



**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE
ORIGINAL APPLICATION NO.170/00012/2020**

ORDER RESERVED ON 07.07.2021

DATE OF ORDER: 01.10.2021

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

(On video conference from Central Administrative Tribunal, Chandigarh Bench, Chandigarh)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(On video conference from Central Administrative Tribunal, Bangalore Bench, Bangalore)

B.Chandu Naik

Age: 58 years

S/o Thukra Naik

Working as Grade II Driver

O/o Senior Superintendent

Of Post Offices

Mangalore Division

Mangalore-575002.

Residing at:

No.C-2 Block

Bolar Postal Quarters

Mangalore-575001.

....Applicant

(By Advocate Shri P.Kamalesan – through video conference)

Vs.

1. Union of India
Represented by Secretary
Department of Post
Dak Bhavan
New Delhi – 110001.
2. Chief Post Master General
Karnataka Circle
Bangalore-560001.
3. Post Master General
S.K.Region
Bangalore-560001.
4. Sr.Superintendent of Post Offices



Mangalore Division
Mangalore-575002.

Senior Post Master
Mangalore-575001.

.....Respondents

(By Advocate Shri Vishnu Bhat – through video conference)

ORDER

PER: RAKESH KUMAR GUPTA, MEMBER (A)

1. The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:
 - i. Direct the respondents to restore the pay fixed as on 1.1.2016 and 1.7.2016 to the applicant since there is no error in pay fixation.
 - ii. Quash the Senior Post Master, Mangalore HO-575001 letter No.IAIR/2019/dlgs/19-20 dated: 7.8.19 vide Annexure-A1 and direct the respondents to refund the recovered amount.
2. The facts of the case as pleaded by the applicant are as follows:
 - a) The applicant is working as Grade II Driver, at O/o Senior Superintendent of Post Offices, Mangalore Division, Mangalore-575002.
 - b) The 7th CPC recommendations were given effect from 1.1.2016 and accordingly the applicant's pay was correctly fixed as Rs.41,600/-. The audit during the inspection raised an objection stating that the applicant's pay was erroneously fixed as Rs.41,600/- instead of Rs.36,000/-. Therefore, the excess paid amount from 1.1.2016 to July 2019, i.e., Rs.84,058/- should be recovered from the applicant.



- c) In pursuance of the audit objection, the Senior Post Master, Mangalore HO, vide letter No.IAIR/2019/dlgs/19-20 dated: 7.8.2019, issued a notice for recovery vide Annexure-A1.
- d) The applicant submitted representation on 7.8.2019, requesting to waive off the recovery vide Annexure-A2.
- e) The applicant requested the Senior Post master, Mangalore on 27.8.2019 to furnish the due drawn statement. The Senior Post Master, Mangalore HO furnished the statement vide letter No.IAIR/2019/dlgs/19-20 dated: 28.8.2019 vide Annexure-A3.
- f) The applicant submits that he was granted MACP III on 7.6.2016, and he opted for pay fixation from date of next increment that is from 1.7.2016 and the pay was correctly fixed as Rs.47600/-. Therefore, the audit objection is without any reasonable grounds.
- g) The applicant submits that in accordance with the Hon'ble Apex Court order dated 18.12.2014 in case of *State of Punjab & Others vs. Rafiq Masih (White Washer)* in 2012, no recovery can be made from Group-D and C employees (Annexure-A4).
- h) The applicant submits that the audit objection is frivolous and the pay was correctly fixed as on 1.1.2016 and 1.7.2016, and recovery is in violation of Hon'ble Apex Court order dated 18.12.2014.

3. The respondents have filed their reply statement wherein they averred as follows:



- a) The applicant was appointed in the department as driver and he is presently working as driver in Mangalore Postal Division. On implementation of 7th CPC, the applicant opted to come over to the revised pay structure from 01.07.2016 i.e. on date of next increment as per his option dated 24.08.2016(Annexure-R1). On 01.07.2016, the pay was fixed by granting two increments on 6th CPC structure and then placed in 7th CPC, forgoing arrears from 01.01.2016 to 30.06.2016 according to his option, the pay was fixed as under:

Sl. No.	Period	Pay+GP	Remarks
1	01.06.2016 to 30.06.2016	13200+2800=16,000	VI CPC
2	01.07.2016	13200+480+2800=16,480	Rs.480 Annual Increment added
3	01.07.2016	13680+500+4200=18,380	Rs.500 promotional increment added
4	01.07.2016	18380x2.57=47,236.60@ Rs.47,600 in level 6	Fixation in 7 th CPC

