aforesaid OAs vide order dated 28.07.2017 and 22.09.2017, the applicants had already retired from service as Assistant Commissioner Group - A.
- 2.4** After the dismissal of applicant's OAs, i.e., 581/2016 & 247/2017 by this Tribunal, the respondents herein had initiated the process of implementation of directions contained in letter dated 20.06.2016 and pursuant to it the benefit of 3rd MACP in PB-3 with GP 6600/- granted to the applicants was withdrawn and consequently the notices for recovery of pay arrears from 01.02.2012 to June 2017 were issued with a further intimation/notice about revision of their pay fixation and further revision of their PPO vide impugned orders. Hence, the applicants have filed the present OA.
- 2.5** It is also contended that after filing of present OA and pendency of it the applicants herein, in the year 2020, aggrieved by the common order passed by this Tribunal in their earlier OAs, i.e., OA No. 581/2016 & OA No. 247/2017 dated 28.07.2017 and 22.09.2017 had filed various SCAs along with other similarly place officers before the Hon'ble High Court. The said SCAs came to be disposed of by Hon'ble High Court of Gujarat vide common judgment dated 09.03.2020 whereby the OAs were remanded back for hearing afresh

in light of law laid down by Hon'ble Apex Court in the case of Union of India & Ors v/s M V Mohanan Nair reported in (2020) 5 SCC 421 . The relevant observation and orders passed by Hon'ble High Court of Gujarat in its order dated 09.03.2020 in SCA 5868/2020 and other connected SCAs are reproduced as under :-

"13. We have noticed that although O.A.s have not been entertained as mentioned herein above, in wake of the pendency of the matter for consideration before the Apex Court in case of Union of India vs. M.V.Mohanan Nair and other five SLPs, the Delhi High Court has been followed by the Tribunal where it noticed the different views by different High Courts. The issues raised before the Tribunal in all these original applications concern the interpretation and clarification of grant of 3rd Financial Upgradation under the MACP to the superintendents by placing them in pay band- III with grade pay of 6600/- who were granted non-functional grade pay of Rs. 5400/- in pay band- II.

14. This Court notices that in case of Union of India vs. M.V.Mohanan Nair delivered on 05.03.2020, the Apex Court has upheld the Delhi High Court's view in case of Union of India vs. All India CGHS Employees Association, which upheld the clarificatory communication choosing not to interfere with the policy. We are conscious that the Tribunal has followed the Delhi High Court on law point and the very issue is now addressed and upheld by the Apex Court. However, only on the ground that in case of petitioner, there has been no individual examination in wake of pendency of matter before the Supreme Court, let all the matters be examined by the Tribunal on merits, with whatever the scope is left, as individual examination on merit in each petition would be necessary, even if, the legal issue stands covered, more particularly, since certain directions have been issued by the Apex Court to the Union of India in the very decision, which it is bound to follow, the same shall also needed to be applied in case of each of the petitioners. To deny consideration on merit in individual case may amount to jeopardizing the right to be considered.

15. Resultantly, all matters are remanded for fresh consideration on merit in wake of the delivery of the aforesaid decision. This Court has not examined the individual matter on merit which shall be done by the Tribunal expeditiously in not

later than six months' period, with the above clarification as mentioned in para (5), from the date of receipt of copy of this order.

16. All petitions stand disposed of accordingly. Rule is discharged."

3 In backdrop of aforesaid, the learned counsel Shri Joy Mathew mainly submitted as under:-

3.1 The respondents had issued impugned orders subsequent to the retirement of applicants. The said impugned orders for re-fixation of their pay and recovery of arrears of pay is contrary to the law laid down by the Hon'ble Apex Court in the case of State of Punjab & Ors v/s Rafiq Masih & Ors (White Washer) reported in (2015) 4 SCC 334.

3.2 It is stated that due to re-fixation of the pay of the applicant and consequent recovery and revision of PPO, the Pension of the applicants have now been reduced by Rs.12000/- (approx.) and the said revised pension is disadvantage to him and same is not permissible under the provision of Rule 70(1) of CCS (Pension) Rules, 1972.

