

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Original Application No. 418/2010

**ORDER RESERVERD ON 10.02.2017
ORDER PRONOUNCED ON 05.05.2017**

**HON'BLE MR. JUSTICE V.C.GUPTA MEMBER (J)
HON'BLE MR. A. K. UPADHAYAY, MEMBER (A)**

Sudhir Sawant, aged about 51 years,
S/o Shri S. D. Sawant,
Resident of -87 F, Samar Vihar Colony,
Alambagh, Lucknow.

Applicant
By Advocate: Sri Praveen Kumar.

VERSUS

1. Union of India through
The Secretary,
Ministry of labour and Employment,
New Delhi.
2. The Central Government Industrial Tribunal
Cum Labour Court through its Presiding Officer,
Kendriya Bawan,
8th Floor , Sector -H, Alignaj,
Lucknow

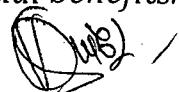
Respondents
By Advocate: Sri Alok Trivedi.

ORDER

By Hon'ble Mr. Justice V. C. Gupta, Member (J)

This petition has been filed under Section 19 of the Administrative Tribunal Act, 1985 by applicant claiming following reliefs:

"i) to quash the order dated 16.9.2010 recovery order dated 22.11.2010 contained as Annexure No.A-1 and A-2 to this O.A. with all consequential benefits.



- ii) *to pay the applicant salary and other benefits in strict compliance of order passed by this Hon'ble Tribunal in O.A. No. 399 of 2005 read with order dated 23.6.2009 passed by the respondent No. 2.*
- iii) *to release the arrears of pay as a result of fixation of pay made in accordance with order dated 23.6.2009 after adding the increments earned by the applicant year wise along with the interest @ 12% P.A.*
- iv) *to re-fix the pay of the applicant while granting ACP/MACP scheme after taking into account of the order dated 23.6.2009 and release the arrears of pay as a result thereof with interest @ 12% P.A.*
- v) *to release the salary withheld from June 2010 onwards after adding increments to it earned in the year 2009 and 2010.*
- vi) *Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed."*

2. The brief facts giving rise to this petition are that the applicant is working as Personal Assistant Grade-I in Central Government Industrial Tribunal (CGIT). The applicant was initially appointed as Steno in UP State Mineral Development Corporation (UP SMDC). The Corporation is a state owned Corporation of State of U.P. He was appointed on 1st of July 1980 as Steno and promoted later on as Personal Assistant Grade-I in December, 1982. The applicant was posted on deputation to CGIT against the post of Personal Assistant in Grade of Rs. 5000-8000 with consent of his parent department and joined on 31.8.1999. The aforesaid grade was revised to 5500-9000. The aforesaid scale was granted to the applicant w.e.f 19th February, 2001 because he opted central scale. While working on deputation, he opted for absorption in CGIT. In pursuance of his request, the parent department UP SMDC, issued no objection certificate. The competent authority after getting approval from concern ministry absorbed the applicant w.e.f. 1.4.2000. After absorption, when the pay of the applicant was not properly fixed he asked for proper fixation of his pay scale as he was granted lesser pay in compression to which he was getting in UPSMDC. The applicant claims that his past services in the parent department ought to have been included for fixation of pay in CGIT. The pay of the applicant was re-fixed, but by this time also, his previous services were ignored. The applicant made representation ventilating his grievances. When his Pay was not correctly fixed in spite of his representation, he filed O.A. 52/2005 before this tribunal. The Tribunal by its order dated 7th March, 2005 disposed of the case with direction to decide the representation of the applicant dated 16.4.2004 within a period of two months. In pursuance of the aforesaid order, the order dated 2.8.2005 was passed. Aggrieved by the aforesaid order dated 2.8.2005, the applicant filed another O.A. 399/2005 before this Tribunal. The aforesaid O.A. 399/2005 was decided on 18.3.2009. When order was not complied the applicant filed contempt petition alleging non-



compliance of order dated 18.3.2009. During the pendency of contempt petition the respondents in compliance of the order dated 18.3.2009 passed an order dated 23.06.2009 by which the pay of the applicant was re-fixed. The contempt petition was disposed of as the respondents started to make payment of salary to the applicant in terms of the order dated 23.6.2009. While dismissing the contempt petition, liberty was granted to the applicant that if he is dissatisfied with order dated 23.6.2009, he may challenge the same. However, the respondents with held payment of arrears of salary as a result of fixation of pay vide order dated 23.6.2009.

3. After taking note of the fact that the applicant was already retrenched from UPSMDC before the date of absorption and had lost his lien there, the respondent No. 2 issued a show cause notice to applicant on 16.9.2009 as to why salary may not be fixed at the entry point in pay scale of Rs. 5500-9000 treating the applicant as fresh recruit. The copy of show cause notice is annexed as Annexure -A11 to the O.A. which reads as under:-

The undersigned is to refer letter No. MDC /CGM /(T) /PF/Admn/8/836 dated 02/05.2006(Copy enclosed) of your parent department i.e. U.P. State Mineral Development Corporation Limited, Lucknow whereby it has been disclosed as under :-

(i) The services of Shri Sudhir Savant in UPSMDC, Lucknow were retrenched w.e.f. 31.1.2000 and his lien came to an end w.e.f. 31.1.2000.

(ii) Consequent to retrenchment of Shri Sudhir Savant, he was paid Notice pay, 151 days' Earned Leave Encashment, Pending Salary and Gratuity.

Since, your services were retrenched & your lien in your parent department came to an end w.e.f. 31.01.2000, before your absorption in this department on 01.04.2000, then why your pay should not be fixed at minimum of entry point in the pay scale of Rs. 5500-175-9000, treating you a fresh recruit w.e.f. 01.02.2000?