- b) During Internal Audit Inspection of Mangalore Head Post Office, the Assistant Accounts Officer, Office of GM (PA&F) Karnataka Circle Bengaluru, in his inspection report dated 15.07.2019(Annexure-R2) observed that while verifying the service book of the applicant, it was found that, the applicant had exercised option to come over to the revised pay structure under 7th CPC from his date of next increment i.e. on 01.07.2016 vide option dated 24.08.2016 and his pay was fixed as per that option. But as the official was granted MACP III w.e.f. 07.06.2016, the above option becomes inoperable in lines with proviso two and Explanation I below Proviso two of Rule 5 of CCS (RP) Rules 2016.



Hence the official's pay should have been fixed either from 01.01.2016 or from 07.06.2016 as follows:

Pay as on 31.12.2015	13,200+2,800=16,000
01.01.2016	16,000x2.57=41,120=>41,600 (L5)
MACP III (07.06.2016)	42,300 (L6, DNI Option)
01.07.2016	44,900 (L6)

and directed to regulate the pay of the applicant accordingly and to recover the excess paid to the applicant.

- c) As per provision two under Rule 5 of CCS (RP) Rules 2016, in case where the Government servant has been placed in a higher grade pay or scale between 1st day of January 2016 and the date of notification of these rules on account of promotion or upgradation, the Government servant may elect to switch over to the revised pay structure from the date of such promotion or upgradation as the case may be. As per explanation No.1 under the said provision, the option to retain the existing pay structure under the provisions to this rule shall be admissible only in respect of one existing pay and Grade Pay or scale (Annexure-R3).
- d) Senior Postmaster Mangalore HO fixed the pay as directed by the Audit party and vide Annexure-A1 of the OA issued notice to the applicant on 07.08.2019 communicating that the pay fixation on implementation of 7th CPC is erroneous as observed by the internal Audit. The excess paid works out to Rs.84,058 for the period from 01.01.2016 to 30.06.2019. This would be recovered from the pay of the applicant at the rate of Rs.5,000 per month commencing from August 2019. A sum of



Rs.25,000, being a part of the excess paid amount, has so far been recovered from the pay of the applicant.

- e) It is not correct on the part of the applicant to say that the pay of the applicant was correctly fixed as Rs.41,600 and Audit has raised objection that the pay was erroneously fixed as Rs.41,600 instead of Rs.36,000. The fact is that the pay of the applicant should have been Rs.41,600 as on 01.01.2016 instead of actual drawn Rs.36000 and Rs.5600 was drawn short to the applicant. Further pay for the month of July 2016 was erroneously fixed as Rs.48,552 (47,600 plus 952 as DA) instead of Rs.45798 (44,900 plus 898 as DA) resulting in excess payment of Rs.2754 and the same was continued till July 2019. The excess paid and short drawn were adjusted and worked out. The net excess pay drawn amounting to Rs.84,058 is being recovered from the pay of the applicant in equal instalments of Rs.5000 per month. This is evident in the statement of due drawn at Annexure-A3 of the OA.
- f) The applicant had got MACP-III promotion on 07.06.2016 and the Senior Postmaster Mangalore HO erroneously fixed the pay of the applicant under 7th CPC without considering the provision of Rule 5 of CCS (RP) Rules 2016 and Explanation No.1 under the said provision (Annexure-R3) which was detected by the Audit party and accordingly the excess drawn to the applicant is being recovered.
- g) The applicant had represented on 20.09.2019 and not on 07.08.2019 (Annexure-A2 of OA). In the said representation the applicant did not challenge the pay fixation as directed by the audit party and subsequently fixed by the Senior Postmaster, Mangalore HO. In his representation, he



had only requested to waive off the recovery as he is a lower cadre employee and his family is entirely dependent on his salary for livelihood.

