

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00391/2015

Thursday, this the 30th day of August, 2018

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Mathai M,
S/o.C.Mathen,
Retd. Assistant,
Andaman Lakshadweep Harbour Works, (ALHW),
Amini – 682 552, Union Territory of Lakshadweep.
Residing at Naluthundil Ann Villa, Pannivizha,
Adoor P.O., Pathanamthitta District – 689 523. **...Applicant**

(By Advocate – Mr.T.C.Govindaswamy)

V e r s u s

1. Union of India
represented by the Secretary to the Government of India,
Ministry of Shipping, Department of Shipping,
Transport Bhavan, No.1, Parliament Street,
New Delhi – 110 001.
2. The Chief Engineer & Administrator,
Andaman Lakshadweep Harbour Works (ALHW),
Port Blair – 744 101, Andaman and Nicobar Isles.
3. The Deputy Chief Engineer (Civil),
Andaman Lakshadweep Harbour Works (ALHW),
Union Territory of Lakshadweep, Amini – 682 552.
4. The Pay & Accounts Officer,
Office of the Pr. Chief Controller of Accounts,
Internal Audit Wing (HQ),
IDA Building, Jam Nagar House,
Shahjahan Road, New Delhi – 110 011.

...Respondents

(By Advocate Mr.Sinu G Nath, ACGSC)

This Original Application having been heard on 8th August 2018, the Tribunal on 30th August 2018 delivered the following :

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

O.A.No.180/391/2015 is filed by Shri.Mathai.M., resident of Pannivizha, Adoor P.O., Pathanamthitta District against the order of Executive Engineer (Civil) refixing his emoluments vide order dated 30.4.2014 (Annexure A-1). The reliefs sought in the O.A are as follows :

1. Call for the records leading to the issue of Annexure A-1 and quash the same.
2. Call for the records leading to the issue of Annexure A-7 and quash the same in so far it recovers a sum of Rs.345906/- (Rupees Three Lakhs Forty Five Thousand and Nine Hundred Six Only) from the applicant's retirement gratuity in the name of alleged over payment.
3. Direct the respondents to grant all the consequential benefits as if Annexure A-1 had not been issued at all, within a time frame, as may be found just and proper by this Hon'ble Tribunal.
4. Direct the respondents to pay interest @9% per annum on the amount recovered from the applicant's retirement gratuity, to be calculated with effect from 1.7.2014 upto the date of full and final settlement of the same.
5. Direct the respondents to pay interest @9% per annum on the delayed payment of arrears of pension and other retirement benefits to be calculated with effect from 1.7.2014 upto the date of full and final settlement of the same.
6. Award costs of and incidental to this application.
7. Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The facts in the case in brief are as follows :

.3.

The applicant was initially appointed as Store Assistant on 11.10.1976 under the respondents and then after due process of selection was appointed as Lower Division Clerk (LDC for short) as a direct recruit with effect from 1.3.1983. The scale of pay attached to the post of Store Assistant Grade II at that time was Rs.210-270 and that of LDC was Rs.260-400. The applicant was granted upgradation under the ACP Scheme with effect from 9.8.1999 in the scale of Rs.4000-6000 and second financial upgradation with effect from 1.3.2007 in the scale of pay of Rs.5000-8000 (PB-2 + Grade Pay of Rs.4200/-). At this point in time, various ministerial cadre under the respondent organization was restructured as per orders of the Ministry of Shipping, Road Transport and Highways through order F.No.A-12023/1/2004-PE-II dated 12.10.2007 (Annexure A-2) by which the posts of Store Assistant Grade II and Store Assistant Grade I were merged with that of LDC.

3. The applicant submits that the two financial upgradations with effect from 9.8.1999 and 1.3.2007 respectively were granted taking into account the appointment of the applicant being from 1.3.1983 ie. treating him as a direct recruit. Now that the post of Store Assistant and LDC stood merged, he contends that his service from 11.10.1976 ought to be treated as continuous whereby he would be eligible for second financial upgradation with effect from 11.10.2000 as against 1.3.2007, the date he was *de facto* granted the benefit.

4.

4. The respondents took a favourable view of his contention granting him the benefit vide order dated 27.10.2009 bearing No.ALHW/ADM/2(12)/2009 (Annexure A-3). This was followed by an Office Order bearing No.34/2010 dated 11.1.2010 (Annexure A-4) issued by the Administrative Officer in the office of the 2nd respondent granting the benefit of first and second financial upgradations, duly reckoning the service rendered as Store Assistant. Herein the applicant's name figures at Sl.No.26 and at Sl.No.9 in Annexure – I and Annexure – II of Annexure A-4 respectively.

5. All on a sudden the applicant was informed that Pay and Accounts Officer under Respondent No.1 at New Delhi had sought some clarifications and these had been provided by the 3rd respondent, Deputy Chief Engineer by letter dated 31.1.2013 (Annexure A-5). On the eve of the applicant's superannuation due on 30.6.2014 a copy of Annexure A-1 order dated 30.4.2014 was served on the applicant retrospectively reducing his pay with effect from 1976. This was followed by PPO No.881001400161 dated 23.6.2014 issued by the 4th respondent showing a total recovery of Rs.3,45,906/- from the applicant's gratuity (Annexure A-7). Aggrieved by the threatened action the applicant submitted a series of representations (Annexure A-8 series) but none were responded to.