2. You are required to submit your written submission, if any, in this respect within four weeks from receipt of this memorandum, failing which it shall be presumed that you

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have nothing to say in this regard and your pay shall be fixed at the minimum at entry point treating you a fresh recruit w.e.f. 01.02.2000 in the pay scale of Rs. 5500-175-9000/-

*(N. K. Purohit)
PRESIDING OFFICER & HOD*

*Shri Sudhir Savant
Personal Assistant
CGIT-cum-Labour Court
Lucknow"*

4. The applicant submitted his reply in response to the aforesaid show cause notice on 6.11.2009. The applicant pleaded that even if he is treated to be a fresh appointee his pay cannot be reduced which he was getting in UP SMDC in view of the office memorandum issued by the DOP&T, having O.M. No. 4/7/92-Estt(Pay-1), dated 4th November, 1993. The applicant after relying upon the judgment delivered in Writ Petition No. 338(S/B) of 1997, Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti Vs. State of U.P., stated that even the retrenched employee would be entitled for absorption. The respondents by passing an order dated 16.9.2010 fixed the pay of applicant treating him as new appointee in CGIT w.e.f. 1.4.2000. It has been stated by applicant that by re-fixation of pay on 16.9.2010, the respondent are not only withdrawing from the stand taken by them while passing the order dated 23.6.2009, but also taken back the benefit of judgment passed in O.A. No. 399/2005. The order of re-fixation dated 16.9.2010 is not sustainable at all in view of the order dated 23.6.2009 and also contrary to the order passed in O.A. No. 399 of 2005. For ready reference, the order passed in O.A. No. 399/2005 is reproduced herein below:-

"Heard the learned counsel appearing for the applicant. None appeared for the respondents. As the matter is of the year 2005, we proceed to dispose of the O.A. in terms of Rule 16 of the Central Administrative Tribunal(Procedure) Rules, 1987 in the absence of the learned counsel for the respondents.

2. At the outset we find that the directions issued by the Tribunal in O.A. 52/2005 on 7.3.2005 clearly ruled pay fixation of the applicant in PA grade as per letter dated 7.7.2004 which stipulates that his pay fixation has to be done in the pre-revised deputation pay scale at the time of joining of applicant CGIT-cum-Labour Court and thereafter fixation of pay in the revised pay scale in an equivalent and corresponding pay scale as per the formula adopted by the Government of India. From the perusal of any such consideration as per letter dated 7.7.2004, rather the pay fixation has been done retrospectively in a manner that an outstanding amount of Rs. 2,37,333/- has been recovered from the individuals. However, this has been stayed by the Tribunal.

3. In the above view of the matter, we do not approve of the pay fixation of applicant, which is oblivion of the letter dated 7.7.2004 and also not in true letter and spirit in compliance of the order of

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the Tribunal. Accordingly, O.A. stands partly allowed. Impugned order is set aside. Matter is remitted to the respondents to consider pay fixation of applicant strictly in accordance with letter dated 7.7.2004 by passing a detailed and speaking order, within a period of three months from the date of receipt of a copy of this order. Till then the order staying the recovery will hold good. No Costs."

5. As the impugned order dated 16.9.2010 is under challenge, hence, it will be appropriate to reproduce the same as it contain the entire facts of the case along with the pith and substance of the matter:-

OFFICE OF THE PRESIDIGN OFFICER

*Central Government Industrial, Tribunal -Cum-Labour
Court*

*Kendriya Bhawan, 8th Floor, hall No.1 Aliganj, Sector-H
Lucknow*

F. No. CGIT/LKO/70/(9) 99/(Part-II) Dated 16th September, 2016

OFFICE ORDER

In pursuance to the direction of Internal Audit Wing, Ministry of labour & Employment, New Delhi, regarding non counting of previous service and pay of Shri Sudhir Savant, Personal Assistant, CGIT-cum-Labour Court, Lucknow in his parent department i.e. UP State Mineral Development Corporation, Lucknow, for grant of any benefit to him in this office consequent to disclosure of the fact of Shri Savant's retrenchment in his parent department and payment of terminal benefits to him and in compliance of the principles of natural justice, Shri Savant, PA had been afforded an opportunity vide this office' memo dated 16.9.2009 to explain as to why his pay should not be fixed at minimum of entry point in the pay scale of R. 5500-175-9000, treating him afresh recruit w.e.f. 1.2.2000? Shri Savant vide his reply dated 6.11.2009 admitted that his services had been terminated w.e.f 31.1.2000 and he received all his terminal benefits including Gratuity from his parent Department consequent to retrenchment of his services before his absorption in this department on 01.04.2000.

The matter of pay fixation of Shri Sudhir Savant, PA, in light of Internal Audit objection, this notice memo dated 16.9.2009 and reply of Shri Savant Dated 6.11.2009 was referred to the Ministry of labour & Employment, New Delhi for Clarification/guideline.

2. *The brief case history from the appointment of Shri Sudhir Savant, PA till date in chronological order of events, is given hereunder:*

(i) *The Recruitment Rules in respect of establishment of CGIT-cum-Labour Courts provides that the post of Personal Assistant shall be filled by direct recruitment failing which by deputation.*

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(ii) Accordingly Shri Sudhir Savant, PA Grade-I of UP State Mineral Development Corporation Limited, Lucknow (A UP State owned undertaking) was appointed on deputation basis for a period of 03 years from the date of his joining vide o/o dated 31.8.99 on the post of P.A. in the scale of Rs. 5000-150-8000 on usual terms and conditions as applicable to the deputations in Government Of India. Shri Savant joined this office on 01.9.1999(F/N)

(iii) Thereafter, Shri Sudhir Savant opted to draw his pay and allowances in the pay scale, applicable to the post of PA in this CGIT, i.e. Rs. 5000-150-8000 and waived the right of deputation allowance: accordingly his pay was fixed vide this o/o dated 14.9.99. The said fixation was in force with effect from his appointment in this Tribunal i.e. 1.9.1999.

(iv) Shri Sudhir Savant was absorbed in this office at his own request vide office order dated 30.3.2000 against the post of Personal Assistant w.e.f 1.4.2000 in the pay scale of Rs. 5000-150-8000.

(v) Consequent to revision of pay scale of Pas working in the CGIT-cum-Labour Courts from 5000-150-8000 to Rs. 5500-175-9000 w.e.f 1.1.1996, the pay of Shri Sudhri Savant was fixed in the pay scale of Rs. 5500-175-9000 vide o/o dated 16.5.2001.

(vi) The arrear bills, consequent to fixation dated 16.5.2001, were objected by the Pay and Accounts Officer, PAO(MS), Ministry of Labuor, New Delhi.

(vii) The Internal Audit videPara 10 of its report raised certain objection and suggested that the case should be referred to the DoP&T, New Delhi along with the necessary documents.

