

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00312/2020

Thursday, this the 30th day of September, 2021

CORAM:

Hon'ble Mr. P. Madhavan, Judicial Member
Hon'ble Mr. K.V. Eapen, Administrative Member

Rajan Nair A.G., aged 63 years, S/o. Gopalan Nair (late),
(Retd. Stenographer Gr. I, Prasar Bharati, Khel Gaon,
New Delhi, Residing at : Kuzhiveli Mannil, Iravon PO,
Konni, Pathanamthitta District, Pin – 689 691. **Applicant**

(By Advocate : Ms. Sreekala T.N.)

V e r s u s

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Information and Broadcasting, A-Wing, Sastri Bhavan, New Delhi – 110 001.
2. The Director General, Doordarshan, Prasar Bharati (Broadcasting Corporation of India), 2nd Floor, PTI Building, Sansad Marg, New Delhi – 110 001.
3. Additional Director General, Central Production Centre, Doordarshan, Asiad Village Complex, New Delhi – 110 049.
4. Pay and Accounts Officer, Doordarshan, Akashwani Bhavan, Sansad Marg, New Delhi – 110 001. **Respondents**

(By Advocate : Mr. N. Anilkumar, SCGSC – Not present)

This application having been heard on 28.09.2021 through video conferencing, the Tribunal on 30.09.2021 delivered the following:

O R D E R

Hon'ble Mr. P. Madhavan, Judicial Member –

The applicant in this case has filed this OA seeking the following reliefs:

- “(i) Call for the records leading to the issuance of Annexure A1 to A4 and quash the same;
- (ii) Declare that the applicant is entitled for pension based on the last drawn basic pay;
- (iii) Direct the respondents to fix and pay the applicant's pension based on the last drawn basic pay;
- (iv) Declare that the recovery of Rs. 9,25,047/- from the gratuity is arbitrary, discriminatory and also ultra-vires the statutory provisions and the law laid down by the Hon'ble Supreme Court;
- (v) Direct the respondents to reimburse Rs. 9,25,047/- recovered from the gratuity to the applicant with an interest at the rate of 18% to be calculated with effect from 31.10.2017 till the date of full and final payment of the same;
- (vi) Award costs of and incidental to this application;
- (vii) Pass such other orders or directions as may be found just and proper in the facts and circumstances of the case.”

2. The applicant is a retired Stenographer Grade-I of Doordarshan, Prasar Bharati, drawing pay in level-8 of the pay matrix. He was issued with a pay fixation order dated 7.3.2016 by the 2nd respondent stating that his pay stands retrospectively re-fixed with effect from 1.1.2006. He produced the said order as Annexure A1. Thereafter the 3rd respondent had also issued another order for re-fixation of the pay with effect from 30.1.1985 which is produced as Annexure A2. According to the applicant these orders re-fixing his salary was done without giving him an opportunity for hearing and that too just before the retirement. Annexure A2 was issued subsequent to his retirement. According to the applicant the respondents had recovered the entire amount on both counts i.e. Rs. 9,25,047/- from the gratuity of the applicant. According to the applicant the recovery of the amount from his gratuity is completely against the ratio laid down by the Hon'ble Supreme Court in ***State of Punjab & Ors. v. Rafiq Masih (White Washer) & connected cases*** - AIR 2015 SC 696. According to the applicant no recovery can be

made from the employees belonging to class-III and also from retired employees or employees who are due to retire within one year of the order of recovery for excess payment made due to un-intentional mistake committed by the authorities and the employees who have not committed any fraud. The applicant also belongs to the the above category and the recovery is illegal and cannot be sustained.

3. This OA was filed on 06.07.2020 and notices were issued to the respondents in the MA for condonation of delay on 23.7.2020. Thereafter, after admitting the OA on 12.8.2020, several adjournments were taken by the respondents for filing reply statement in the matter. But no reply statement was filed till 20.9.2021 and this Tribunal ordered that since the respondents had not cared to file a reply statement in the matter, the Tribunal is compelled to proceed ex-parte in this case. When the matter came up for hearing on 28.9.2021 it is seen that even then no reply statement is filed by the respondents and the applicant was heard.