3.3 It is argued that as per the provision of Rule 70 of CCS (Pension) Rules, 1972, revision of pension after authorization (1) subject to the provisions of Rules 8 & 9, pension once authorized after final assessment shall not be revised to the disadvantage of the Government Servants, unless such revision become necessary on account of detection of clerical errors subsequently. The Rule 8 of the said rule refers to pension subject to future good conduct and Rule 9 refers to the right of President to withhold or withdraw pension in the event of the concerned officer being found guilty of grave misconduct or negligence.

It is also stated that in the case of applicants, neither of these rules are applicable nor any action was taken by the President for any misconduct or any negligence on the part of the applicant. The pension cannot be reduced for any reason other than future good

conduct as per the decision of Government of India mentioned underneath Rule 8 of CCS (Pension) Rules, 1972 or grave misconduct under Rule 9. Therefore, it is submitted that pension once authorised after final assessment can only be revised vide Rule 70(1) and the impugned order have been passed in contravention to the said provision. In this regard, the counsel for the applicant placed reliance on the decision of the Hon'ble Delhi High Court in the case of WP(C) 5687/2007 Director General Civil Aviation v/s Iqbal Singh Vedi & Ors decided on 06.03.2017 wherein it has been held that the Pension of a retired government servant cannot be reduced to his detriment or disadvantage.

- 3.4** Learned counsel also placed reliance on order passed by Principal Bench of this Tribunal in the case of Shri R K Bhatnagar (Retd.) V/s Union of India in OA No.472/2014 decided on 26.02.2015 wherein the Hon'ble CAT, PB had an occasion to consider re-fixation done even on the verge of retirement and the same was quashed as not permissible and the respondents were ordered to calculate the pensionary benefits of the applicant on the basis of average pay of the last ten months drawn by them and grant all arrears with interest @ 9% per annum till the date of actual payment. Therefore, it is submitted that the action of the respondents is completely illegal and arbitrary.
- 3.5** The learned counsel for the applicant submits that after the law laid down by Hon'ble Apex Court in the case of Rafiq Masih (supra), the Union of India through DoPT issued OM dated 02.03.2016 (Annexure A/30), wherein the Ministries/Departments are advised to deal with the issue of wrongful/excess payment make to the Government Servants in accordance with the decision in Rafiq Masih (White Washer) and further stated therein that wherever the arrear of recovery in the situations mention in the judgment of Rafiq Masih is considered, the same may be allowed with the express approval of Department of Expenditure in terms of DoPT OA dated 06.02.2014.

However, the respondents failed to consider the case of applicants in light of said direction of DoPT.

- 3.6** It is stated that after the respondent issued instructions/directions under order dated 20.06.2016 to settle the case of withdrawal of benefit of 3rd MACP in PB-3 with GP 6600/-, the respondents CBEC had issued further clarification dated 07.12.2016 (Annexure A/31), whereby it has been clarified that “with regard to recovery of wrongful/excess payment made to the individual officers, it is clarified that action may be taken in terms of OM dated 02.03.2016.” However, in the present case the respondent no.3 and 4 failed to take into consideration the direction contained in the said communication dated 07.12.2016, and therefore the case of applicant needs to be re-examined by the respondents.
- 3.7** In response to the revision of PPO, present applicants have submitted their various representations before Pension Accounting Office as also to the Commissioner of CGST Audit (Annexure – A/33 to Annexure – A/39) and requested to restrain from implementing revision of pension and recovery from pension. Further the applicants had also stated in their representation that some of them had requested the Under Secretary to the Government of India, Ministry of Finance Department of Revenue CBEC for waiver of recovery in pursuance to DoPT OM dated 02.03.2016 read with CBEC circular dated 07.12.2016 and pending disposal of the said representation no recovery/revision be resorted to. However, no response to the said representation was received from the respondents. Therefore, it is submitted by the applicants that the impugned orders are arbitrary and in contravention of provision of pension rules as also directions issued by the DoPT as well as circular of respondent CBEC. Therefore, the applicants submit that the prayer sought in the present OA be allowed.
- 4 On the other hand the respondent nos. 1 to 5 have filed their reply and denied the contention of the applicants. The learned standing counsel Shri H D Shukla for the respondents 1 to 5 mainly submitted as under:-