(viii) In pursuance to Audit Para, the matter was referred to the DoPT, N. Delhi, which advised to examine the issue in terms of existing instructions/rules and the point of doubt/clarification may be elaborated. Accordingly, pay of Shri Sudhir Savant was fixed vide office order dated 6.2.2003. Shri Sudhir Savant made representation dated 13.5.2003 against the said order, accordingly the matter was again referred to the DoPT, N. Delhi through M/o Labour, N. Delhi Ministry of Labour vide its letter dated 7.7.2004, issued following clarifications on the issue of pay fixation of Shri Sudhir Savant, PA of this Tribunal:

- a. Fixing his pay in the pre-revised deputation post's pay scale at the time of his joining the CGIT-cum-Labour Court on deputation at a corresponding stage;
- b. This will have to be followed up by fixing his pay in revised pay scale of PA at the equivalent and

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corresponding stage as per the formula approved by Govt. of India for fixation of pay as per 5th Central Pay Commission scales.

(ix) On receipt of above mentioned clarification, this office fixed the pay of Shri Sudhri Savant, tentatively and forwarded the same to the Internal Audit Organization, MoI, N Delhi w.r.t. their Audit para 10 for their concurrence. Internal Audit returned the same with direction that the matter be referred to the DoPT, N. Delhi.

(x) In the mean the Shri Sudhir Savant filed an O.A. No. 52/2005 before Hon'ble CAT, Lucknow Bench, Lucknow regarding fixation of his pay Hon'ble CAT, Lucknow Bench, Lucknow vide their order dated 7.3.2005 directed the respondents as under:

"The applicant by this O.A. seeks for direction to Respondent No. 2 for fixing the pay of the applicant correctly with effect from his date of appointment in CGIT on the post of Personal Assistant in grade of Rs. 5500-9000/- in terms of the order dated 7.7.2004. A representation in this regard ha already been moved ion 16.4.2004. The respondents are directed to decide the representation of the applicant by a reasoned and speaking order within a period of two months and communicate the orders thereon to the applicant."

(xi) In compliance of Hon'ble CAT, Lucknow Bench, Lucknow's order dated 7.3.2005, in O.A. No. 52/2005, the pay of Shri Sudhir Savant was fixed, with concurrence of DoP&T, New Delhi, vide office order 2.8.2005.

(xii) Aggrieved from order dated 2.8.2005, Shri Sudhir Savant filed an O.A. No. 399/2005 before Hon'ble CAT, Lucknow Bench, Lucknow which stayed this office order dated 2.8.2005 to the extent of recovery only.

(xiii) Further, in compliance of Audit Para 10, verification of services of Shri Sudhir Savant was made from his parent department and the following material information was received vide their letter dated 2.5.2006:

(a) The services of Shri Sudhir Savant in his parent department were retrenched w.e.f 31.1.2000 and his lien came to an end w.e.f. 31.1.2000.

(b) Consequent to retrenchment of Shri Savant, he was paid Notice pay, 151 days 'Earned Leave Encashment, Pending Salary and Gratuity.

(xiv) On revelation of above mentioned facts, disciplinary proceedings have been initiated against Shri Sudhir Savant, PA in terms of Government of India, Deptt. Of Personnel & Training OM No. 11012/7/91-Estt. (A) Dated 19th May, 1993 under Rule 14 of CCS (CCA) Rules, 1965 for alleged

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misconduct of concealment of relevant facts at the time of his absorption in this Tribunal on 1.4.2000.

(xv) *Hon'ble CAT, Lucknow vide its order dated 18.3.2009 disposed of O.A. No. 399/2005 with following directions:*

"We do not approve of the pay fixation of applicant, which is oblivion of the letter dated 7.7.2004 and also not in true letter and spirit in compliance of the order of the Tribunal. Accordingly, O.A. stands partly allowed impugned order is set aside. Matter is remitted to the respondents to reconsider pay fixation of applicant strictly in accordance with letter dated 7.7.2004 by passing a detailed and speaking order within a period of three months from the date of receipt of a copy of this order."

It is pertinent to mention that the fact of retrenchment of services of Shri Sudhir Savant in his parent department w.e.f 31.1.2000 and end of his lien w.e.f. 31.1.2000; and receipt of consequential benefits including Notice pay, 151 days Earned Leave Encashment, Pending Salary and Gratuity were not part of pleadings before Hon'ble CAT, Lucknow in O.A. No. 399/2005.

(xvi) *In compliance of Hon'ble CAT, Lucknow Bench, Lucknow bench, Lucknow's order dated 18.3.2009, in O.A. No. 399/2005, the pay of Sudhir Savant was fixed vide office order dated 23.6.2009 and the same was forwarded to the PAO(Ms), Ministry of Labour & Employment N. Delhi for verification/ authentication as per para -05 of the pay fixation order dated 23.6.2009 and also for the reason that it contained benefits of 6th CPC; which was further forwarded to the Internal Audit Wing, MoL&E, N, Delhi by the PAO (Ms).*

(xviii) *The Internal Audit Wing MoL&E, New Delhi made following observations over the pay fixation order dated 23.6.2009 vide their letters dated 7.10.2009 and 10.11.2009 which reflects as under:*

(a) *Consequent to the retrenchment of services of Shri Savant in this parent department and receipt of terminal benefits, his previous service, pay etc. in his Deptt. is not required to be counted for extending any benefits to him in the CGIT, Lucknow.*

(b) *That the benefits of sixth CPC may be kept pending till the outcome of the Disciplinary Proceedings against Shri Savant in terms of CCS (CCA) Rules; and*

(c) *If the benefits of Sixth CPC has already been given to Shri Savant, full amount may be recovered from him.*

3. *The fact of retrenchment of services of Shri Sudhir Savant in his parent department i.e. UPSMDC, Lucknow & end of lien w.e.f 31.1.2000 and receipt of consequential terminal benefits i.e. Notice pay, 151 day's Earned Leave Encashment, Pending Salary and*



Gratuity came to know to this office vide UPSMDC, Lucknow letter dated 2.5.2006 much after issuance of guidelines by Ministry of Labour vide their letter dated 7.7.2004 which was base of pay fixation order dated 23.6.2009.

However, in the interest of principles of natural justice, Shri Sudhir Savant, PA was asked vide this office'memo dated 16.9.2009 to explain his position as to why his pay should not be fixed at minimum of entry point in the pay scale of Rs. 5500-175-9000, treating him a fresh recruit w.e.f. 1.2.2000? consequent to retrenchment of his services & end of lien in his parent department w.e.f 31.1.2000 and receipt of all terminal benefits, before his absorption in this department on 1.4.2000.

