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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00299/2018

Monday, this the 30th day of July, 2018

C O R A M :

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

K.S.Saffia,
W/o.late M.K.Abdulla,
Working as Administrative Officer,
All India Radio, Thrikkakkara P.O., Kochi – 682 021.
Residing at Madathil House, Cheranallur P.O.,
Edapally, Kochi – 682 034.

...Applicant

(By Advocate – Mrs.K.R.Krishnakumari)

V e r s u s

1. Union of India
represented by the Secretary to the Government of India,
Ministry of Information and Broadcasting,
BA (P) Section, 'A' Wing, New Delhi – 110 001.
2. The Chief Executive Officer,
Prasar Bharati Secretariat, 7th Floor,
Copper Nicus Marg, New Delhi – 110 001.
3. Director General,
All India Radio, Akashwani Bhawan,
Sansad Marg, New Delhi – 110 001.
4. The Assistant Station Director,
All India Radio, Thrikkakara P.O., Kochi – 682 021.
5. The Senior Accounts Officer,
Pay and Accounts Office,
All India Radio, Mylapore, Chennai – 600 004. ...Respondents

(By Advocate – Mr.N.Anilkumar, Sr.PCGC [R])

This Original Application having been heard on 25th July 2018, the
Tribunal on 30th July 2018 delivered the following :

ORDER

O.A.No.180/299/2018 is filed by Smt.K.S.Saffia, Administrative Officer, AIR against implementation of Order No.PAO/AIR/Chennai/PEN/2016-17/1689 dated 23.2.2018 issued by the 5th respondent directing recovery on account of wrong fixation of pay. The prayers contained in the O.A are as follows :

1. To set aside Annexure A-3 letter of the fifth respondent dated 23.2.2018 ordering preparation of due drawn statement and recovery from gratuity of the applicant who is due to retire on 31.3.2018 since the same is issued in violation of the guidelines issued by the Hon'ble Supreme Court of India in Annexure A-4 judgment as also in violation of the fundamental rights of the applicant under Articles 14 to 18 of the Constitution of India.
 2. To declare that the applicant is entitled to get the entire pensionary benefits including gratuity released without any recovery, in the light of Annexure A-4 judgment of the Hon'ble Supreme Court of India.
 3. To direct the fifth respondent to disburse the entire pensionary benefits including gratuity to the applicant without any recovery, immediately after her retirement on 31.3.2018.
 4. To direct the fourth respondent to forward the pension papers of the applicant forthwith, to the fifth respondent without any preparation of due drawn statement as directed in Annexure A-3 letter dated 23.2.2018.
 5. To grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant;
- and
6. To grant costs of this Original Application.

2. The facts of the case are as follows : the applicant had joined as Lower Division Clerk (LDC) at All India Radio (AIR), Calicut on 1.10.1981 and was promoted as Upper Division Clerk (UDC) with effect from 30.10.1989. She had been the beneficiary of first and second upgradations under the Assured Career Progression Scheme (ACPS). She was granted

third Modified Assured Career Progression Scheme (MACPS) with effect from 1.10.2011. While working in the post of Assistant in the Pay Band – 2 (PB-2) of Rs.9300-34800/- with Grade Pay (GP) of Rs.4200/- the applicant was promoted to the post of Administrative Officer in the Pay Matrix Level 7 (revised) PB-2, Rs.9300-34800/- with GP of Rs.4600/-.

3. She is slated to retire on 31.3.2018 and was surprised to receive the impugned order stating that her re-fixation of pay at Rs.12090/- + GP Rs.4200/- in the pay scale of Rs.6500-10500/- (pre-revised) with effect from 1.1.2006 is not in order. She was also informed that the excess amount paid to her was to be recovered from the gratuity due.

4. The applicant maintains that as per the decision of the Hon'ble Supreme Court in **State of Punjab & Ors. v. Rafiq Masih (White Washer) & Connected cases** reported in **AIR 2015 SC 696** recovery from a retired employee is impermissible. Further the Hon'ble Apex Court in that case had summarized a few situations wherein recovery by the employer would be violative of law. She submits that recovery from her dues is violative of second and third categories mentioned in the Apex Court judgment in Rafiq Masih (supra). She further refers to the decision of this Tribunal in O.A.No.492/2017 and that of the Jabalpur Bench in O.A.No.694/2013 as well as that of the Principal Bench in O.A.No.1118/2015 which prohibited recovery from the applicant concerned. But it is the Rafiq Masih's judgment that she relies upon primarily.

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5. Per contra the respondents have filed a reply statement admitting the details pertaining to the applicant's service. It is maintained that there had been overpayment due to an error in estimation and the same had occurred in “deducing the relevant part of the 6th Pay Commission”. It is submitted that steps were taken to correct the mistake and the correct calculation was made. The O.A is an attempt being made by the applicant to retain the illegitimate gains they have obtained.

6. Various steps taken by the respondents in examining and re-examining the matter in consultation with the Internal Financial Unit (IFU) have been detailed. It is conclusively stated that the Department of Expenditure, Ministry of Finance was also seized of the issue and steps were initiated as per clarification received from the Ministry of Information & Broadcasting (Annexure R-1[c]). Recovery was resorted to with the intent to preserve the resources in the public exchequer. At the time of fixation of pay from 1.1.2006 the applicant among others was to be on notice that the estimation made is subject to audit and any excess amount if found, will be recovered. Respondents also calls to their assistance various decisions of the C.A.T Benches which had considered the refixation matter and had also approved steps taken for recovery of excess amount.