- h) It is a fact that his pay was fixed by Postmaster Mangalore HO (Respondent No.5) without considering the provision of Rule 5 of CCS(RP) Rules 2016 and Explanation No.1 under the said provision (Annexure-R3), which was detected by the Audit Party. Accordingly, respondent No.5 had re-fixed the basic pay of the applicant as Rs.44900 as on 01.07.2016 as per the above provisions and commenced recovery of excess paid pay by issuing prior notice to the applicant.
- i) The applicant had been provided with the Pay Fixation Chart and due drawn statement on 28.08.2019(Annexure-A3 to OA). The applicant, in his subsequent representation dated 20.09.2019 (Annexure-A2) has not challenged the revised pay fixation. He has only requested for waive off of the recovery of excess paid to him.
- j) The averment of the applicant that in accordance with Apex Court in its judgment in *State of Punjab & others vs. Rafiq*, no recovery can be made from Group D and C employees is not correct as per the subsequent judgment dated 29.07.2016 of Hon'ble Apex Court in *Civil Appeal No.3500 of 2006 (High Court of Punjab and Haryana and others vs. Jagdev Singh)*.
- k) In the instant case, the applicant had given an undertaking on 24.08.2016 (Annexure-R1), that in the event of his pay having been fixed in a manner contrary to the provisions contained in these rules, as detected subsequently, any excess payment so made shall be refunded by him to



the Government either by adjustment against future payments due to him or otherwise.

- l) The Apex Court in Civil Appeal No.3500 of 2006 in the case of *Jagdev Singh*, has held that “....*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. Para 12 states that “for 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 be made in equated monthly instalments. We opine that the recovery be made in equated monthly instalments spread over a period of two years.”*”

- m) The entire amount of Rs.84058/- was not proposed to be recovered in one go. Taking into account, the financial position of the applicant, the respondent No.5 is recovering Rs.5,000 each per month from the pay of the applicant after issuing suitable notice to the applicant.

4. The applicant has filed the rejoinder wherein he averred as follows:

- a. The applicant submits that the Audit opined that the option becomes inoperable in lines with proviso two explanation I below proviso two of Rule 5 of CCS (RP) Rules, 2016.
- b. Rule 5 proviso two Explanation I is misinterpreted by the respondents. The proviso two explanation I, states that “option to retain the existing



pay structure under proviso to this rule shall be admissible only in respect of one existing pay band and Grade pay or scale.

- c. The applicant submits that the benefit of his due increment occurring on 1.7.2016 was granted in the pre-revised scale, and MACP benefit was also granted in the pre-revised scale therefore, the Rule 5, proviso two explanation I is not applicable to the applicant. Therefore, the respondent's acceptance of Audit objection is contrary to revised pay rules of 2016.
- d. Applicant submits that his pay was correctly fixed by the respondents as stated by them in page 2 para No.3 of the reply statement.
- e. The applicant submits that their reliance on Hon'ble Apex Court order dated 29.7.2016, in Civil Appeal No.3500/2006 is not applicable in this case, because the respondent in that case was a judicial officer and not Group C and D. The Hon'ble Apex Court in Civil Appeal No.11527/2014 in order dated: 18.12.2014 held and declared that recoveries from Group C and D employees would impermissible in law.

5. Heard the learned counsels for the parties.

6. The applicant is disputing his revised pay fixation under 7th CPC. The pay of the applicant was supposed to be fixed on account of revised pay structure under the 7th CPC on 01.01.2016. The official was granted MACP-II w.e.f. 07.06.2016. His date of next increment after pay fixation would have fallen on 01.07.2016. Initially the applicant opted for pay fixation on the date of next increment i.e. 01.07.2016. However, since his MACP-II was due in June 2016



(07.06.2016), hence, his pay was initially fixed after refixing his pay due to grant of MACP-II on 07.06.2016 and then subsequently revising his pay as per 7th CPC pay fixation. However, the Audit pointed out that this pay fixation is inadmissible since as per the explanation I below Proviso two of Rule 5 of CCS (RP) Rules 2016, the option to retain existing pay structure under the provisions of this rule shall be admissible only in respect of one existing pay band and grade pay or scale. The Rule-5 under CCS(RP) Rules, 2016 for fixation of pay is as follows:

5. Drawal of pay in the revised pay structure.– *Save as otherwise provided in these rules, a Government servant shall draw pay in the Level in the revised pay structure applicable to the post to which he is appointed:*

Provided that a Government servant may elect to continue to draw pay in the existing pay structure until the date on which he earns his next or any subsequent increment in the existing pay structure or until he vacates his post or ceases to draw pay in the existing pay structure:

Provided further that in cases where a Government servant has been placed in a higher grade pay or scale between 1st day of January, 2016 and the date of notification of these rules on account of promotion or upgradation, the Government servant may elect to switch over to the revised pay structure from the date of such promotion or upgradation, as the case may be.

