

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.1907/2017

Friday, this the 28th day of September, 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

Girdhari Lal, aged 61 years
s/o late Sh. Ram Phal
retired as Daftry (MTS)
From National Commission for SC
Presently r/o 38A, Sarojani Naidu Park
Shastri Nagar, Delhi – 31

..Applicant

(Mr. Yogesh Sharma, Advocate)

Versus

1. Union of India through the Secretary
Ministry of Social Justice & Empowerment
Shastri Bhawan, New Delhi
2. The Secretary
National Commission for Scheduled Castes
5th Floor, Lok Nayak Bhawan, Khan Market
New Delhi

..Respondents

(Mr. G S Virk, Advocate)

O R D E R (ORAL)

The applicant was working in National Commission for Scheduled Castes (NCSC) – respondent No.2 as Daftry (MTS). He retired on 31.05.2016 on attaining the age of superannuation. At the time of fixation of his pay, it was noticed that the applicant was granted first Assured Career Progression (ACP) Scheme benefits w.e.f. 08.04.2005, but his pay has been wrongly fixed at ₹4830/- instead of ₹3875/-. On account of this wrong fixation, the applicant has continued to draw excess payment towards his salary till the date of his retirement. However, this mistake came to the

notice of the respondent No.2 on the eve of applicant's retirement. Accordingly, the respondent No.2, vide its impugned Annexure A-1 letter dated 20.06.2016, advised the Senior Accounts Officer, Pay & Accounts Office, Ministry of Social Justice & Empowerment that his pension should be fixed keeping the aforementioned in view and the excess amount of ₹4,20,402/- paid to the applicant due to the wrong fixation of pay on 08.04.2005 should be recovered.

2. The grievance of the applicant is that the recovery of ₹4,20,402/- ordered from him is illegal, as he has not indulged in any misrepresentation for securing higher pay, and that the respondents are entirely responsible to fix up the pay of the applicant incorrectly on 08.04.2005. Accordingly, the applicant has approached the Tribunal in the instant O.A. and has prayed for the following main reliefs:-

“i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 20.06.2016 and order dated 31.05.2016 (Annex.A/1 & A/2) and order dated 28.5.2016 (Annex.A/3), declaring to the effect that the same are illegal, arbitrary, against the law and against the principle of natural justice and consequently pass an order directing the respondents to restore the pay of the applicant deeming no such order dt.31.5.2016 has been passed with all consequential benefits including refund of recovered amount with interest.

ii) That the Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to re-fix the pay of the applicant w.e.f. 1.1.2006 after granting financial upgradation under ACP scheme as per clarification 27 (iii) of 2012 by way of granting 2nd financial upgradation in GR 2400/- w.e.f. 1.1.2006 and 3rd financial upgradation in GP 2800/- w.e.f. 8.4.2011, after ignoring the promotion from the post of Peon to Daftry which are in the same Grade pay of Rs.1800/-, with all the consequential benefits including the arrears of difference of pay and allowances and retirement benefits with interest.”

3. Mr. Yogesh Sharma, learned counsel for applicant submitted that the applicant is not pressing relief 8 (ii) at this stage and that he seeks 8 (i) only. He argued that illegally the alleged excess payment of ₹4,20,402/- has been recovered from the gratuity of the applicant (₹5,13,068/-) vide Annexure A-3 order dated 28.06.2016. He, thus, prayed for a direction to the respondents for refunding the amount recovered to the applicant. In this regard, he placed reliance on the judgment of Hon'ble Apex Court in **State of Punjab & others etc. v. Rafiq Masih (White Washer) etc.**, I (2015) SLT 179.

4. *Per contra*, Mr. G S Virk, learned counsel for respondents submitted that the applicant's pay was wrongly fixed at the time of granting him the first ACP benefits. As a consequence thereof, he has been paid excess salary every month. This irregularity has been detected by the Audit and accordingly, the excess payment of ₹4,20,402/- has been ordered to be recovered from him.

5. I have considered the arguments of learned counsel for the parties and have perused the pleadings.

6. Admittedly, a mistake has been committed by respondent No.2 in refixing the pay of the applicant on 08.04.2005 at the time of grant of ACP benefits to him. His pay ought to have been fixed at ₹3875/-, whereas inadvertently it was fixed at ₹4830/-. This has resulted in excess payment of ₹4,20,402/-. It is also not in dispute that the applicant has not indulged in any misrepresentation and the excess payment is entirely attributable to the mistake committed by the office of respondent No.2.

7. In view of this, placing reliance on the ratio of law laid down by Hon'ble Apex Court in **Rafiq Masih's** case (supra), I grant relief 8 (i) of O.A. and direct the respondents to refund the amount of ₹4,20,402/-, recovered from the applicant's gratuity, to the applicant. This shall be done within a period of two months from the date of receipt of a copy of this order. The issue relating to relief 8 (ii) is, however, kept open.

8. The O.A. accordingly stands disposed of. No costs.

(K.N. Shrivastava)
Member (A)

September 28, 2018

/sunil/