- 4.1** It is stated that the DoPT in consultation with Department of Expenditure had advised that, the grant of Non-Functional Grade Pay of Rs.5400 in PB-2 to the Superintendents needed to be counted as one financial upgradation for the purpose of MACP Scheme in terms of para 8.1 of Annexure 1 of MACP Scheme notified vide OM dated 19.05.2009 (Annexure R/3). Thereafter, the respondent CBEC also vide its letter dated 20.06.2016 (Annexure R/4) in consultation with DoPT clarified that Non-Functional Scale in Grade Pay of Rs. 5400/- in PB - 2, granted to the Superintendents had to be treated as a Financial up-gradation under MACP Scheme. Further, by withdrawing their letter dated 26.05.2015 in the case of Shri R. Chandrashekhar all the Cadre Controlling Authorities were further requested to take appropriate action to settle MACP cases accordingly. Since, applicants herein were granted Financial Up-gradation as NFG in PB – 2 with GP 5400/-, thereafter another, Financial Up-gradation in PB – 3 with GP Rs. 5400/- as also additional Financial Up-gradation in PB – 3 with GP Rs. 6600/-, in light of clarification/instructions contained in the letter dated 20.06.2016 the applicants herein had to be subjected to withdrawal of the benefit of 3rd MACP in PB-3 with GP 6600/- erroneously granted to them.
- 4.2** It is stated that aggrieved by the said decision dated 20.06.2016 the applicants while they were working as Assistant Commissioner (Group – A), had approached this Tribunal by way of filing various OAs and prayed to quash and set aside clarification dated 20.06.2016 at Annexure – A/3 and further to declare that the present applicants were eligible to the benefit of 3rd MACP by way of fixing the pay in PB – 3 with Pay Rs. 15,600 – 39,100 with Grade Pay Rs. 6600/- as also to direct the respondent to grant the said benefit with all consequential benefits including arrears of pay. The details of said OAs filed by the present applicants are as under:-

Applicant herein No.	Name of the officers	OA No.	OA filed on
4	Mansukh Patel	581/2016	06.08.2016
5	Niranjan Bhatt		
7	Dhandhura Meena		
3	Motilal Meena	582/2016	06.08.2016
1	Sebi Dias	583/2016	06.08.2016
2	Anilkumar Sharma		
6	Ram Sahay Meena	247/2017	03.05.2017

4.3 The aforesaid OAs filed by the applicants came to be dismissed by this Tribunal vide order dated 28.07.2017 and 22.09.2017 (Annexure R/5 & R/6).

Referring to Table – G of para 8.2 of their reply, learned counsel for the respondents stated that in the meantime, the applicants herein retired on the respective dates of their superannuation that are 30.06.2017 and 31.07.2017.

4.4 It is stated that after the dismissal of said OAs of the applicants, vide order dated 07.11.2017 and 23.10.2017 (Annexure R/7 & R/8) the said 3rd financial upgradation in PB – 3 with GP Rs. 6600/- granted to the applicants was withdrawn by the respondent and the pay of applicants was re-fixed in PB-3 with GP 5400/- vide revised pay fixation order dated 10.11.2017 and 14.11.2017 (Annexure R/9 & R/10) and accordingly recovery notices were issued vide various letters by the respondent department starting from 01.05.2018 and 29.01.2018 (Annexure R/11).

5 The learned standing counsel submits that the applicants were well aware of the fact that, they were not entitled for GP Rs.6600/- in PB-3 and that the process of re-fixing of their pay and subsequent recovery had already taken place in terms of order dated 20.06.2016. While issuing notice in the OAs filed by the applicants, this Tribunal ordered on 12.08.2016 (Annexure – R/12) that *“in the interregnum, it is ordered that any action pursuance to the clarification bearing No.A-23011/25/2015-Ad.II.A dated 20.06.2016 vide Annexure A/3 shall be subject to the final outcome of the OA”*. In the

circumstances, the department could not initiate any action of re-fixation of pay and consequent recovery while the applicants were in service to avoid any further litigation.

It is submitted that in fact, re-fixation of pay and resultant recovery was stalled at the instance of the applicants themselves. Since the OAs filed by the applicants have been dismissed and subsequent to it respondents have taken action for re-fixing their pay, recovery of excess arrears of pay and revision of PPO, now applicants are attempting to take premium out of their own action by pressing into service the judgment of Hon'ble Apex Court rendered in the case of Rafiq Masih (White Washer) (supra) which is not permissible in the facts and circumstances of the present case.