4. Shri Sudhir Savant submitted his rely dated 6.11.2009 to the above referred memo , wherein he admitted that the information regarding his retrenchment w.e.f 31.1.2000 was made available to him by his parent department prior to his absorption and also consequent upon retrenchment he received benefits of notice pay, Leave Encashment, Pending Salary, Gratuity etc. vide UPSMDC's letter dated 10.3.2000. However his said reply is irrelevant in view of memo dated 16.9. 2009, as in the said memo he was required to explain his position as to why his pay should not be fixed at minimum of entry point in the pay scale of Rs. 5500-9000, treating him a fresh recruit w.e.f 1.2.2000,consequent to his retrenchment in his parent department & end of his lien w.e.f 31.1.2000 and also receipt of consequential terminal benefits including Notice Pay, Gratuity, 151days' Earned Leave Encashment etc. which is an established fact whereas his reply prevails around reiteration of the submission that the informed the then Presiding Officer (not the office) about his retrenchment and he issued order of his absorption after considering all the facts and circumstances of the case, which is disputed/ is point of inquiry and the same is being taken up in the Disciplinary proceeding under Rule 14 of CCS(CCA) Rules, 1965.

The reply of Shri Savant was not accepted on the ground that the memo dated 16.9.2009 which was regarding why he should not be treated as fresh recruit whereas his reply was silent on this point.

Keeping in view the seriousness of matter, Audit objections/observations and submissions of Shri Sudhir Savant, the matter was forwarded to the Ministry of Labour and Employment, New Delhi for clarification/ guideline vide this officer's letter dated 11.2.2010 & subsequent letters dated 2.7.2010 and 09.2010.

On above, the Ministry vide their letter dated 6.9.2010, in consultation with the Nodal Ministry, on the subject matter i.e. Department of Personal and Training (DoPT), in light of fixation order dated 23.6.2009 and observation made thereon by Internal Audit wing, has issued following directions/guidelines:



(i) Since the services of Sh. Savant had been retrenched in his parent department and he received all terminal benefits including gratuity before absorption i.e. CGIT, Lucknow, his services be treated as Fresh Appointee in CGIT, Lucknow, his services be treated as Fresh appointment in CGIT, Lucknow on the date of absorption. Thus, he may be placed at the minimum of the pay scale of post of PA on the date of absorption in CGIT, Lucknow.

(ii) Shri. Sudhir Savant be paid monthly emoluments at the rates he was drawing before issuance of pay fixation order dated 22.9.2008 without giving the benefits of 6th Central Pay Commission.

Thus, in view of facts given above and guide lines issued by the Ministry of Labour & Employment, New Delhi vide their letter dated 06.09.2010, the pay of Shri Sudhir Savant, Personal Assistant in this Tribunal is fixed as under:

1.	Basic pay in the pre-revised scale of Rs. 1940-2900 as on 31.8.1999 as per LPC dated 6.9.99	Rs. 2750/-
2.	<p>On fixing his pay in revised pay scale of PA i.e. 5500-175-9000 as per Illustration-I of the Annexure of Gol, DoPT's O.M. No. 12/188-Estt.(Pay-1) dated 7 August, 1989 (order No. 28 under FR 22).</p> <p>Basic Pay in PSU : Rs. 2750/- DA : Rs. 4675/- ADA : Rs. 1007/- Interim Relief : Rs. 650/- Total : Rs. 9082/- Pay in the Central government</p> <p>Basic Pay : Rs. 5500 Rs. 6550 Rs. 6725 DA @37% : Rs. 2035 Rs. 2424 Rs. 2488 Total : Rs. 7535 Rs. 8974 Rs. 9213</p> <p>So pay will be fixed at Rs. 6550/- on his appointment in the Central Government on deputation basis on 1.9.1999 in the pay scale of Rs. 5500-175-9000.</p>	
3.	Next date of increment will be 1.9.2000 @ Rs. 175/-	

Thereafter, in view of retrenchment of Services of Shri Sudhir Savant & end of his lien in his parent department w.e.f. 31.1.2000 and receipt of all terminal benefits, internal audit wing's observations and guidelines issued by the Ministry of Labour & Employment, New Delhi vide their letter dated 6.9.2010, the status of Shri Sudhir Savant, PA in this CGIT-cum-Labour Court, Lucknow becomes that of a Fresh appointee w.e.f the date of absorption i.e. 1.4.2000. Accordingly, the pay of Shri Sudhir Savant, PA, CGIT-cum-Labour Court, Lucknow as

1.	Pay fixed in PA scale in CGIT i.e. Rs. 5500-175-9000 as on 01.4.2000	Rs. 5500/-
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(Signature)

	<i>treating him as Fresh Appointee w.e.f 1.4.2000</i>	
2.	<i>Date of next increment is on 1.4.2001 @ Rs. 175/-</i>	
3.	<i>So the pay as on 1.4.2001 comes to</i>	<i>Rs. 5675/-</i>
	<i>As on 1.4.2002 comes to</i>	<i>Rs. 5850/-</i>
	<i>As on 1.4.2003 comes to</i>	<i>Rs. 6025/-</i>
	<i>As on 1.4.2004 comes to</i>	<i>Rs. 6200/-</i>
	<i>As on 1.4.2005 comes to</i>	<i>Rs. 6375/-</i>
	<i>As on 1.5.2006 comes to</i>	<i>Rs. 6550/-</i>
	<i>As on 1.4.2007 comes to</i>	<i>Rs. 6725/-</i>
	<i>As on 1.4.2008 comes to</i>	<i>Rs. 6900/-</i>
	<i>As on 1.4.2009 comes to</i>	<i>Rs. 7075/-</i>
	<i>As on 1.4.2010 comes to</i>	<i>Rs. 7250/-</i>

7. *Excess amount if any, paid to the incumbent shall be recovered w.e.f the salary of the commencing month in equal instalments as per Rules.*

8. *The benefit of 6th CPC shall be granted to the official subject to the final outcome of disciplinary proceedings pending against him under Rule 14 of CCS (CCA) Rules 1965.*

9. *The above fixation is subject to Audit check.*

(DR. Manju Nigam)
Presiding officer & Head of the Department
CGIT-CUM-LABOUR COURT LUCKNOW"

6. Supporting the impugned order the Reply has been filed, wherein, the respondents stated that the applicant was absorbed on his own request in CGIT, but the matter was scanned on the basis of audit objection. In that process, it was came to notice of respondent that the applicant was already retrenched w.e.f 31.1.2000. As such he was not entitled to be absorbed as he has lost his lien in UPSMDC. The fact that he is a retrenched employee and has already received the benefits after retrenchment has not been disclosed. However, in compliance of para 10 of Audit report, verification of the service of the applicant from his parent department was made and it was found that the applicant was retrenched w.e.f 30.1.2000 from his parent department. His lien comes to an end w.e.f 31.1.2000. The applicant consequently was paid notice pay of 151 days, leave encashment, pending salary and gratuity. Knowing the fact of his retrenchment and the fact that he has received all the terminal benefit including GPF, gratuity EL encashment etc prior to his absorption, the disciplinary proceedings were initiated against the applicant under Rule 14 of CCS (CCA) Rules 1965 for alleged misconduct for concealment of material fact.

