

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.01/2017

Reserved on:25.09.2018
Pronounced on:09.10.2018

Hon'ble Ms. Praveen Mahajan, Member (A)

Shri Ashok Bhandari

Age -63 years

Self employee

WZ-1079 (G.F.), Ashoka Apptt.

H-1, Nangal Raya

New Delhi – 110 046.

... Applicant

(Applicant in person)

VERSUS

Ministry of Information & Broadcasting

Civil Construction Wing

All India Radio

Through its Chief Engineer

1st Floor, Soochna Bhawan

CGO Complex, Lodhi Road

New Delhi – 110 003.

...Respondent

(By Advocate: Shri S.M.Arif)

ORDER

The facts of the case in brief are that Mrs. Meena Bhandari, the deceased wife of the applicant, joined as Architect Assistant Grade-II in All India Radio on 05.01.1984 in the pay scale of Rs.425-15-1500-EB-560-20-70. After implementation of the fourth Central Pay Commission, her pay was revised in the pay scale of Rs.1400-40-1800-EB-50-2300 w.e.f.01.01.1986 as was fixed for all other Architect Assistant Grade-II. On 28.11.1989 she was promoted to Architect Assistant Grade-I in the pay scale of Rs.1640-60-2600-EB-75-2500

and her pay was fixed at Rs.1700/-. After recommendation of the Fifth Central Pay Commission the deceased wife of the applicant and other similarly placed Architects Assistant Gr.-I, received pay scale of Rs.5500-175-9000 w.e.f. 01.01.1996 and their pay was fixed at Rs.6375/-. After the acceptance of Sixth Central Pay Commission and in accordance with CCS (Revised Pay) Rules, 2008 the pay of the applicant's deceased wife and other similarly placed employees was revised to the pay band of Rs.9300-34800 & 4200, thus their pay was fixed at Rs.15120 as on 01.01.2006 + Grade Pay.

2. On 05.01.2010, the 2nd financial upgradation was granted under ACP Scheme in the pay scale of Rs.5500-9000 upgraded to Rs.6500-200-10500 (pre revised) i.e. PB-1 Rs.9300-34800 with Grade Pay of Rs.4600/- and the pay of Smt. Meena Bhandari was revised and came to Rs.19320/- payable on 01.07.2006. On 30.06.2012 she was granted annual increment and her final basic pay came to Rs.26590/- w.e.f. 01.07.2012. On 25.06.2013 the respondents released the seniority list of Architect Assistants Grade-I wherein the name of Smt. Meena Bhandari figured at Serial No.13. She was granted annual increment on 30.06.2013 and her final basic pay came to Rs.27390/- w.e.f.01.07.2013. Unfortunately, on 07.10.2013 Smt. Meena Bhandari passed away.

3. The applicant states that the respondents by their order dated 25.09.2014 revised the basic pay of deceased employee as Rs.25080+GP Rs.5400/- uniformly alongwith all other Architect Assistants Grade-I in the wake of recommendation of 6th Central Pay

Commission. The respondents, however, did not grant appropriate family pension to the applicant and on 19.11.2014 provisional family pension was released to the applicant since review DPC was being contemplated after demise of Smt. Mrs. Meena Bhandari. On 02.01.2015 the respondents revised the pay scale of the deceased and withheld the sum of Rs.3,15,000/-.

4. The applicant represented on 14.03.2016 for settling the provisional pension and to release the withheld dues. He also filed an RTI application and came to know that family pension had been fixed on reduced basic pay of Rs.25730/- instead of the last unrevised pay drawn by late Smt. Bhandari at Rs.27390/- without taking cognizance of the order dated 25.09.2014 issued by the respondents. The applicant further avers that no disciplinary proceedings of any kind were pending or contemplated against late Smt. Meena Bhandari hence the pension ought to be finalised and calculated on the unrevised last pay drawn by her of Rs.27390/-.

5. Aggrieved he has sought the following reliefs :-

- "(a) quashing the letter dated 22nd December 2014 and Form 18 signed on 22nd December 2014 by Respondent;
- (b) quashing the letter dated 02.01.2015 issued to Applicant by Respondent;
- (c) directing the Respondent to grant correct final family pension and release withheld dues with interest forthwith;
- (d) directing the respondent to grant correct gratuity;
- (e) Any other appropriate Order or Direction that this Hon'ble Tribunal deems just and proper keeping in consideration the facts and circumstances of the instant case and in the larger interest of public and justice."

