

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 670/2015
MA 570/2015

Hon'ble Mr. P.K. Basu, Member (A)

Reserved on: 8.12.2016
Pronounced on: 16.12.2016

1. Shri Akhilesh Singh, Mali
Aged about 58 years
S/o Shri Santan Singh
R/o E-1/140, Sector-11
Rohini, Delhi-110085
2. Shri Ashok Kumar, Mali
Aged about 54 years
S/o Shri Lakhmi Chand
R/o 8/25, Manohar Nagar,
Near Life Care Hospital,
Gurgaon, Haryana
3. Shri Ram Chander, Mali
Aged about 51 years
S/o Shri Nattha Lal
R/o D-2/65, Sec-20,
Rohini, Delhi-110085
4. Shri Rajendra Pal,
Aged about 55 years
S/o Shri Jai Mal Singh
R/o Village – Mavikalan, PO - Katha
District Baghpat, UP

....Applicants

(Through Shri M.K. Bhardwaj, Advocate)

Versus

Delhi Development Authority and others through

1. The Vice Chairman
Vikas Sadan, INA
New Delhi
2. The Commissioner (P)
Vikas Sadan, INA

New Delhi

3. The Director (Horticulture) N/W
15th Floor, Vikas Minar,
DDA, New Delhi

4. The Dy. Director (Hort-5)
DC-1, Sec-10, Rohini,
Delhi-110085

5. The AAO/ Hort-5
DC-1, Sector-10, Rohini
Delhi-110085

... Respondents

(Through Ms. Sriparna Chatterjee, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

All the four applicants are serving as Mali in Delhi Development Authority (DDA). They were granted second financial upgradation under Modified Assured Career Progression Scheme (MACPS) in 2011 after completion of 20 years of service with effect from 1.09.2008 in Pay Band Rs.5200-20200 + Rs.4200/- Grade Pay. The applicants raised the issue before the respondents that they should have been placed in Pay Band Rs.9300-34800 and not Rs. 5200-20200.

2. The respondents issued a Show Cause Notice (SCN) dated 22.10.2014 intimating the applicants why recovery should not be made from their pay as their Grade Pay had been wrongly fixed at Rs.4200/- instead of Rs.2000/-. In the SCN, reference has been made of order of the Tribunal in OA 168/2012 and C.P. No.392/2014. O.A. No.168/2012 filed earlier by the applicants and few others, was disposed of vide order dated 17.01.2012

with a direction to issue SCN and order re-fixation of pay and recovery only after considering the reply to the SCN. SCN dated 22.10.2014 was issued as a consequence of aforementioned OA. The applicants filed Contempt Petition No.392/2014. This CP was closed vide order dated 22.01.2015 in view of the fact that SCN had been issued.

3. The respondents, after receiving reply of the SCN, examined the same and refixed the second MACP upgradation with effect from 1.09.2008 in Pay Band Rs.5200-20200 with Grade Pay of Rs.2000/- vide order dated 5.02.2015 with direction to recover overpayment from the salary of the applicants in suitable installment from the month of February 2015 onwards. Being aggrieved by this order, the applicants have filed this OA praying for the following reliefs:

- "(i) To quash and set aside the impugned order dated 05.02.2015 and consequential recovery and direct the respondents to grant the pay scale of Rs.9300-34800 with grade pay of Rs.4200 to the applicants from the date of completion of 24 years of service.
- (ii) To direct the respondents to determine the eligibility of applicants for grant of 2nd Financial Upgradation in the pay scale of Rs.5000-8000 / 9300-34800 with grade pay of Rs.4200 by counting their service from the date of initial appointment as Mali in July 1982.
- (iii) To declare the action of respondents in not counting the service rendered by the applicants as Mali from 1982 for the purpose of Financial Upgradation under ACP Scheme dated 09.08.1999 as illegal and arbitrary and issue consequential directions for granting Financial Upgradations to the applicants by treating their service from initial appointment i.e. from July 1982 as Work Charged/ Regular.

(iv) To allow the OA with exemplary costs on the respondents.

(v) Any other or further relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

4. The applicants arguments are as follows:

(i) As per respondents own order dated 11.08.2006, the applicants were made eligible to get pay scale of Rs.5000-8000 on account of second financial upgradation. Therefore, the applicants who had completed 24 years of service in 2006 itself, were entitled to get the pay scale of Rs.5000-8000 (revised Rs.9300-34800 with Grade Pay Rs.4200/-) from the date of completion of 24 years. The order dated 11.08.2006 is regarding applicability of ACP Scheme in favour of work-charged regular employees and their eligibility;

(ii) The SCN is cryptic and the reason for reduction of grade pay is not clear;

(iii) The Hon'ble High Court of Delhi in its judgment dated 12.02.2015 rendered in the case of **Anil Kumar Nasa Vs. DUSIB and others** has held that benefits conferred as per existing Scheme cannot be withdrawn with retrospective effect;