7. His pay was fixed from time to time under the orders of the Tribunal. When his pay was fixed as per order dated 23.6.2009, the same was sent to Pay and Accounts office, Ministry of Labour and Employment, New Delhi, for verification on 7.7.2009. The audit objection communicated vide letter dated 7.10.2009 and 10.11.2009 and reply to show cause of the applicant vide letter dated 6.11.2009

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were forwarded to the Ministry of Labour and Employment for clarification/guidelines vide office letter dated 10th February 2010 and subsequent letter dated 2.7.2010 and 9.8.2010. Thereafter, guidelines were issued to the respondents vide letter dated 6.9.2010 which were also incorporated in the impugned order dated 16.9.2010.

8. In pursuance of direction contained in letter dated 6.9.2010, a fresh order of pay fixation was issued by office memorandum dated 16.9.2010 which is impugned in the O.A. The applicant, thus as per fixation dated 16.9.2010 is getting salary. The applicant for the purpose of fixation of pay was treated as a fresh appointee in CGIT so pay fixed on the basis of order of absorption was reviewed and consequential order to recover the excess payment from the applicant was rightly passed.

9. Rejoinder affidavit has been filed where the earlier pleadings were reiterated.

10. During the pendency of this O.A. an amendment application was moved by challenging the recovery order dated 22.11.2010 passed by the respondents whereby the applicant was directed to return the amount of Rs. 530773/- within a week failing which recovery may be made from his pay on monthly basis. The same was allowed.

11. Against amended petition, counter reply was also filed by the respondents supporting his earlier stand stating therein that recovery of the amount can legally be made. It was further contended that a retrenched employee cannot claim his absorption. The applicant is subjected to an inquiry; hence the order impugned need not be interfered.

12. We have heard the learned counsel for the parties and also perused the record of the case and written arguments submitted by the counsel for the parties.

13. The undisputed fact of this case are that the applicant was an employee of UP SMDC and applied for deputation in CGIT and was allowed to join as deputationist on 31.08.1999.

14. The applicant Sudhir Sawant was working on the post of Personal Assistant in UP SMDC and also deputed on the similar post in CGIT. During the continuous of his deputation, the applicant was retrenched w.e.f 31.1.2000 from his parent department, UP SMDC and his lien comes to an end w.e.f 31.1.2000.

15. In pursuance of his retrenchment, the applicant was paid notice pay of 151 days, leave encashment, pending salary and gratuity etc. After knowing the fact of retrenchment by office of CGIT, a disciplinary proceeding was initiated wherein the charges are that the applicant has wilfully concealed the fact of his retrenchment and processed his case for absorption in CGIT.

16. That the applicant has filed O.A. No. 399 of 2005 for fixing his pay in terms of letter dated 7th April 2004 which is based on order of absorption.

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17. That in pursuance of the order passed in O.A. No. 399 of 2005 , the pay of the applicant was fixed in terms of the order dated 7.7.2004 after counting the previous services rendered by him in UP SMDC being a regular employee of UPSMDC.

18. After fixation of pay, the applicant was served with a notice on the basis of fact of his retrenchment and loss of lien and getting the benefits of retrenchment, as to why he should not be treated as a fresh appointee and his pay should not be fixed treating him to be a fresh appointee. The applicant filed reply to it. After considering the reply, the impugned order was passed re-fixing the pay of the applicant after taking into account his retrenchment from service.

19. The applicant challenged the impugned order mainly on three grounds:

- (i) That once the order has been passed in O.A. No. 399/2005 to fix the pay of the applicant in the light of letter dated 7.7.2004 then after fixing the pay in terms of the order passed in aforesaid O.A. , the respondents has no authority to review his order depriving the benefit of the past services rendered by the applicant and fix his pay treating him as a fresh appointee.
- (ii) That if the applicant is treated to be retrenched employee even than in terms of the order passed by the Hon'ble High Court in Writ Petition No. 338(SB) 1997, the applicant would be entitled to be absorbed and as such his absorption in CGIT cannot be said to be illegal and he would be entitled not only pay protection but also the benefit of service rendered by him in his parent department.
- (iii) That even if the applicant is treated to be a fresh appointee, the recovery sought to be made in consequences of the order impugned shall not be made from the applicant in view of the judgment of the Hon'ble Apex Court in **State of Punjab Vs. Rafiq Masih, (2015) 4 SCC 334.**

20. The perusal of the record reveals that the present O.A. was finally decided by an order dated 1st of March 2016 with direction to the respondents to refund the recovered amount if any from the applicant. This order has been passed after decision in inquiry against the applicant with regard to concealment of material fact which was dropped .

21. Aggrieved by the aforesaid order of Tribunal, the respondents preferred a Writ Petition No. 20502 of 2016 which was finally disposed of by the Hon'ble High Court on 31.8.2016. The relevant portion of the judgment is necessary to be looked into and reads as under:

"We have also perused the order dated 16th September, 2010 of pay fixation and recovery order dated 22 November, 2010, which reveal that since the first respondent had been retrenched in

ABP/2

his parent department and on retrenchment he received all terminal benefits including gratuity etc. before absorption in CGIT, his services were treated as fresh appointed in CGIT on the date of his absorption therefore, he was entitled to be placed at the minimum of the pay scale of the Personal Assistant on the date of his absorption in CGIT, Lucknow, but he continued to get the same very scale which was later on detected and an order of recovery was issued to recover the amount paid to him in excess, which was determined as a sum of Rs. 5,30,773/- by means of recovery order dated 22 November, 2010. Thus the fact of both the proceeding of recovery of payment made to him in excess are altogether different without having any connection to each other. That apart, trenching upon one matter to another to some extent does not create hurdle in the way of other proceedings, on account of which we are of the view that the learned Tribunal has committed error in dropping the proceeding of the original application No. 418 of 2010 on the pretext that the articles of charges as well as the disciplinary proceedings were dropped, whereas, the matter of recovery of excess payment requires its determination on merit by the Tribunal, therefore, we hereby quash the order impugned dated 1st March 2016, passed by the Central Administrative Tribunal Lucknow Bench, Lucknow and restore the Original application to the record of the Central Administrative Tribunal Lucknow bench Lucknow for its decision on merit.

