

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH AT BANGALORE**

ORIGINAL APPLICATION NO.170/00030/2019

DATED THIS THE 16TH DAY OF JANUARY, 2020

**HON'BLE DR K B SURESH.....MEMBER (J)
HON'BLE SHRI C V SANKARMEMBER (A)**

Shri.Mahadeva Rao
Aged about 55 years,
Assistant/Accountant,
Doordarshan Kendra,
J.C.Nagar,
Bangalore-560 006.

...Applicant

(By Advocate Shri.N.Obalappa)

Vs.

1. The Union of India,
Represented by its Secretary,
Ministry of Information and Broadcasting
'A' Wing, Shastry Bhavan,
New Delhi-110 001.

2. The Union of India,
Represented by its Secretary,
Ministry of Personnel, Pensions &
Public Grievances, North Block,
New Delhi-110 001.

3. The Chief Executive Officer,
Prasar Bharati, II Floor,
PTI Building, Parliament Street,
New Delhi-110 001.

4. The Director General,
All India Radio, Akashvani Bhavan,
Parliament Street,
New Delhi-110 001.

5. The Director General,
Doordarshan,
Doordarshan Bhavan,
Copernicus Marg,
New Delhi-110 001.

6. The Dy. Director General (E)
All India Radio,
Rajbhavan Road,
Bengaluru-560 001.
(Zonal – Cadre Controlling Authority)

7. The Dy. Director General (E)/
Head of Office,
Doordarshan Kendra,
J.C.Nagar,
Bangalore-560 006.

8. The Head of Office,
All India Radio
Mysore.

...Respondents

(By Shri.M. V.Rao, Senior Panel Counsel)

ORDER (ORAL)

HON'BLE DR K B SURESH, MEMBER (J)

Heard. Shri.N.Obalappa, learned counsel for the applicant submits that the matter is covered by our order in OA No.1797/2018 dated 17.12.2019 which we quote:

ORDER (ORAL)

HON'BLE DR.K.B.SURESH **...MEMBER(J)**

Heard. This seems to be covered by our order in OA.No.189/2019 dated 26.11.2019, which we quote:

“Heard. The matter is covered by our order at Annexure A-10 and Annexure A-11, which we quote:

Annexure A-10

“CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

ORIGINAL APPLICATION No. 170/00407/2017

TODAY, THIS THE 17th DAY OF SEPTEMBER, 2018

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER

B.M. Jadi
Programme Executive (Retd),
House No. 31,
Veerabhareshwara Krupa, Part – I
Basava Nagara, Haliyal Road,
Dharwad, Karnataka – 580 003

... Applicant.

(By Advocate Shri N. Obalappa)

Vs.

1. The Union of India,
Represented by its Secretary,
Ministry of Information and Broadcasting
'A' Wing, Shastry Bhavan,
New Delhi – 110 001 & 4 ors.

... Respondents.

(By Advocate Shri Vishnu Bhat, Senior Panel Counsel)

ORDER

Hon'ble Shri Dinesh Sharma, Administrative Member

The case of the applicant, in brief, is as follows:

The applicant joined as Field Reporter / Family Welfare at All India Radio, Dharwad, with effect from 14.08.1986 in the pay scale of Rs.1400-2600 (4th CPC pay scale w.e.f. 1.1.1986) and the said pay scale was revised to Rs. 5000-8000 by 5th CPC with effect from 1.1.1996. Again the applicant got regular promotion to the post of Programme Executive with effect from 15.1.1999 in the pay scale of Rs. 6500-10500. The 1st respondent upgraded the said pay scale to Rs. 6500-12000 and to 7500-12000. The 5th respondent has declined to count the upgraded pay scale of Rs. 6500-200-10500 as one upgradation resulting into non-consideration of his 1st MACP and suggested recovery of DCRG amount of Rs. 9,99,975/-. The applicant continued in the same grade for more than 10 years and is entitled for 3rd MACP with effect from 1.1.2009. The 5th

respondent while processing the pension papers of the applicant found the pay fixation given to him as incorrect and recovered a sum of Rs. 11,48,855/- and his pay and grade pay of Rs. 5400/- has also been reduced to Rs. 4800/-. The applicant submitted a representation to refund the recovered amount and re-fix his pay, but no reply has been received from the respondents since 30.09.2016. The applicant has cited *State of Punjab and Others etc. vs. Rafiq Masih* (hereinafter referred to as the *White Washer case*) to support his claim about non-recoverability of sums, even if wrongly paid, after an inordinate delay of time.

2. Though the respondents have not materially differed with the facts mentioned by the applicant, they have justified the actions taken by the 4th and 5th respondents (Head Office and Pay and Accounts Officer of All India Radio, respectively) to recover the sum which, according to them, were wrongly paid to the applicant. They have quoted the decision of the Hon'ble Supreme Court in Civil Appeal No, 3500 of 2006 (*High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh*) in which the Apex court had distinguished the facts of that case from the *White Washer case* and allowed recovery of wrongly paid excess amount.