5.1 It is stated that applicants had filed their representations and appeal before Hon'ble Minister of State (Finance) under Rule 23 of CCS (CCA) Rules 1965 (Annexure R/13) against the re-fixation of their pay in PB-3 with GP Rs. 5400/-. In one of the representations dated 04.12.2017 filed by one Shri Sebi Dias addressed to the Hon'ble Minister of State (Finance) wherein it is stated that (i) the letter of the Board dated 20.06.2016 is not applicable in their case, (ii) the re-fixation order dated 07.11.2017 be quashed, (iii) Re-fixation done without following OM dated 06.02.2014 and 02.03.2016, therefore be quashed and (iv) no recovery be done in view of Board's letter dated 07.12.2016. In this regard, it is further stated by the counsel for the respondents that vide letter dated 15.11.2018 (Annexure R/15), the Under Secretary to the GOI, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs had conveyed the decision of Ministry on the said Appeal filed by the applicants wherein it was decided that;

- (i) by counting NFG as financial upgradation – these officers were already given three financial upgradations and they were not entitled to financial upgradation in GP 6600/- in PB-3 under MACP Scheme as per DoPT

instructions on MACP Scheme, as conveyed by Board vide its letter dated 20.06.2016 and 07.12.2016.

- (ii) Office of the Commissioner, CGST Ahmedabad vide order dated 07.12.2017 has withdrawn the wrongful grant of upgradation in GP 6600/- to these officers. The order dated 07.11.2017 did not violate Government of India instruction issued on MACP Scheme.
- (iii) There is no merit on the representation of these applicants which are being claimed as appeals under Rule 23 of CCS (CCA) Rule 1965 and hence there is no cause of action for an appeal under Rule 23 of CCS (CCA) Rules 1965.

It is stated by the respondents that the aforesaid decision of the department was conveyed to the applicants vide office letter dated 30.11.2018 (Annexure R/16). Therefore, the issued had attained finality as the said decision was not challenged before any Court. The said fact was not brought to the knowledge of this Tribunal or before Hon'ble High Court by the applicants of this OA. Not only that, the OA filed by the applicants came to be dismissed whereby the claim of applicant to grant benefit of 3rd MACP was denied by this Tribunal. Therefore, it was no longer open for the applicants to submit that they were entitled to retain erroneous excess payment paid to them; in fact it was held that they were not entitled for the said claim.

- 5.2 The learned standing counsel for the respondents further submits that in the present case, erroneously excess amount was paid to the applicants and if same was not recovered, it would not be fair to the other employees working in the department from whom the recovery had been effected and were placed below the applicants only because of irregular fixation of pay on account of technical reasons; it would be unfair to the other officers. It is also required to be noted that in case of similarly placed other officers who had also filed identical OAs along with present applicants, recovery-had already been made.

Therefore, no discrimination should be allowed to be made in the case of recovery of excess arrears of pay of (Group A) Officers and revision of their PPO.

- 5.3 Learned standing counsel further submits that in the case of Rafiq Masih in para 18 (v) it was held that ***“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”***. Therefore, in the present case, the decision of respondents to re-fix the pay and recovery of excess arrears of pay and revise PPO of Group A Officers (i.e. applicants herein) was equitable and just and in consonance with MACP Scheme as well as law laid down by Hon’ble Apex Court in the case of M V Mohanan Nair (supra).
- 6 Rejoinder has been filed on behalf of applicants reiterating the submissions in the OA. Additionally, it has been stated that it is not correct on the part of respondents to state that at earlier point of time this Tribunal had granted any interim relief in the OAs filed by this applicants. Infact, this Tribunal at no point of time, in the entire proceedings of OA 581/2016 and other allied matters, had ever granted any form of Interim relief. The observation of this Tribunal that action pursuance to order / letter dated 20.06.2016 shall be subject to outcome of the OA cannot be construed to be a form of Interim relief and therefore it is not correct on the part of respondents that due to aforesaid order dated 12.08.2016, they had not initiated recovery proceedings at an earlier point in time. As such, there was no stay granted in this OA. The respondents had initiated the recovery only in the year 2017-18 for the amount paid to the applicant in the year 2016/2017, which is not permissible in light of law laid down in; case of Rafiq Masih (supra).