The writ petition is accordingly allowed."

22. The Hon'ble High Court set aside the order of refunding the amount to the applicant and further direct the Tribunal to decide the question of recovery of excess payment on merit.

23. The perusal of written submissions filed by the applicant as contended in para 13 and 14 reveals that if the applicant has been treated as fresh appointee after consultation with the concerned ministry and approval of Nodal Ministry i.e. DoPT, the status of applicant attains finality. It further reveals that the applicant is now admitting his status as a fresh appointee and not the appointee on the basis of his absorption as on 1.4.2000. Para 14 of the written arguments, reveals that after acknowledging his status as fresh appointee, the question requires to be considered whether the amount of excess payment can be recovered from the applicant or not?

24. In view of averments contained in para 15 of the written submissions, the applicant confines his prayer in the present case with regard to recovery of excess amount paid on account of alleged wrong fixation of pay.

25. In view of the order of the Hon'ble High Court too, the controversy squeezed. Now the matter has to be scanned keeping in view the retrenchment of applicant while he was working on deputation. Now the question remains to be decided in the matter is;



whether the applicant would be entitled to the benefit which was accrued to him on deputation without taking notice of the applicant's retrenchment?

26. In this regard, the case of the applicant is that he never misrepresented the facts as established in the inquiry proceeding. Moreover, he never gave any under taking for returning the excess amount if any found after fixation of pay by the impugned order. The applicant thus would be fully protected in terms of the guidelines framed by the Hon'ble Supreme Court in the case of Rafiq Masih (Supra).

27. It has been contended by learned counsel for applicant that the applicant is a Group C employee so recovery of such amount cannot be made particularly when the question of concealment or misrepresentation by him is not proved in the detailed enquiry. There is no role of applicant in wrong fixation. Thus, the amount cannot be recovered and as such a direction should have been issued that recovered amount be refunded to the applicant in the interest of justice.

28. The learned counsel for the respondents would submit that once the applicant acknowledged his status as a fresh appointee he has no words to say that excess amount cannot be recovered in view of the finding recorded in the departmental inquiry. In this regard, he drew the attention of this Tribunal on certain facts. The respondents placed on record a proposal made by the applicant before presiding officer CGIT for his absorption on the basis of which order was passed by the presiding officer on 30th March 2000. The note placed by applicant reveals that he did not disclose the fact that he has been retrenched on 31.1.2000 and the presiding officer without taking note of his retrenchment, passed the orders of absorption (CA-11 to the CA) which reads as under:-

NOTE SHEET

(Presented by the applicant before the Presiding Officer)

"27.3.2000

Sir,

Application for absorption in CGIT cum-Labour Court Lucknow is submitted. No objection certificate is also on record. Submitted for order.

(By applicant) Sudhir Sawant

Order By PO

"Submitted 30.3.2000

Sir,

Sir Sudhir Savant was appointed on the post of Personal Assistant on deputation for a period of 3 years by office order no. LKO/CGIT/70(9)/99 dated 31.8.1999 and he joined this office on 1.9.1999. His pay was fixed in this scale of Rs. 5000-8000.

Sri Sudhir Savant has applied seeking his absorption on the said post in the Central Government Industrial Tribunal cum Labour Court, Lucknow. The Director, Govt. Of Indian Ministry of Labour, New Delhi vide his letter No. A-12011/3/98-CLS-II dated 16th Feb. 2000, conveyed approval of the competent authority permitting

absorption of Shri Sudhir Savant on the post of Personal Assistant in CGIT-cum- Labour Court, Lucknow in the pay scale of Rs. 5000-8000. The General Manager (Admn) UP State Mineral Development Corporation Limited, the parent department of the deputationist, also informed vide his letter no.MDC/PF/2000-259 dated 27.1.2000, there being **no objection** if absorption of Shri Sudhir Savant is favourable considered.

Accordingly, Shri Sudhir Savant on his own request and also in view of the prior approval of the competent authority and there being no objection of the parent department, it is ordered that Shri Sudhir Savant be absorbed against the post of personal Assistant in the pay scale of Rs. 5000-8000, w.e.f. 1.4.2000. Order be issued and also formal taking over be ensured.

(Rudresh Kumar)

Presiding Officer/Appointing Authority
CGIT cum Labour court, Lucknow."

29. Our attention is also drawn towards the letter issued by his parent department on 2nd May 2006 in reply to the request of verification of service of the applicant wherein the department not only informed that the applicant was retrenched w.e.f 31st January 2000 and lost his lien from that date, but he has also been paid the consequential benefit of retrenchment. In support thereof, they also furnished the acknowledgment of receipt of cheque by the applicant with regard to the amount of benefit of retrenchment. The letter dated 2.5.2006 has been placed on record as annexure CA-42 which is extracted herein below:

"Sub: Verification of services of Sri Sudhir Sawant, Ex. P.A.
Grade-I of U.P. State Mineral Development Corporation
Limited.

Sir,

Please refer to our letter No.
CGIT/LKP/70(9)/99(Part-I) dated 24.4. 2006 on the above
subject.

In this connection, para wise reply to the points is
given herebelow:

1. Corporation's reply to CGIT's letter No. CIT/LKO/70(9)/99 Dated 6.9.2005 has already been given to Under Secretary, Government of U.P. Department of Industrial Development. Vide letter no. MDC/PF/181/05 1551 dated 28.10.2005 a copy of which is annexed herewith as Annexure No.1 for information.
2. Reply of para (2) need no comments from the side of UPSMDC as the referred para 10 (1) of inspection report of Internal Audit Organization, Govt. Of India is addressed to CGIT. However, if specific clarification is needed from UPSMDC same should be addressed by CGIT separately for rectification in the service book to UPSMDC.
3. Documents demanded by Shri Sudhir Sawant and as requested by you are being sent herewith as follows:

(Signature)

- (i) There is no such order as No. 188/77-5-2000-54(w) 97 dated 11.1.2000 by which the services of Shri Sudhri Sawant were retrenched. Actually, his services were retrenched vide this corporation's letter No. MDC/Sha/-2000 574 dated 31.1.2000, a copy of which is attached herewith as Annexure-2 to this letter.
- (ii) Vide this Corporation's order No. MDC/ Lekha/-2000 dated 10.3.2000 payment of pending salary and gratuity has been released to Shri Sudhir. A Copy of detailed payment sheet is attached herewith as Annexure No. 4 of this letter.
- (iii) Copy of Government order No. 183/77-5-2000-54 (W)/97TC dated 11.1.2000 issued by Secretary, Department, Govt. Of U.P. is attached herewith as Annexure No. 5 to this letter. In compliance to this Government order and as per decision taken by Board of Directors of this Corporation, Services of 245 regular and 76 consolidated employees were retrenched w.e.f 31.1.2000 which also included the name of Shri Sudhir Swawant.