(iv) The respondents have failed to consider that the applicants were appointed as Mali in the year 1982 as per procedure prescribed under the rules and,

therefore, service rendered from 1982 was required to be considered for determining eligibility for grant of 1st and 2nd financial upgradation. Once the service from 1982 is taken into consideration, the applicants complete 24 years of service in 2005 and are eligible for financial upgradation under the ACP Scheme. In this regard, the applicants referred to Office Order dated 15.10.2009 in which the decision taken was that continuous service from the date of initial appointment in the work-charged cadre will be counted for the purpose of reckoning the 12/24 years of service for grant of ACP benefits to the work-charged staff. The learned counsel also referred to office order dated 17.12.2009, which provides as follows:

“3. As per the decision of the Authority, the office order for grant of ACP benefits to work-charged employees from the date of their initial appointment in the work-charged cadre subject to the condition of ACP guidelines as prescribed and conveyed by the DoPT OM no.35034/1/97-Estt (D) dated 9.08.1999 has been issued vide Estt. Order no. 2044 dated 15.10.2009.”

In the case of the applicants, it is stated that they were treated as work-charged employees from 1985 although they were appointed in 1982 as Malis in accordance with the rules to the post of Mali;

- (v) The applicants had not been granted the grade pay of Rs.4200/- on some misrepresentation or concealment of fact on their part and, therefore,

reduction of pay scale and effect of recovery is illegal;

(vi) In OA 616/2013 vide order dated 21.02.2013, the Tribunal has recognized that service should be counted from the date of initial appointment.

The aforesaid OA was disposed of by directing the respondents to consider the representation and to pass a reasoned and speaking order. Therefore, the statement of the applicants is incorrect;

(vii) In support of their claim, the applicants have relied on the following judgments:

(1) **National Insurance Company Limited and Another Vs. Kirpal Singh, (2014) 5 SCC 189**

– Though the facts of the case are totally different from the present OA, the learned counsel for the applicants drew our attention to para 10 of the judgment which reads as follows:

“10.....There is, however, no reason why the expression “retirement” should receive such a restricted meaning especially when the context in which that expression is being examined by us would justify a more liberal interpretation.....”

It is their contention that the Tribunal is expected to make a liberal interpretation of the

Scheme which is not detrimental to the employees.

(2) **Charan Lal Sahu Vs. Union of India, (1990)**

1 SCC 613 - Again the facts of this case are totally different as it deals with Bhopal Gas Leak Disaster and the learned counsel for the applicants has cited this judgment only to buttress his claim that the Union of India should make a liberal interpretation and justice should not only be done but manifestly seem to be done.

(3) OA 629/2015, **Rampratap Singh and Others Vs. Union of India and another** decided on 12.03.2015 – The Tribunal in this case, relying on its decision in OA 4523/2013 dated 1.05.2014, asked the respondents to examine the case of the applicants in the light of the judgments cited in that case. In OA 4523/2013, the Tribunal had directed the respondents to count 100% temporary status casual service and 50% of casual service as qualifying service for the purpose of granting benefits under MACP, pensionary benefits etc.

(4) **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc., 2014 (8) SCALE 613** – It is stated that since the applicants in the instant case are Group 'D' employees, as

per the order of the Hon'ble Supreme Court that recovery from Group 'C' and Group 'D' is impermissible in law, no recovery can be made from them.

5. Learned counsel for the respondents put forth the following arguments:

- (i) In compliance of the Tribunal's order dated 17.01.2012 passed in OA 168/2012, the department had passed detailed order dated 24.11.2014 citing reasons why the grade pay has to be Rs.2000/- and Rs.4200/-. It is stated that this order has not been challenged by the applicants;
- (ii) The SCN mentions that this is in pursuance of OA 168/2012 and CP 392/2014 and, therefore, the stand of the applicants that the SCN is cryptic and reasons for reduction of grade pay are not clear, does not hold good as the applicants were parties to the aforesaid OA.
- (iii) Orders dated 15.10.2009 and 17.12.2009 (Annexure A-14) is meant for work charged staff and the applicants were not worked charged staff. They joined on Muster Roll in 1982 and were brought in as work charged employees in 1985. They were granted first ACP with effect from

9.08.1999 as they had completed 12 years of service as work charged employees. The applicants were granted second MACP with effect from 1.09.2008 as by that time they had completed 20 years of service. Unfortunately, their grade pay was indicated as Rs.4200/- instead of Rs.2000/-.

(iv) The applicants approached the Tribunal in OA 168/2012 and OA 616/2013 and the only direction of the Tribunal was to issue a SCN. The SCN was issued on 22.10.2014 and after consideration of the reply thereto, order dated 5.02.2015 was issued disposing of the representation/reply to the SCN. The Contempt Petition was also closed by the Tribunal. Vide order dated 5.02.2015, the pay of the applicants was re-fixed and recovery ordered.