It is further stated by the applicants that since the respondents have already initiated the recovery process and deducted the amount from the pension of the applicants, any further promise for consideration of

representation or appeal of the applicant would have no bearing in the facts and circumstances of the present case.

The learned counsel for applicants placed reliance on the order passed by the Ernakulam Bench of this Tribunal dated 14.03.2017 in OA no.859/2016 in the case of K C Joseph v/s Principal Controller of Defence Accounts, Pension and submitted that there was no fault on the part of applicant or any misrepresentation; the respondents due to their own mistake or error paid them 3rd MACP and therefore no recovery be made against the applicants.

- 7 It is noticed that on behalf of respondent no.6 and 7 i.e. the disbursing bank has filed the reply and contended that it had followed the direction/instructions contained in the PPO/revised PPO and accordingly disbursed the pension in the case of applicants.
- 8 Heard the learned counsel for both the parties and perused the materials on record.
- 9 At the outset it is required to mention that respondents in their clarification/letter dated 20.06.2016 decided that the Non Functional Grade pay granted to the Superintendents on completion of four years of regular service had been considered as a separate grade with higher grade pay under the provision of para 8.1 of Annexure 1 of MACPS and accordingly the same was set off against one financial upgradation and as its natural corollary, directed to withdraw the erroneously granted benefit of 3rd MACP in PB-3 with GP 6600/-.

Since applicants herein were granted said NFG in PB-2 with GP 5400 and subsequent financial upgradation in PB-3 GP 5400/- on completion of 24 years of service and thereafter they were granted benefit of 3rd MACP in PB-3 with GP 6600/-, they were apprehending the withdrawal of said benefit of 3rd MACP and consequent recovery and therefore while they were working as Assistant Commissioners they had challenged the said clarification/letter dated 20.06.2016 issued by the respondents before this Tribunal by way of filing of OA 581/2016 and other connected OAs.

- 10 The said OAs of applicants, as noted hereinabove, initially were dismissed by this Tribunal vide order dated 28.07.2017 & 22.09.2017, only thereafter, vide order dated 07.11.2017 (Annexure R/7), 23.10.2017 (Annexure R/8), 14.11.2017 (Annexure R/9) and 10.11.2017 (Annexure R/10), order dated 01.05.2018 (Annexure R/11) the respondents initiated action for withdrawal of grant of benefit of 3rd MACP in PB-3 with GP 6600/- pursuant to clarification/letter dated 20.06.2016 (Annexure R/4) and consequent to it, the pay of applicants were re-fixed, notices for recovery of excess arrears of pay and revised of PPO were issued. Aggrieved by the said action, applicants have filed the present OA 219/2019 on 04.07.2019 before this Tribunal.
- 11 It is the grievance of the applicants that after receipt of orders/notices for re-fixation of pay, recovery of excess arrears of pay and revision of PPO, they have submitted their representations/appeals before the CBEC, as well as before Hon'ble Minister of State (Finance) and requested to consider their case for waiver of recovery in terms of OM dated 07.12.2016 issued by the CBEC as the said OM is based on instructions/guidelines issued under OM dated 02.03.2016 of the DoPT by following the directions contained in judgment passed by Hon'ble Apex Court in the case of Rafiq Masih (White Washer), but the said request of the applicants for waiver of recovery has not been considered by the competent authority/department. In this regard, it is apt to mention that undisputedly the representations/appeals submitted by the applicants before the Hon'ble Minister of State (Finance) was duly considered by the Board and was not found fit for waiver of recovery and accordingly the said request of applicants was rejected vide their decision dated 15.11.2018 (Annexure – R/15) by assigning cogent reason for the said dismissal of their representations/appeals to the effect that order of withdrawal of wrongful upgradation in PB-3 with GP 6600/- dated 07.11.2017 issued by the O/o.Commissioner of CGST, Audit Ahmedabad in the case of applicants have not violated any instructions issued on MACP Scheme. The applicants were not entitled for benefit of 3rd financial upgradation in terms of MACPS clarified under DoPT instructions and same was conveyed by Board's letter dated 20.06.2016 and 07.12.2016.