Explanation 1.- The option to retain the existing pay structure under the provisos to this rule shall be admissible only in respect of one existing Pay Band and Grade Pay or scale.

Explanation 2.- The aforesaid option shall not be admissible to any person appointed to a post for the first time in Government service or by transfer from another post on or after the 1st day of January, 2016, and he shall be allowed pay only in the revised pay structure.

Explanation 3.- Where a Government servant exercises the option under the provisos to this rule to retain the existing pay structure of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that pay structure under Fundamental Rule 22, or under any other rule or order applicable to that post, his substantive



pay shall be substantive pay which he would have drawn had he retained the existing pay structure in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher.

7. In this particular case, as pointed out by the respondents, since the applicant was in Level-5 on 01.01.2016 and after grant of MACP-II, he received financial upgradation to Level-6, hence, as per the provisions of Rule-5, Explanation 2 highlighted above, the option to retain the existing pay structure under the proviso to this rule was not admissible to him since his pay scale changed from Level-5 to Level-6. Keeping this in view, the earlier erroneous pay fixation has been rightly corrected by the pay fixation authority after receiving advice from the Audit. His pay was accordingly refixed at Rs.44,900 basic pay on 1.7.2016, as compared to the earlier fixation of Rs.47,600 basic pay on 1.7.2016. This resulted in a recovery of the excess pay paid to him amounting to Rs.84,058/- for the period in between 01.07.2016 to 01.07.2019.
8. The applicant has submitted that the Rule-5, 2nd proviso, explanation-1 is not applicable to him since the benefit of his due increment was occurring on 01.07.2016 as well as the MACP benefit was also granted in the pre-revised scale.
9. However, as is clearly mentioned in the Rule-5, 2nd proviso, Explanation-1, the option to retain the existing pay structure under the proviso to this rule shall be admissible only in respect of one existing Pay Band and Grade Pay or scale. However, in the present case, the applicant, after grant of MACP - II, shifts from Level-5 to Level-6 due to financial upgradation. Hence, he could not have



opted for stepping over to the existing pay structure from the date of next increment and his pay was required to be fixed in the revised pay scales from 01.01.2016 itself.

10. The contention of the applicant, therefore, to allow him to exercise his option for pay revision after receiving MACP-II benefit, being against the revised pay rules is inadmissible.

11. The applicant has also claimed that the recovery of excess pay amounting to Rs.84,058/- from the applicant, is in violation of Hon'ble Apex Court judgment in Rafiq Masih's (White Washer's) case.

12. Hon'ble Apex Court in *Civil Appeal No.3500 of 2006 in High Court of Punjab and Haryana and others vs. Jagdev Singh*, had observed as follows:

“The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10 In State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc. this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.*

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."

13. The applicant, in the present case had submitted a specific undertaking at the time of pay revision dated 24.08.2016 as follows:

"I hereby undertake that in the event of my pay having been fixed in a manner contrary to the provisions contained in these Rules, as detected subsequently, any excess payment so made shall be refunded by me to the Government either by adjustment against future payments due to me or otherwise."

14. The applicant had given this specific undertaking at the time of his pay fixation under 7th CPC. He was put on notice before the recovery was initiated against him. In his reply to the notice he had not disputed the revised pay fixation. He had only requested for waiving off of the recovery of excess amount paid to him to the extent of Rs. 84,058/-. Hence, his case is squarely covered under the judgment of Hon'ble Apex Court in *Civil Appeal No.3500 of 2006 in High Court of Punjab and Haryana and others vs. Jagdev Singh*.

15. In *State of Punjab & Others vs. Rafiq Masih (White Washer)*, 2012, the Honorable Apex Court had also observed that:



7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under [Article 142](#) of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the concerned employee. If the effect of the recovery from the concerned employee would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

16. The respondents have ordered recovery of the excess amount paid to the applicant in easy installments of Rs.5000/- per month instead of recovering the entire due amount of Rs.84058/- in one go. The salary being drawn by the applicant at the time of recovery is around Rs. 60,928/- per month. Hence, the recovery is in reasonable installments and it cannot be said to entail extreme financial hardship to the applicant. This quantum of recovery spread over installments from a serving employee can certainly not be considered to result in a hardship of a nature, which would outweigh, the equitable balance of the employer's right to recover.



17.Keeping the above in view, the present OA, being devoid of any merit is liable to be dismissed.

18.The OA is accordingly, dismissed. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (ADMN)

(SURESH KUMAR MONGA)
MEMBER (JUDL)

/ps/