7. Rejoinder was filed by the applicant reiterating the contentions raised in the O.A and enclosing certain decisions on the legality of the fixation in the scale of pay of Rs.6500-10500/-.

8. Heard Smt.K.R.Krishnakumari, learned counsel for the applicant and Standing counsel for the respondents. The applicant had retired from service on 31.3.2018 and about a month before ie. 23.2.2018 to be precise, had been served with the impugned order. When the matter was heard learned counsel for the applicant informed the Tribunal that a large sum of money had been deducted from her gratuity already in accordance with the directives in the communication at Annexure A-3.

9. The cardinal factor to be looked at in the case is the applicability of the Rafiq Masih's judgment (supra) to this case. The said judgment, setting down the law, declared as impermissible recovery from employees under certain circumstances. The Apex Court ruled :

12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

(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.

10. The applicant in this case is a retired employee now. The order of recovery is dated 23.2.2018 when she was slated to retire on 31.3.2018. The fixation, deemed erroneous, which the respondents have set out to correct, is dated as 17.12.2012 (Annexure A-1) and the recovery is declared in February, 2018. Thus two counts, viz, recovery from an employee due to retire within one year and recovery from an employee where excess payment has been made for a period in excess of five years before the order of recovery is issued, are both involved in this case. Thus it comes clearly within the ambit of the Rafiq Masih judgment. Learned counsel for the respondents emphasized the judgment of the Hon'ble Supreme Court in **High Court of Punjab and Haryana & Ors. v. Jagdev Singh AIR 2016 SC 3523** to justify recovery. Jagdev Singh's judgment (supra) has qualified the Rafiq Masih judgment by including the proviso which reads as follows :

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

11. Learned counsel for the respondents while admitting that no undertaking *per se* had been extracted from the applicant in this case, drew our attention to the last line of the fixation document of Annexure A-1 which reads :

“ The fixation is subject to Audit observations, overpayments found if any will be recovered in lump sum from his salary/dues without any notice to him.”

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12. It was maintained by the learned counsel that this proviso to the fixation order is tantamount to the applicant having been placed on notice. This Tribunal does not see this as a valid argument for the action initiated by the respondents. A standard clause introduced at the bottom of the fixation order does not amount to a notice.

13. Respondents, presumably out of zeal to save the resources of the public exchequer had initiated recovery but we wish the zeal had been exhibited in the care with which they examined cases while according revision in salary and other emoluments. Having committed a gross error they cannot spring surprises on unwary employees who are on the threshold of superannuation and unilaterally enforce large recoveries. The judgment in Rafiq Masih clearly covers the field in this respect and none of the judicial orders produced by the respondents in any way involve similar circumstances as those in this O.A.

14. The O.A succeeds. The entire amount recovered from the gratuity due to the applicant is to be refunded to the applicant within 30 days of receipt of a copy of this order. There shall be no further recovery from the applicant's pension or other benefits due to her. The O.A stands disposed of. No costs.

(Dated this the 30th day of July 2018)

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00299/2018

- 1. Annexure A-1** – A true copy of the Order No.CHN.AIR.10(2)2012-S/dated 17.12.2012 issued by the 4th respondent.
- 2. Annexure A-2** – A true copy of the Order No.CHN-1(3)/2017-S/dated 30.6.2017 issued by the Assistant Director (Prog.)HOD.
- 3. Annexure A-3** – A true copy of the Order No.PAO/AIR/Chennai/PEN/2016-17/1689 dated 23.2.2018 issued by the 5th respondent.
- 4. Annexure A-4** – A true copy of the judgment of Hon'ble Supreme Court of India in Civil Appeal No.11527 of 2014 and connected cases dated 18.12.2014.
- 5. Annexure A-5** – A true copy of the Covering Letter dated 26.3.2018 sent by the applicant to all the respondents.
- 6. Annexure A-6** – A true copy of the Track Consignment of Speed Post article bearing No.EL380175073IN issued to the 4th respondent.
- 7. Annexure A-7** – A true copy of the Salary Slip of the applicant for the month of February, 2018.
- 8. Annexure A-8** – A true copy of the Salary Slip of the applicant for the month of March, 2018.
- 9. Annexure A-9** – A true copy of the order of this Hon'ble Tribunal dated 3.4.2018 in O.A.No.180/569/2014.
- 10. Annexure A-10** – A true copy of the order of this Hon'ble Tribunal dated 13.7.2012 in O.A.No.856/2011.
- 11. Annexure R-1(a)** – A true copy of the Pay Fixation Order by AIR Kochi dated 27.3.2018.
- 12. Annexure R-1(b)** – A true copy of the Note 2 A read with illustration 4 A in Part-B Section II of the Gazette Notification.
- 13. Annexure R-1(c)** – A true copy of the clarification received from Ministry of Information & Broadcasting dated 20.8.2014.
- 14. Annexure R-1(d)** – A true copy of the Department of Expenditure ID Note dated 19.2.2015.
- 15. Annexure R-1(e)** – A true copy of the OM No.FTS154226/2015/E-

III(A) dated 28.7.2015.

16. Annexure R-1(f) – A true copy of the DG:AIR letter dated 5.1.2016.

17. Annexure R-1(g) – A true copy of the DoP&T OM dated 6.2.2014.

18. Annexure R-1(h) – A true copy of the Order dated 16.6.2017 in O.A.No.813 of 2016.
