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**CENTRAL ADMINISTRATIVE TRIBUNAL,  
ERNAKULAM BENCH**

**Original Application No.180/00234/2017**

Tuesday, this the 9<sup>th</sup> day of October, 2018

**C O R A M :**

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

1. Dr.H.Moosa  
Assistant Chief Technical Officer,  
ICAR-CPCRI, Regional Station, Vittal,  
Bantwal Tk K.K.District, Karnataka-574 243.  
Residing at CPCRI Quarters, Type-IV/13,  
Chowki, Kasaragod.
2. B.Anil Kumar,  
Technical Assistant,  
ICAR-CPCRI, Regional Station,  
Krishnapuram P.O., Kayamkulam-690 533.  
Residing at Drishyam, Mampallikunnam,  
Chathanoor P.O., Kollam.
3. M.Krishnan,  
Technical Officer,  
ICAR-CPCRI, Kudlu P.O.,  
Kasaragod-671 124.  
Residing at Sreenandanam,  
Surabhi Housing Colony,  
Nullipaddy, Kasaragod.
4. T.N.Vdyadharan,  
Assistant, ICAR-CPCRI, Regional Station,  
Minicoy, Lakshadweep-682 559.  
Residing at CPCRI Quarters, Minicoy,  
Lakshadweep.

..Applicants

**(By Advocate – Mr.Vishnu Chempazhanthiyil)**

**V e r s u s**

1. The Officer-in-Charge,  
ICAR-Central Plantation Crops Research Institute,  
(Indian Council of Agricultural Research),  
Regional Station, Minicoy, Lakshadweep-682 559.

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2. The Director,  
ICAR-Central Plantation Crops Research Institute,  
(Indian Council of Agricultural Research),  
Kudlu P.O., Kasaragod-671 124.

3. The Indian Council of Agricultural Research,  
Represented by its Secretary,  
Krishi Bhavan,  
New Delhi – 110 001.

4. Union of India,  
represented by its Secretary,  
Department of Agricultural Research and Education,  
Ministry of Agriculture,  
New Delhi – 110 001.

...Respondents

**(By Advocates Mr.P.Santhosh Kumar [R1-3]  
& Mr.Thomas Mathew Nellimoottil [R4])**

This Original Application having been heard on 3<sup>rd</sup> October 2018, the Tribunal on 9<sup>th</sup> October 2018 delivered the following :

### **ORDER**

The applicants are employees of ICAR-CPCRI posted at various places. They are Group A and B employees who have been called upon to remit alleged over-payment made to them. At the time of filing of the O.A they were the employees working in ICAR-CPCRI, at its Regional Station in Minicoy, Lakshadweep. As per O.M dated 29.8.2008 of the Ministry of Finance, Department of Expenditure, Hard Area Allowance to Central Government employees posted in Nicobar group of Islands and Minicoy in Lakshadweep Islands has been sanctioned (Annexure A-1). The rates and eligibility for these allowances as well as the recommendations made by the 6<sup>th</sup> Pay Commission are at Annexure A-3. As per Annexure A-4 the recipients were asked to opt between two allowances which benefits them the most. Now as per 28.12.2016 a notice has been served on the applicants

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that employees were required to choose between the two allowances and drawal of both simultaneously would amount to excess payment. Accordingly, each of the applicants were required to refund a large sum of money.

2. The applicants contend that both these allowances were being paid to all employees of other Departments who are posted in Minicoy and other Islands of Lakshadweep. No option had been actually made available to the applicants. They also call to their assistance the order in **State of Punjab & Ors. v. Rafiq Masih (White Washer) etc.** in C.A.No.11527 of 2014 which has declared as impermissible, recovery from employees belonging to Class III and Class IV service, retired employees, recovery from employees when excess payment has been made for a period in excess of five years before the order of recovery is issued, recovery in respect of an employee who discharges duties of a higher post wrongly etc.

3. As grounds, in addition to the judgment in Rafiq Masih (supra) the applicants cite decisions of the Hon'ble Apex Court in **Sahib Ram v. State of Haryana 1995 (Supp) 1 SCC 18**, **Shyam Babu Verma v. Union of India 1994 (2) SCC 521**, **Registrar Co-operative Societies Haryana & Ors. v. Israel Khan & Ors 2010 (1) SCC (L&S) 1123**, **Purushotham Lal Das v. State of Bihar (2006) 11 SCC 492** and **Bihar SEB v. Bijay Bahadur (2000) 10 SCC 99**.

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4. In reply the respondents have stated that the discrepancy has been pointed out by the Audit and as per extant orders drawal of both allowances is illegal. In Annexure A-4 it has been clearly stated that “*in places where more than one Special Compensatory Allowance is admissible, the Central Government employees posted in such stations will have the option to choose the allowance which benefits them the most.*” This had not been considered by the authorities while allowing two allowances to be drawn by the staff in question. It is maintained that **Rafiq Masih's** judgment has no relevance in this case as the applicants were directly responsible for sanctioning the inadmissible allowances. Further in the order of the Hon'ble High Court of Kerala in **United India Insurance Company Ltd. v. Roy 2005 (2) KLT 63** it has been maintained that if a mistake has occurred there is no impediment in correcting the same. A similar view has been taken in **Chandi Prasad Uniyal v. State of Uttarakhand & Ors. (AIR) 2012 SC 2951.**

5. Heard Shri.Vishnu S Chempazhanthiyil, learned counsel for the applicants, Shri.P.Santhosh Kumar, learned counsel for the Respondent Nos.1-3 and Shri.Thomas Mathew Nellimoottil, learned counsel for the Respondent No.4.