Further vide letter dated 30.11.2018 (Annexure – R/16), the office of respondent no. 3, i.e., Commissioner of Central GST, Audit, Ahmedabad also conveyed the said decision of the Board to the applicants. It can be seen that the department, i.e. CBEC, the competent authority in the case of applicants did not find it fit to accept the point of any hardship caused to the applicants due to said revision of their pay and PPO who are Group – A officers. Therefore, it cannot be said that respondents have not considered their request for waiver of recovery in terms of OM dated 07.12.2016. Thus, the said submission of applicants is not tenable.

- 12 At this stage it is apt to mention that after initiation of re-fixation of pay and recovery of excess payments, as also after filing the present OA, the applicants herein in the year 2020 had approached the Hon'ble High Court of Gujarat against the orders dated 28.07.2017 & 22.09.2017 passed by this Tribunal in OAs 247/17, 581/16 and other connected OAs which came to be disposed of by Hon'ble High Court of Gujarat in its common order dated 09.03.2020 in SCA No. 5868/2020 and other allied SCAs and remanded the said for hearing afresh in the light of law laid down by the Hon'ble Apex Court in the case of Union of India v/s M V Mohanan Nair. As per the said direction of the Hon'ble High Court of Gujarat, the said OAs of the applicants was heard afresh by this Tribunal.

It is also required to mention that while dismissing the said OAs, this Tribunal vide its fresh order dated 25.01.2021 held that:

“there is no infirmity in the clarification/letter dated 20.06.2016 issued by the respondents as the same is in consonance with provision of para 8.1 of Annexure 1 of MACPS as also in light of the law laid down by Hon'ble Apex Court in the case of M V Mohanan Nair (supra). Accordingly, the applicants herein were not found eligible for grant of benefit of 3rd MACP in PB-3 with GP 6600/- and further held that the decision of withdrawal of said benefit and consequent recovery cannot be interfered with.”

- 13 In the present case, it is also noticed that the re-fixation of pay on withdrawal of 3rd MACP, recovery of excess arrears of pay and revision of PPO has been effected in case of all similarly placed officials by the respondents and the said action has been upheld by this Tribunal in its order dated 25.01.2021. Under the circumstances it is not open for the applicant to

reiterate their claim against the withdrawal of erroneous benefit of 3rd MACP in PB-3 with GP Rs. 6600/- and consequent re-fixation of their pay, recovery of excess payment and revision PPO.

- 14 Undisputedly, while the applicants were working as Assistant Commissioner (Group – A), they were well aware about the decision dated 20.06.2016 of the respondents with respect to treating the NFG granted to the Superintendent including the applicants herein as one separate Grade Pay and same ~~is~~ was required to be set off under the MACP accordingly the wrongful grant of 3rd MACP was liable to be withdrawn.. The challenge to the said decision dated 20.06.2016 by the applicants herein came to be rejected by this Tribunal in first round of litigation vide order dated 28.07.2017 and 22.09.2017. Thereafter, immediately vide order dated 07.11.2017 and 23.10.2017 the wrongful grant of 3rd Financial Up-gradation with GP Rs. 6600/- to the applicants was withdrawn and their pay were re-fixed in PB-3 with GP of Rs. 5400/-.

At this stage we take note of the respondents' submissions that the applicants are trying to take advantage of this situation they themselves had created. The Applicants cannot be extended premium on such an action undertaken by them, because, they shall be enriched unjustly as against those who are similarly situated, but their Grade Pay was withdrawn and recovery against them was effected or could be effected. It is also the contention of the respondents that the acceptance of plea of the applicants would also render the clarification dated 20.06.2016 of the CBEC irrelevant; as such, the challenge of the applicants against it has been rejected by this Tribunal. The erroneous excess amount paid, if not recovered, would not be fair to the other employees working in the department from whom the recovery has been affected. This amounts to discrimination.

In view of the aforesaid factual matrix, the judgments relied upon by the counsel for the applicants are not helpful to them.

- 15 So far as the submission of the applicants that respondents had revised the pension of the applicants in violation of Provision of Rule 70 of the CCS

(Pension) Rules, 1972 is concerned, the said submissions is also not tenable for the reason that the said Rule 70 reads as under :-

“70. Revision of pension after authorization

(1) Subject to the provisions of Rules 8 and 9 pension once authorized after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently :

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Department of Personnel and Administrative Reforms if the clerical error is detected after a period of two years from the date of authorization of pension.