6. The respondents in their counter state that vide Order No. A-43011/1/2013-14/CW.III/V/257 dated 25.09.2014, in supersession of all previous Orders they granted 1st, 2nd and 3rd financial upgradations, w.e.f.01.01.2006 (G.P. Rs.4600/-), 01.09.2008 (G.P. Rs.4800/-) and 28.11.2009 (G.P. Rs.5400/-) to late Smt. Meena Bhardwaj. After ignoring her first promotion, the 3rd MACP was granted w.e.f.28.11.2009 after 20 years of first promotion i.e. 28.11.1989. Accordingly, the last Pay drawn by late Smt. Meena Bhandari was Rs.27,390/- (PB Pay -Rs.21990 + G.P. Rs.5400/-). They contend that the Pay & Accounts Officer, All India Radio vide letter dated 01.07.2014 pointed out that since Smt. Bhandari has already been granted 1st promotion and 2nd ACP w.e.f.28.11.1989 and 05.01.2001 respectively, therefore, 3rd MACP in respect of Smt. Meena Bhandari was not due as her date of appointment was 05.01.1984. The 3rd MACP was intended to be given based on either 10 years from 2nd MACP/Promotion or 30 years of the overall service as per DOP&T Order. Since, late Smt. Bhandari expired on 07.10.2013, therefore, 3rd MACP was not admissible to her. Since, the Pension papers were required to be revised by re-fixing the pay, only provisional pension was given to the applicant.

7. The respondents vide their Order dated 14.02.2017 have now revised the date of 3rd MACP to 15.01.2014 on which she would have completed 30 years of regular service instead of 28.11.2009 inadvertently granted earlier.

8. In his rejoinder to the counter affidavit, the applicant states that the respondents have not been able to release the final family pension to the deceased employee even after lapse of four years of the death of his wife. The family is receiving provisional pension and representation dated 14.03.2016 of the applicant has also not been replied to. The applicant avers that the respondents have admitted in their counter affidavit that the 3rd MACP was granted w.e.f.28.11.2009 after 20 years of first promotion i.e. 28.11.1989. Since last pay drawn by Smt. Meena Bhandari was Rs.27390/-, she should be given pension on the last pay drawn by her. It is submitted that Smt. Meena Bhandari was short of only 100 days of completion of her overall 30 years service and her family cannot be deprived the financial upgradation when she had put in more than 99% of the 30 years of service. Withdrawal of benefits on this ground, more so after the death of the employee is illegal and arbitrary.

9. The respondents in their rejoinder to the additional affidavit state that the pay of Smt. Meena Bhandari, deceased wife of the applicant has been revised at the Grade Pay of Rs.4800/- w.e.f. 01.09.2008 vide order dated 07.03.2017. It is further informed that an amount of Rs.1,15,278/- has already been paid to the applicant after recovery of an amount of Rs.2,00,322/- on account of re-fixation of pay in PB-II with Grade Pay of Rs.4800/- w.e.f.01.09.2008. The respondents explain that the family pension was fixed on the basis of Basic Pay of Rs.25,980/-. The grade pay of the deceased Smt. Meena Bhandari which was Rs.4600/- has now been revised to Rs.4800/-.

10. The applicant in his rejoinder to the additional affidavit filed by the respondents states that the amount of Rs.1,15,278/- has not been received by him. He also states that as per the law laid down by the Hon'ble Apex Court in **Syed Abdul Qadri & Ors. V. State of Bihar & Ors** (Civil Appeal No.335 of 2003 and Civil Appeal No.3364 of 2003) the respondent cannot recover the alleged recovery, even if it was/is in excess.

11. I have gone through the facts of the case carefully, perused the record and considered the rival submissions.

It is not in dispute that the deceased wife of the applicant, expired before completion of 30 years of service. The plea of the applicant that she was only short of 100 days of completion of her overall 30 years of service does not help or make her eligible for 3rd MACP. Hence, the decision of the respondents withdrawing the grant of 3rd MACP cannot be faulted.

12. However, the respondents have recovered an amount of Rs.3,15,000/- the excess amount inadvertently paid to Mrs. Meena Bhandari from her gratuity. It is submitted in the additional affidavit, and was also mentioned during the course of hearing that Rs.1,15,278/- (out of Rs.3,15,000/-) has already been paid to the applicant. This was denied by the applicant. Be that as it may, in view of the law laid down by the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih** AIR 2015 SC 696, it is an admitted position of law that no recovery of the amount paid in excess to the appellant is recoverable if it is without any misrepresentation or fraud

on part of the applicant. It is not the case of the respondents that the excess payment was made to Smt. Bhandari on account of misrepresentation on her part rather it was their own carelessness and negligence which has created the chaos at hand, hence the wife of the applicant cannot be held responsible for the excess payment made to her.

13. I therefore direct that the entire recovery made to the late wife of the applicant should be refunded to him. However, the revised fixation of pension as per law, is legal and is upheld. Thus, the order dated 07.03.2017 revising the pay of late Smt. Meena Bhandari, deceased wife of the applicant in the Grade Pay of Rs.4800/- w.e.f.01.09.2008 is upheld.

14. The respondents are directed to refund the entire amount of Rs.3,15,000/- to the applicant within a span of three months from the date of certified copy of this order. OA is disposed of with these directions. No costs.

**(Praveen Mahajan)
Member (A)**

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