6. This O.A is concerned with recovery of a large sum of money from the applicants on account of wrong drawal of two allowances when they were entitled to only one. The seminal judgment in the

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matter of recovery of sums from employees is **Rafiq Masih**. This order has deemed as impermissible recovery under the following contingencies :

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

7. In this case recovery has been ordered as per Annexure A-7 series dated 25.2.2017 and this involves alleged over payments disbursed from 2008 onwards. Applicants are entitled to the benefits coming under Clause (iii) above and recovery of amounts disbursed before 25.2.2017 are not liable to be refunded. As there is no bar otherwise on the recovery instituted, except the above, any sum paid in excess after 25.2.2017 can be recovered. The interim stay issued on recovery on 22.3.2017 is modified to this extent and is deemed as final. The O.A is disposed of accordingly. No costs.

(Dated this the 9<sup>th</sup> day of October 2018)

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

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**List of Annexures produced in O.A.No.180/00234/2017**

1. **Annexure A1** – True copy of OM No.12/4/2008-E.II(B) dated 29.8.2008 issued by the Ministry of Finance, Union of India.
2. **Annexure A2** – True copy of the OM No.12(4)/2008-E.II(B) dated 9.11.2011 issued by the Ministry of Finance, Union of India.
3. **Annexure A3** – True copy of relevant portion of the Gazette of India.
4. **Annexure A4** – True copy of the O.M.No.12(1)'E.II(B)/03 dated 1.3.2004 issued by the Ministry of Finance.
5. **Annexure A5** – True copy of Memorandum No.F.No.7(4)/Audit/09-Mcy/207-210 dated 28.12.2016 issued by the 1<sup>st</sup> respondent to the 1<sup>st</sup> applicant.
6. **Annexure A5(a)** – True copy of memorandum No.F.No.7(4)/Audit/09-Mcy/223-226 dated 28.12.2016 issued by the 1<sup>st</sup> respondent to the 2<sup>nd</sup> applicant.
7. **Annexure A5(b)** – True copy of Memorandum No.F.No.7(4)/Audit/09-Mcy dated 28.12.2016 issued by the 1<sup>st</sup> respondent to the 3<sup>rd</sup> respondent.
8. **Annexure A5(c)** – True copy of Memorandum No.F.No.7(4)/Audit/09-Mcy/259-262 dated 28.12.2016 issued by the 1<sup>st</sup> respondent to the 4<sup>th</sup> applicant.
9. **Annexure A6** – True copy of the representation dated 19.1.2017 of the 1<sup>st</sup> applicant to respondents 1&2.
10. **Annexure A6(a)** – True copy of the representation dated 21.1.2017 of the 2<sup>nd</sup> applicant to respondents 1 & 2.
11. **Annexure A6(b)** – True copy of the representation dated 24.1.2017 of the 3<sup>rd</sup> applicant to respondents 1 & 2.
12. **Annexure A6(c)** – True copy of the representation dated 18.1.2017 of the 4<sup>th</sup> applicant to respondents 1 & 2.
13. **Annexure A7** – True copy of Memorandum No.No.(6) (1481)/2013-Estt. Dated 25.2.2017 issued to the 1<sup>st</sup> applicant.
14. **Annexure A7(a)** – True copy of Memorandum No.F.No.(6) (1481)/2013-Estt. Dated 25.2.2017 issued to the 2<sup>nd</sup> applicant.

15. **Annexure A7(b)** – True copy of the Memorandum No.F.No.(6) (1481)/2013-Estt.dated 25.2.2017 issued to the 3<sup>rd</sup> applicant.
  16. **Annexure A7(c)** – True copy of the Memorandum No.F.No.(6) (1481)/2013-Estt. Dated 25.2.2017 issued to the 4<sup>th</sup> applicant.
  17. **Annexure A8** – True copy of the O.M.No.F.No.18/03/2015-Estt. (Pay-I) dated 2.3.2016 issued by the Government of India, Department of Personnel & Training.
  18. **Annexure A9** – True copy of the order dated 6.4.2018 in O.A.No.180/00226/2017 of the Hon'ble Tribunal.
  19. **Annexure R2(1)** – True copy of the Audit Observation No.CE/AB/IV/7-53/CPCRI/2015-16/287 dated 15.1.2016.
  20. **Annexure R2(2)** – True copy of the recovery details of the applicant No.1.
  21. **Annexure R2(3)** – True copy of the recovery details of the applicant No.2 and 3.
  22. **Annexure R2(4)** – True copy of the recovery details of the applicant No.4.
  23. **Annexure R2(5)** – True copy of the Office Order F.No.4(41)/98-Estt.-1 dated 20.5.2009 to the applicant.
  24. **Annexure R2(6)** – True copy of the Office Order F.No.4(14)/2004-Estt. Dated 15.4.2013.
  25. **Annexure R2(7)** – True copy of the Office Order F.No.4(14)/2004-Estt. Dated 19.5.2014.
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