1[(1-A) The question whether the revision has become necessary on account of a clerical error or not shall be decided by the administrative Ministry or Department.]

(2) For the purpose of sub-rule (1), the retired Government servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment, shall be adjusted in instalments by short payments of pension in future, in one or more instalments, as the Head of Office may direct.

15.1 It can be seen that the aforesaid Rules 70 (1) stipulates that pension, once authorized after final assessment shall not be revised to the disadvantage of the Government servants unless such revision becomes necessary on account of a clerical error subsequently provided that no revision of pension be ordered if the clerical error is detected after a period of two years from the date of authorization of pension. In the present case, undisputedly the decision dated 20.06.2016 that grant of wrongful Pay in PB-3 with GP Rs. 6600/- to the applicants was liable to be withdrawn was made known to the applicants. Not only that, as noted hereinabove their challenge to such decision falls flat as per the order passed by this Tribunal.

During the pendency of said litigation the applicants retired from service on superannuation. However they were very much aware about the fact that they were not entitled to the last pay which was drawn by them. Evidently, in the present case, it has become necessary for the concerned department to pass an order for revision of pay and pension of the applicants on detection of the error arising from the erroneously granted grade pay and resultant excess payment to them. Accordingly, in light of provision of Rule 70 (1) the respondent department passed orders of revision of pension within the time limit as stipulated in the said Rule.

- 15.2 Further, it is noticed that the as per the provision Rule 70 (2) for the purpose of sub-rule (1), the retired Government servant, i.e., applicants were served with a notices by the department requiring them to refund the excess payment due to wrong fixation of the pay and pension. It is also not in dispute that the present applicants failed to comply with the said notices and therefore the respondents in light of provision of Rule 70 (3) ordered directing the recovery of such excess payment.
- 15.3 In view of the aforesaid factual matrix, it can be seen that the respondents have duly followed the provisions of Rule 70 of CCS (Pension) Rules, 1972 in revision of pension in the case of applicants.
- 15.4 Thus, the orders / judgments relied upon by the counsel for the applicants passed in the case of A C Joseph Vs. Principle Control of Defence Accounts (Pension), OA No. 859/2016 decided on 14.03.2017 by CAT Ernakulum Bench and the order dated 16.02.2015 passed by CAT PB in the case of R K Bhatnagar (Retired) & Ors. Vs. Union of India are also not helpful since in the present case, the respondents have followed the provision of Rule 70 of Pension Rules. Therefore, the submission of the applicants that the respondents had arbitrarily and in violation of Pension Rules issued the revise PPO is also therefore not tenable.

- 16 At this stage it is appropriate to refer the observation of the Hon'ble Apex Court passed in Union of India vs. M. V. Mohanan Nair (supra), that *“there is nothing to show that the scheme (i.e. MACP) is arbitrary or unjust warranting interference as also when the government has accepted the recommendation of pay commission and has also implemented those, any interference by the court would have a serious impact on the public exchequer”*.

As noted hereinabove, as per the directions issued by the Hon'ble High Court, the OAs i.e., (OA Nos. 581/2016, OA 582/2016, OA No. 583/2016 & OA No. 247/2017) filed by the applicants have been reheard afresh by this Tribunal and said OAs have been dismissed vide order dated 25.01.2021 by taking into consideration the terms of para 8.1 of Annexure 1 to MACPS, various clarifications authority issued by the competent authority and in light of law laid down by Hon'ble Apex Court in the case of M V Mohanan Nair (Supra) it has been held that applicants are not entitled for grant of 3rd MACP in PB-3 with GP Rs. 6600/- and the decision of respondents to withdraw the said wrongful grant of benefit and recovery of excess payment was upheld..

- 17 In view of aforesaid discussion and in light of judgment passed by Hon'ble Apex Court in the case of M V Mohanan Nair (Supra) as also the order passed by this Tribunal in the OAs filed by the Applicants, i.e. OA 581/2016, OA 582/2016, OA No. 583/2016 & OA No. 247/2017 dated 25.01.2021, we do not find any infirmities in the impugned decision, and thus are not inclined to interfere with the impugned orders. Hence, the OA stands dismissed. No order as to cost.

(A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

abp