3. After going through the pleadings and hearing both the sides, the main issue to be decided in this case is whether the decision in *White Washer case* applies to the facts of this case. What is sought to be recovered in this case is admittedly to have been paid since 1996. The applicant has already retired. We quote here the relevant portion from the *White Washer case* (conditions where recovery 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.”

It is very clear that conditions No. 2 and 3 and, to some extent, 5 apply to the facts of this case.

4. Regarding the case cited by the respondents (*High Court of Punjab & Haryana vs. Jagdev Singh, Annexure R/2*), the facts in that case are vastly different from the facts of this case. There the recovery was for a revision done

in 2004 of pay scales given following a notification of 2001 and there was also an express undertaking given by the applicant therein to recover the amount.

5. The O.A is, therefore, allowed. The impugned orders at Annexures A-9, A-10, A-11, A-12 and A-16 are quashed. The respondents are directed to the issue revised orders granting him pay, pension, DCRG etc. without “correcting” what they have described as errors in Annexure A-9, within 2 months from the date of receipt of a copy of this order.

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

(DR. K.B. SURESH)
JUDICIAL MEMBER”

Annexure A-11

**“CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/000399/2018

DATED THIS THE 18TH DAY OF JANUARY, 2019

**HON’BLE DR.K.B.SURESH
HON’BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

A. Francis Royan,

...Applicant

Vs.

*1. Union of India,
Represented by Secretary,
Ministry of Information
‘A’ Wing, Sastry Bhavan,
New Delhi – 110001 & 4 ors.*

...Respondents

ORDER (ORAL)

HON’BLE DR.K.B.SURESH ...MEMBER(J)

Heard. The applicant is an LDC, whose pay was fixed wrongly by some one and had been informed that he had drawn excess pay, which is now sought to be recovered from him. On a same and similar matter as both agree, by the Ernakulam Bench in OA.No.299/2018 dated 30.07.2018, except the portion of notice, we quote from it:

“10. The applicant in this case is a retired employee now. The order of recovery is dated 23.2.2018 when she was slated to retire on 31.3.2018. The fixation, deemed erroneous, which the respondents have set out to correct, is dated as

17.12.2012 (Annexure A-1) and the recovery is declared in February, 2018. Thus two counts, viz, recovery from an employee due to retire within one year and recovery from an employee where excess payment has been made for a period in excess of five years before the order of recovery is issued, are both involved in this case. Thus it comes clearly within the ambit of the Rafiq Masih judgment. Learned counsel for the respondents emphasized the judgment of the Hon'ble Supreme Court in High Court of Punjab and Harayana & Ors. v. Jagdev Singh AIR 2016 SC 3523 to justify recovery. Jagdev Singh's judgment (Supra) has qualified the Rafiq Masih judgment by including the proviso which reads as follows:

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.

11. Learned counsel for the respondents while admitting that no undertaking per se had been extracted from the applicant in this case, drew our attention to the last line of the fixation document of Annexure A-1 which reads :

“ The fixation is subject to Audit observations, overpayments found if any will be recovered in lump sum from his salary/dues without any notice to him.”

12. It was maintained by the learned counsel that this proviso to the fixation order is tantamount to the applicant having been placed on notice. This Tribunal does not see this as a valid argument for the action initiated by the respondents. A standard clause introduced at the bottom of the fixation order does not amount to a notice.

2. In this case, the respondents would say that unlike in the other case, the one which is referred, a notice was issued and the applicant was heard on the matter. But then, that is not the soul and spirit of the Hon'ble Apex Court order. The applicant is admittedly a low level employee. Assuming that he got a salary of Rs.10/- per month. Then he will live on it. But if he had got a salary of RS.9/-, he would have adjusted his life accordingly and after 10 years if he were to be told that you have drawn one rupee more, look we are going to take from you Rs.100/-, will it not amount to burden on him and it will be an unjust burden. That is the dictum of White Washer's Judgment. It is squarely applicable in this case. Therefore, this recovery will not lie going by the Hon'ble Apex Court rulings and the recovery is hereby quashed.

3. OA allowed. No costs. The amount deposited will be released to the applicant.

-Sd/-
(C.V. SANKAR)
MEMBER(A)

-Sd/-
(DR.K.B.SURESH)
MEMBER(J) ”

But Shri S. Sugumaran, learned counsel for the respondents submits that even though by mistake some amount has been granted to the applicant, it has been corrected in 2015. It may be so, but still it is covered by White Washer's Judgment of the Hon'ble Apex Court. OA. Therefore allowed. Requisition for recovery is hereby quashed. If any amount has been recovered, it shall be returned to the applicant within 2 weeks without interest, thereafter at the rate of 15% as stipulated by the Hon'ble High Court of Karnataka.

OA allowed. No order as to costs."