4. The counsel for the applicant contended that the recovery effected from the gratuity is against the principles laid down by the Hon'ble Supreme Court and also against Annexure A14 OM dated 2.3.2016 issued on the basis of the Hon'ble Supreme Court's judgment in *Rafiq Masih*'s case (supra). The applicant is pressing only the 3rd relief i.e. recovery of an amount of Rs. 9,25,047/- from his gratuity. He also requested the Tribunal that he may be permitted to reserve his right as regards the relief sought as items Nos. (i), (ii), (iii) & (v) as left open. He also produced a copy of the order passed by this Tribunal in a similar case as OA No. 180/530/2016 wherein recovery

was stayed on the basis of the decision of the Hon'ble Supreme Court in *Rafiq Masih*'s case (supra).

5. We have gone through the pleadings of the applicant and find that the entire amount which was drawn due to incorrect fixation of pay with effect from 1985 onwards was calculated and recovered from the gratuity of the applicant. The amount of Rs. 9,25,047/- was recovered even without giving notice to the applicant. The applicant retired from service in the year 31.1.2017 and it appears that his pay had been re-fixed with effect from 1.1.2006 and thereafter from 1985 onwards. There is no reason to believe that the applicant has committed any fraud or any irregularity in this case. The Hon'ble Supreme Court in *Rafiq Masih*'s case (supra) has laid down the following principles regarding recovery of amounts retrospectively:

"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."*

6. The applicant in this case retired on 31.10.2017 and the re-fixation was done as per Annexure A1 order dated 7.3.2016 only when he has less

than one year service to retire. Another re-fixation is ordered with effect from 30.1.1985 as per Annexure A2 order dated 17.1.2018 after his retirement. The Hon'ble Supreme Court has categorically stated in its judgment that recovery from retired employees or employees who are due to retire within one year of the order of recovery, recovery is not permissible. The recovery sought was from 1985 and 2006 onwards. Hence, we find that the recovery of an amount of Rs. 9,25,047/- from the gratuity is illegal and against the order passed by the Hon'ble Supreme Court in *Rafiq Masih*'s case (supra) and also against the OM dated 2nd March, 2016 issued by the DoP&T in compliance with the judgment passed in *Rafiq Masih*'s case (supra).

7. Hence, we hereby allow the OA. The respondents are directed to release the amount of Rs. 9,25,047/- recovered from the gratuity of the applicant without any delay. We are not entering into any finding as regards the relief Nos. (i), (ii), (iii) & (v) sought in the OA. These reliefs are left open for the applicant to agitate in appropriate proceedings. No order as to costs.

**(K.V. EAPEN)
ADMINISTRATIVE MEMBER**

**(P. MADHAVAN)
JUDICIAL MEMBER**

“SA”

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APPLICANTS' ANNEXURES

Annexure A1 - True copy of Pay Fixation order bearing No. CPC-1(5)/Min. Pay/2015-16/A/6988, dated 7.3.2016 issued by the 2nd respondent.

Annexure A2 - True copy of Pay Fixation order bearing No. CPC-8(98)/RGN./95/A dated 17.1.2018, issued by the 3rd respondent.

Annexure A3 - True copy of Form 8 dated 22.1.2018 issued by the 3rd respondent.

Annexure A4 - True copy of the order bearing No. CPC-8(98)/RGN/1995/A/3333 dated 25/30.10.2018, issued by the Sr. Administrative Officer.

Annexure A5 - True copy of the no dues certificate dated 28.7.2017 by 3rd respondent.

Annexure A6 - True copy of the order bearing NO. CPC-8(98)/RGN./95/A/2477, dated 10.10.2017 issued by the Sr. Administrative Officer.

Annexure A7 - True copy of the salary slip pertaining to the month of August, 2017.

Annexure A8 - True copy of the representation dated 15.12.2017 submitted to the 4th respondent.

Annexure A9 - True copy of the representation dated 28.12.2017, submitted to the 2nd respondent.

Annexure A10 - True copy of the communication from the 4th respondent, bearing file No. 172, dated 1.2.2018.

Annexure A11 - True copy of the pension calculation sheet issued by the 3rd respondent.

Annexure A12 - True copy of the said representation, dated 5.3.2018 submitted to the 3rd respondent.

Annexure A13 - True copy of the order in OA 2585/2019 dated 16.9.2019 of the Hon'ble Central Administrative Tribunal, Principal Bench.

Annexure A14 - True copy of the Office Memorandum bearing F. No. 18/03/2015-Estt.(Pay-I), dated 2.3.2016 issued by the Department of Personnel & Training.

RESPONDENTS' ANNEXURES

Nil

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