There is no contradiction as such in the entry of service book and in the letter dated 24.9.99 sent by General manager (Admn) of this Corporation -balance Earned leave of Shri Sudhir Sawant. Vide letter dated 24.9.99, it has rightly been intimated that the total due Earned Leave of Shri Sawant upto 31.12.99 is 148 days. After adding 3 more days of Earned Leave for one month of January 2000, i.e. 148 + 3 = 151 days, consequent upon the retrenchment of his services, the order for encashment of 151 days of Earned leave was issued (Annexure No. 4). Regarding authenticity of letters referred from serial No. (i) to (ix) they are photocopies of original letters sent by Corporation and there does not appear to be any fabrication in these letters. There appears to be some allegation in last pay certificate dated 17.6.2000 of this Corporation as mentioned above. The language written in first para of said LPC is as follows:

Rest of the contents in the LPC are correct.

Entries made in original service book except at the bottom of page No. 3 and page No. 12 where some **white fluid** have been applied by someone in your office appears to be genuine and are made by former officers and staff of this corporation. It is Cleary mentioned here that no white fluid was applied by UPSMDC on the service book of Shri Sawant while sending it to CGIT vide Corporation's letter No. MDC/PF/181/2000-965 dated 26.8.2000, a copy of which is annexed herewith as Annexure No. 6 to this letter. Again, in this letter, it has been

(6/1962) /

reiterated that the services of Shri Sudhir Sawant ----(Not readable). In addition to above, the copies of the following documents, relevant in the referred case of shri Sudhir Sawant are also sent herewith as Annexure No. 7 and 8 to this letter;

Copy of actual retrenchment order No. MDC/Sha/Cha-2000 574 dated 31.1.2000 vide which services of Shri Sudhir Sawant were retrenched w.e.f 31.1.2000 along with details of payment made at that time (Annexure No. 7)

Copy of letter No. MDC/Sha/Cha-2000-245 dated 25.1.2000 vide which intimation was given to CGIT that after the retrenchment of Shri Sawant, his lien in the Corporation will come to end w.e.f 31.1.2000. This letter is well received in the office of CGIT(Annexure No. B).

We hope that the matter has been clarified and we feel, it would have been better if such verifications were made much earlier and not after a period of 6 years.

*Yours faithfully,
(U.S. Pandey)
Chief General Manager(Tech)*

Encl. As above."

30. Before getting the information of the aforesaid facts mentioned in letter dated 2nd of May 2006, the O.A. 399/2005 was already filed without disclosing therein the foresaid facts. The perusal of the judgment in O.A. No. 399/2005 reveals that the same was decided after invoking Rule 16 of CAT (Procedure) Rules on account of absence of pleadings and appearance of the respondents. The order further reveals that there is no whisper of fact of retrenchment of applicant and simply the relief was granted on the basis of a letter dated 7.7.2004. This indicates that pay fixation was ordered taking the earlier services of the applicant into consideration as a regular employee of UP SMDC on the date of absorption. It further reveals that the order dated 2.8.2005 which was subject matter of O.A. No. 399/25 was also passed without taking into notice the fact of retrenchment of the applicant from the service.

31. In view of the above, it is established beyond doubt that the order was passed in this O.A. No. 399/2005 without noticing of retrenchment of applicant. As such, the same was admittedly contrary to the factual matrix of the case.

32. The aforesaid fact and circumstances narrated here in above clearly reveals that the applicant was continuously pursuing the cause by filing different OAs without bring to the notice of the Tribunal that he is a retrenched employee. When this fact has been noticed by next presiding officer of CGIT, he instead of correcting the things continuing to pursue his cause treating him to be a regular employee of UP SMDC

(Signature)

ignoring his retrenchment. Though the finding has been recorded in favour of the applicant in enquiry held by the department with regard to alleged misconduct of applicant of wilful concealment of the aforesaid fact, but the fact remains undisputed that the applicant is a retrenched employee of UPSMDC w.e.f 31.1.2000 and have also lost his lien there on the same day. It is also true that whatever fixations of pay of the applicant done earlier to the impugned order were done in ignorance of the facts of retrenchment of the applicant and were done in the light of letter dated 7.7.2004 which was also issued without taking into the fact of retrenchment of the applicant. Hence, the payment of excess amount is legally recoverable from the applicant and he cannot take shelter that he was not instrumental in wrong fixation of his pay. Therefore, we are of the firm view that there is no illegality in passing the impugned order of fixing the pay of the applicant.

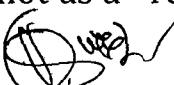
33. Now we will discuss each and every point separately;

Point No.(i)

34. The learned counsel raised this issue in the pleadings but he did not press during arguments. Under this issue the case of the applicant is that once the order has been passed in O.A. No. 399/2005 directing the respondents to fix the pay of the applicant in the light of letter dated 7.7.2004 then after fixing the pay in terms of the order passed in aforesaid O.A. , the respondents has no authority to review his order depriving the benefit of the past services rendered by the applicant and fix his pay treating him as a fresh appointee.

34.1 In the case in hand , it is the applicant who was instrumental in getting the pay fixed on the basis of wrong fact knowing it well that he was a retrenched employee but still he pursued his remedies not before the authorities but also before the court of law and when the authorities notices the wrong committed by the applicant corrected the orders by the reviewing the same. It is virtually fraud on court and applicant would not be entitled to get the advantage of his own wrong. If the applicant is allowed to retain the excess amount paid to him in the aforesaid circumstances it will amount to unjust enrichment..