(v) The respondents have relied on the following judgments of the Hon'ble Supreme Court:

(i) **High Court of Punjab and Haryana and others Vs. Jagdev Singh**, 2016 SCC Online SC 748 – In this case, the Hon'ble Supreme Court clearly stated that if there is an undertaking given by the petitioner that excess payment can be recovered, if detected later, the judgment in Rafiq Masih (supra) will not be

applicable. It is stated that in the present case, all the applicants had furnished undertaking to recover excess payment. In fact, the undertakings given by the applicants are placed on record.

(ii) **Chandi Prasad Uniyal Vs. State of Uttarakhand**, 2012 (8) SCC 417 – It is stated that the Hon'ble Supreme Court categorically held as follows:

“15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of

law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered."

It is pointed out by the learned counsel for the respondents that the judgment in Chandi Prasad Uniyal was passed under Article 136, which is a binding precedent under Article 141 of the Constitution. Rest of the judgments prior to Rafiq Masih (supra) were all passed under Article 142 of the Constitution.

(iii) State of Punjab and others Vs. Rafiq

Masih (White Washer) etc., 2014 (8)

SCALE 613 – The respondents pointed out that para 12 of the judgment has to be read in consonance with para 2, 3 and 4 of the judgment, which are quoted below:

"2. All the private respondents in the present bunch of cases, were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments

payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay-scales; or for having been granted allowances, for which the concerned employee was not authorized. The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due.

3. 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 concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits 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 the wrongful determination of their inflated emoluments.

4. The issue that we have been required to adjudicate is, whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. For the applicability of the instant order, and the conclusions recorded by us hereinafter, the ingredients depicted in the foregoing two paragraphs are essentially indispensable."

It is the contention of the learned counsel for the respondents that the issues mentioned in para 2 and 3 quoted above were held to be essentially indispensable and in this case, the applicants cannot be held to be innocent in wrongful determination of their emoluments.

6. Learned counsel for the respondents also relied on the order of this Tribunal in OA 1050/2014, **Naresh Kumar and others Vs. DDA**. In that case, the applicants working as Malis in DDA, had erroneously been granted the Grade Pay of Rs.4200/-, which was corrected later on in view of office order dated 28.01.2016 issued by the respondents indicating the correct hierarchy of scales of Mali namely PB-1 + Grade Pay of Rs.1800/-, then Grade Pay Rs.1900/-, followed by Grade Pay of Rs.2000/- and Rs.2400/- thereafter. The OA had been disposed of vide order dated 24.11.2016 directing the respondents to grant the benefits of second and third upgradation under MACP in accordance with order dated 28.01.2016. It is stated by the respondents that in the present case also, the respondents have granted Grade Pay of Rs.2000/- correctly.

7. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

8. The applicants are Malis, who were granted first upgradation under ACP Scheme before MACP Scheme came into

effect. When the MACP Scheme came into effect i.e. 1.09.2008, since the applicants had completed 20 years of service (1985-2008), they were granted second upgradation under MACP Scheme. Under MACP Scheme, the upgradation has to be in the next hierarchy of Grade Pay, which was clearly Rs.2000/- in PB-1. It cannot be anything other than that as per MACP guidelines. The applicants claim that since they are in service from 1982, they completed 24 years in 2006, thereby making them eligible for second upgradation under ACP Scheme and under ACP Scheme, the upgradation has to be in the next hierarchy of promotional post, which was Rs.4200/- in the new scale. However, as the learned counsel for the respondents has pointed out, the applicants were appointed as Mali in 1982 on Muster Roll and were treated as work-charged from 1985. Therefore, there is no question of counting their service from 1982. This is clear from the orders dated 15.10.2009 and 17.12.2009, which are meant for work-charged staff and not muster roll staff. Therefore, there is no ground for granting second ACP benefit from 2006. The applicants will only be eligible for second upgradation under MACP. Under the MACP Scheme, the upgradation has to be in the hierarchy of Grade Pay and since it was Rs.2000/-, they were rightly given Grade Pay of Rs.2000/-.

9. We do not think the judgments cited on liberal interpretation are useful in the instant case because the respondents have to follow the rules and provisions of the Scheme and nothing beyond that. The order of the Tribunal in OA 629/2015 (supra) also does not relate to muster roll staff but

to casual/ temporary status employees and will not apply in this case.

10. Learned counsel for the applicants, citing the judgment in Rafiq Masih (supra), has stated that the applicants being Group 'D' employees, recovery could not be ordered. However, this judgment has been modified in Jagdev Singh (supra) where the Hon'ble Supreme Court has held that if the employee had given an undertaking, excess payment made, if any, will be recoverable by the government. The respondents have produced copies of undertakings given by the applicants. Therefore, this case will be governed by the judgment of the Hon'ble Supreme Court in Jagdev Singh (supra).

11. Finally, we are also bound by the order of the Coordinate Bench in OA 1050/2014 (supra), where it has been held that second and third upgradation to Mali would be granted in the hierarchy of Grade Pay of Rs.2000/- and Rs.2400/-.

12. In view of above clear legal position, the OA is found to be devoid of merit. It is, therefore, dismissed. However, there will be no order as to costs.

(P.K. Basu)
Member (A)

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