2. The applicant herein is also a Group 'C' Government servant which have now been made into Group "B. But still the alleged infraction on the part of the Government took place when she was a Group 'C' employee. Therefore, the White Washer's Judgment is squarely applicable and the recovery is not allowed against her. OA allowed to this limited extent. No costs.

2. Shri.M.V.Rao, learned counsel for the respondents produces a table indicating that there is a distinction, which we quote:

OA No.170/30/2019 of Sh.D.Mahadeva Rao, Head Clerk/Assistant, Doordarshan Kendra, Bangalore.

Date	Events	Pay Scale	Remarks
10.01.1985	LDC	3050-4590	
27.12.1989	1 st promotion as UDC	4000-6000	
10.01.2009	2 nd ACP	PB-2/GP Rs.4200	Withdrawn
01.09.2008	2nd MACP	PB 1/GP Rs.2800	
13.09.2010	3 rd MACP	PB-2/ GP Rs.4200	Withdrawn
27.11.2014	2 nd promotion as HC/Asst. (Group B)	PB-2/ GP Rs.4200	
10.01.2015	3rd MACP	PB-2/GP Rs.4600	

Hon'ble Supreme Court prescribed conditions for non-recovery from employees:

Conditions/Situations	Actual	Remarks
Recovery from employees of Gr.C & Gr.D	Not Applicable Applicant is a Group B employee	
Recovery from retired employees/due to retire within one year	Not Applicable Applicant is in service and also not retiring within next one year	

<i>Recovery when excess payment made for a period of excess of 5 years</i>	Not Applicable <i>Less than 5 years. Paid on 6.2.2012 (A-7) Rectified on 28.9.2015 (A-10)</i>	
<i>Recovery when employee has been wrongly discharged duties of a higher post and has been paid accordingly</i>	Not Applicable	

2. In this case, vide Annexure-A3, the applicant had been given the 2nd ACP with GP Rs.4200 w.e.f 10.1.2009 vide order dated 22.1.2009. Vide Annexure-A7, the respondents have corrected this in a retrospective manner and given the 2nd ACP w.e.f. 1.9.2008 with GP Rs.2800. This is clearly not acceptable as has been ordered in a similar case by the Chandigarh Bench vide its order dated 23.2.2012 in OA.No.1003/PB/2011 and also by this Tribunal in OA.No.2/2017 vide its order dtd.1.8.2017. Therefore, we have no hesitation in holding that Annexure-A7 is to be quashed on similar lines since the grant of 3rd MACP in the same order w.e.f. 13.9.2010 is also wrong, which is also admitted by the applicant. Annexure-A7 is therefore quashed and the applicant is entitled for the benefit of 2nd MACP as given at Annexure-A3. The applicant would however cite Annexure-A5 and Annexure-A6 based on which he claims that he should have been given the Grade Pay of Rs.4600 earlier i.e. with effect from 2009 and therefore he should get the 3rd MACP w.e.f.10.1.2015 with Grade Pay Rs.4800. Annexure-A5 & A6 are clearly not applicable to him as this is related to the cases where the ACP is due to the concerned persons for the period between 1.1.2006 and 31.8.2008

whereas the applicant becomes eligible for the 2nd ACP only w.e.f. 10.1.2009.

Therefore, this contention of the applicant is not acceptable.

3. The OA is allowed to the limited extent above. No costs.

(C V SANKAR)
MEMBER (A)

(DR K B SURESH)
MEMBER (J)

/rsh/

Annexures referred to by the applicant in OA No.170/00030/2019

- Annexure A1: Copy of the Order dated 27.12.1989
Annexure A2: Copy of the OM dated 09.08.1999
Annexure A3: Copy of the Statement of Pay Fixation dated 22.01.2009
Annexure A4: Copy of the OM dated 19.05.2009
Annexure A5: Copy of the OM dated 13.11.2009
Annexure A6: Copy of the FAQs on MACP by DOPT dated 09.09.2010
Annexure A7: Copy of the Statement of Pay Fixation dated 06.02.2012
Annexure A8: Copy of the Order dated 23.02.2012 in OA No.1003/PB/2001 of CAT, Chandigarh Bench
Annexure A9: Copy of the Letter dated 29.12.2014
Annexure A10: Copy of the Order dated 28.09.2015
Annexure A11: Copy of the order dated 12.08.2017 in OA No.02/2017
Annexure A12: Copy of the representation dated 15.05.2017
Annexure A13: Copy of the table showing 4th CPC Pay Scale corresponding to revised 5th CPC
Annexure A14: Copy of the Case status of SLP No.6289/2019 filed before Hon'ble Apex Court.
Annexure A15: Copy of the Revised Pay fixation statement dated 14.08.2019
Annexure A16: Copy of the Recovery Statement in OA No.1797/2018
Annexure A17: Copy of the order dated 26.11.2019 in OA No.189/2019