34.2 The recruitment rules for employees in CGIT were placed on record. The recruitment rules reveals that post of Personal Assistant may be filled by way of direct recruitment or by taking the services of an employee on deputation or on transfer from the High Court or subordinate court of the state where the, CGIT is working. Admittedly, the applicant has not been directly recruited in accordance with the recruitment rules. He is also not appointed on transfer from High Court or any subordinate court of Sate of U.P. He was inducted in service in 1999 by way of deputation. When the applicant was continuing on deputation, he was retrenched by his parent department on 31.1.2000 and he got his all the benefit of retrenchment. He also lost his lien on 31.1.2000. Hence, his deputation virtually ceases to exist and comes to an end automatically on 31.1.2000. The order of absorption passed on 1.4.2000 was admittedly come into existence after retrenchment of applicant but treating the applicant as regular employee of UPSMDC being on deputation and not as a retrenched employee. Therefore, the



benefit of absorption on the basis therefore cannot be continued after an admitted fact of retrenchment of the applicant as stated herein above. However, for the purposes of fixation of pay that the applicant has been treated as fresh appointee. The applicant is now acknowledging his status as fresh appointee as such, he would be entitled to pay fixation treating him to be a fresh appointee and not as a regular employee on deputation. In view of the aforesaid fact the applicant would not be entitled for counting his earlier services for fixation of pay in CGIT.

34.3 Truly speaking the absorption of applicant does not fulfil the requirement of recruitment Rules. He did not qualify the process of direct recruitment as admittedly the applicant did not appear in any examination for the post as direct recruit. Hence the applicant cannot be treated to be appointed as per recruitment rules applicable to the post and his appointment in the department even as new appointee is *dehors* to the relevant rules of recruitment. However the pay benefits given to the applicant earlier were revised in the light of admitted fact to the parties. In such situation and also in the light of Judgment of Hon'ble High Court in writ petition directing the Tribunal to decide the question of recovery on merit delinking the matter with the findings of inquiry makes it abundantly clear the there is no force in point No. 1, which the applicant has rightly not presses during arguments at final stage.

34.4 The argument of the counsel for the applicant that he is entitled to pay protection in the light of OM No.4/7/92-Estt (Pay-I) issued by DoPT is also not sustainable because a fresh appointee to the service is recruited as per rules of recruitment after technical resignation from parent department only that fresh appointee will get the benefit of OM and not otherwise. Admittedly the applicant has been treated to be fresh appointee for purpose of fixing the pay and not on the basis of selection as fresh direct recruit or after technical resignation from parent department for the purpose of joining the new post in another department. Consequently, the applicant is not entitled to get the pay protection under the aforesaid OM.

34.5 Accordingly point No. 1 is decided in negative.

Point No.(ii)

35. It has been submitted by the learned counsel for the applicant that if the applicant is treated to be retrenched employee even than in terms of the order passed by the Hon'ble High Court in Writ Petition No. 338(SB) 1997, the applicant would be entitled to be absorbed and as such his absorption in CGIT cannot be said to be illegal and he would be entitled not only pay protection but also the benefit of service rendered by him in his parent department.

35.1 Contrary to it the learned Counsel for the respondents would submit that this argument is misconceived. The order of high Court could at the most be binding on State Government and not on Union of India. The absorption could be in any undertaking or corporation owned by State Government or in any other department of State



Government and not of Central Government. Therefore, the applicant cannot claim absorption in CGIT by virtue of order of High Court.

35.2 We find sufficient force in the submission of the counsel for the respondents. The perusal of order of High Court in WP No.338 (SB) 1997 leave no room to doubt that applicant being a retrenched employee of UPSMDC, a U.P. State Government owned corporation, cannot be legally absorbed in CGIT. Nor CGIT is under legal compulsion to absorb the applicant in view of order passed in WP No.338 (SB) 1997. The order passed in aforesaid WP No.338 (SB) 1997 has no binding force so far as the respondents or CGIT are concern.

35.3 Accordingly point No.(ii) is decided in negative.

Point No.(iii)

Whether the benefit of case of Rafiq Masih (supra) can be extended to the applicant or not?

36. As we are of the view as expressed herein above that there is no illegality in passing the impugned order of fixing the pay of the applicant so, in case if the benefit of excess amount paid is not directed to recover from the applicant it will amount to give the benefit of wrong fixation which has been admittedly done in ignorance of fact of retrenchment of the applicant and the applicant knowing it well never pointed out that he is a retrenched employee before present fixation.

36.1. In the aforesaid facts and circumstances the learned counsel for the respondents draw the attention of the Tribunal to para 2 of Rafiq Mashi Case which reads as under;

“2. Another essential factual component in this bunch of cases is that the respondent employees were not guilty of furnishing any incorrect information, which had led the competent authority, to commit the mistake of making a higher payment to the employee. The payment of higher dues to private respondents, in all these cases, was not on account of any misrepresentation made by them. Any participation of the private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefit to the respondent employees, is totally ruled out. It would, therefore, not be incorrect to record, that the private respondents were as innocent as their employers, in wrongful determination of their inflated emoluments. ”

and submitted that the present case is not cover in view of para 2 because the applicant cannot be an innocent person and he remain always instrumental for wrong fixation of his pay knowing it well that he is a retrenched employee.

36.2 In fact and circumstances as discussed herein above and also keeping in view that the applicant is still in service and the order of wrong fixation was withdrawn and corrected within a period of one year, the Tribunal is of the view that benefit of case of Rafiq Masih

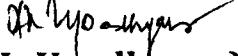
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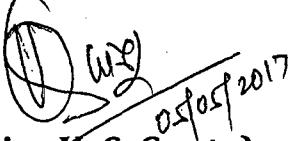
cannot be extended to the present applicant in given facts and circumstances of this peculiar case. The public money cannot be allowed to be misappropriated in such a way specially when the applicant cannot be said to be innocent in the process of fixation of wrong pay. There is an implied bond in between the employee and employer that mistake may be rectified and the benefit accrued due to mistake or otherwise to any one of them should be made good barring some extreme hardship to the employee. Hence the Tribunal is of the view that in the present case, the benefit of Rafiq Masih's case cannot be extended to the applicant.

36.3. Moreover, if in any manner the recovery is not made from the applicant, in other words, it will amount to give full benefit to the applicant of such status which he admittedly not possessing. The well settled proposition of law as held by Hon'ble Supreme Court in **Motibhai Narainbahi & anr Vs. Dhirubhai Motibhai, (1996) 2 SCC 586** is that a party cannot be allowed to do indirectly which he could do directly. In other word the party cannot be allowed to seek such relief which he is not otherwise entitled under the law.

36.4 Accordingly Point No.(iii) is also decided in negative and held that the applicant is under legal obligation to refund/return the excess amount paid to him due to wrong fixation of pay of the applicant as detailed in the impugned order.

37. Resultantly, we are of the view that this petition lacks merit and is accordingly dismissed with cost.


(A. K. Upadhyay)
Member(A)


Justice V. C. Gupta
Member (J)

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