6. Per contra the Respondent Nos.2-3 have filed a reply statement. It is maintained therein that there was no illegality in the case. While it is admitted that two upgradations under ACP Scheme as well as third MACP upgradation were granted counting his service from initial appointment ie. from the date he was appointed as Store Assistant Grade II, the merger of two cadres with effect from 12.10.2000 is stated to have changed the entire scenario. It is quoted "*In case any discrepancies noticed by the PAO/Audit party at later stage the excess paid amount on account of ACP shall be recovered from the individual concerns*" (Annexure A-4). PAO in the ALHW is the competent authority for authorization of pension and he cannot be faulted for the view he has taken in the matter.

7. Heard Shri.T.C.Govindaswamy, learned counsel for the applicant and Shri.Sinu G Nath, learned ACGSC for the respondents. All pleadings, documentary and oral were examined. It is admitted that the Department after due examination had granted the benefit of financial upgradation to the applicant from the date of his initial entry as Store Assistant. His pay was fixed accordingly as per order dated 11.1.2010 (Annexure A-4) which involved a large number of employees. Needless to add this fixation had been done after the merger of Store Assistant Grade I and Store Assistant Grade II with LDC had been effected as per Annexure A-2 order dated 12.10.2007. It was only a few days before the scheduled date of superannuation of the applicant that the respondents changed their stance

and refixed his emoluments bringing the dates of financial upgradations several years forward thereby exposing the applicant to substantial loss on account of the reduction of salary necessitating recovery.

8. This Tribunal had considered the very same issue in O.A.No.230/2014 filed by Shri.R.Radhakrishnan Nair, retired UDC under the same respondents. The circumstances of the case and claim thereof made by the applicant therein were identical with the claims made in the current O.A. In the earlier case this Tribunal had concluded that refixation necessitating recovery and resultant reduction in retirement benefit is illegal as the alleged excess disbursement had not occurred on account of any misrepresentation, fraud or collusion on the part of the applicant. This Tribunal had also relied on the orders of the Hon'ble Supreme Court in the case of **Registrar, Co-operative Societies, Haryana & Ors. v. Israil Khan & Ors. 2010 (3) SLR 359** which had disallowed recovery effected from an employee after a long period. Also relied upon was the judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Ors. v. Rafiq Masih (White Washer) AIR 2015 SC 1267** which disallowed recovery from retired employees under various categories. The applicant in this case seem to tick all the categories mentioned in the *Rafiq Masih* judgment (supra). In that case this Tribunal had ordered that the refixation order is to be set aside and forbade the respondents from effecting any recovery from the money disbursed. The retained gratuity was also ordered to be released

with interest at the rate of 9% per annum. The respondents had approached the Hon'ble High Court in O.P(CAT) No.140/2017 but the Court had refused to interfere with the order of the Tribunal.

9. On the basis of the precedent case quoted as well as the facts of this case which are identical to O.A.No.180/230/2014, we set aside Annexure A-1 fixation order. We grant the reliefs sought for in the O.A in full except for costs requested therein. The O.A stands disposed of accordingly. No costs.

(Dated this the 30th day of August 2018)

**ASHISH KALIA
JUDICIAL MEMBER**

**E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER**

asp

List of Annexures in O.A.No.180/00391/2015

1. **Annexure A1** - A true copy of the Office Order bearing No.162/2014 dated 30.4.2014, issued from the office of the 3rd respondent.
2. **Annexure A2** - True copy of the order bearing F.No.A-12023/1/2004-PE-II dated 12.10.2007, issued by the Ministry of Shipping, Road Transport & Highways (Department of Shipping – Ports Wing).
3. **Annexure A3** - True copy of the order bearing No.ALHW/ADM/2(12)/2009 dated 26/27.10.2009 issued from the office of the 2nd respondent.
4. **Annexure A4** - A true copy of the Office Order bearing No.34/2010 dated 11.1.2010 issued from the office of the 2nd respondent.
5. **Annexure A5** - A true copy of the letter bearing No.DCE/KVT/Estt./127/348 dated 31.1.2013, addressed to the 4th respondent by the 3rd respondent Deputy Chief Engineer.
6. **Annexure A6** - A true copy of the letter bearing F.No.IAW/MOSRTH/MISCL/2012-12/238 dated 26.2.2013 issued by the Sr.Accounts Officer (IAW).
7. **Annexure A7** - True copy of order bearing PPO No.881001400161 dated 23.6.2014 from the office of the fourth respondent.
8. **Annexure A8** - True copies of the representations submitted by the applicant.
9. **Annexure R2(a)** - True copy of the PAO, ALHW, New Delhi letters No.PAO/ALHW/Pension/2013/1035-36 dated 25.10.2013.
10. **Annexure R2(b)** - True copy of the PAO, ALHW, New Delhi letters No.PAO/ALHW/Pension/2013/1203-1204 dated 19.12.2013.
11. **Annexure MA1** - True copy of the order in O.A.No.230/2014 dated 5.12.2016, rendered by this Hon'ble Tribunal.
