

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ORIGINAL APPLICATION NO. 180/00331/2017

Tuesday, this the 9th day of October, 2018

CORAM

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

N.Mohan Kumar
Retired Assistant, Doordarshan Kendra
Kudapanakunnu P.O, Thiruvananthapuram-965 043
Residing at Vaishnavam, Christ Nagar Vazhayila
Karakulam P.o, Thiruvananthapuram-695 564

... **Applicant**

[By Advocate Mr.Vishnu S Chempazhanthiyil]

V.

1. Union of India, represented by its Secretary
Ministry of Information and Broadcasting
New Delhi- 110 001
2. The Director General
All India Radio, Prasar Bharathi Corporation
New Delhi- 110 001
3. The Director General
Doordarshan Kendra, Prasar Bharati Corporation
New Delhi- 110 001
4. The Deputy Director General, Doordarshan Kendra
Kudapanakunnu, Thiruvananthapuram-695 043
5. The Pay and Accounts Officer (Doordarshan)
Chennai-600 005

... **Respondents**

(By Advocate Mr.N.Anilkumar,SCGSC)

This application having been finally heard on 3.10.2018, the Tribunal on 9.10.2018 delivered the following in the open court.

ORDER

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

Original Application No.180/00331/2017 is filed by Shri.N.Mohan Kumar, retired Assistant, Doordarshan Kendra, Trivandrum aggrieved by the recovery effected from the DCRG due to the applicant by Annexure A-2 issued by 4th respondent, Annexure A-7 issued by 2nd respondent and Annexure A-10 issued by 2nd respondent.

2. The relief sought in the Original Application are as follows:-

“ 1. Declare that recovery being effected by the respondents from the DCRG amounts due to the applicant is illegal and arbitrary

2. Call for the records leading to the issue of Annexure A-2, Annexure A-7 and Annexure A-10 orders and set aside Annexure A-2, Annexure A-7 and Annexure A-10.

3. Direct the respondents to extend the benefit of decision of the Hon'ble Supreme Court in Whitewasher's case (Civil Appeal No.11527/2014 in State of Punjab & Others v. Rafiq Masih) to the applicant.

4. Direct the respondents to refund the recovered amount of Rs.241614 from the entitled and sanctioned DCRG dues of the applicant with 8% interest to the applicant

5. Any other further relief or order as this Tribunal may deem fit and proper to meet the ends of justice.”

3. Applicant had joined the service under the respondents on 28.4.1977 and had retired on 30.11.2014. On retirement, he became eligible for Gratuity amount of Rs.7,40,817/-. A copy of the Authority for Gratuity vide PPO No.286601401017 dated 18.11.2014 is at Annexure A-1.

4. Ostensibly, due to objections raised by PAO, DDK Chennai, the pay of the applicant was re-fixed retrospectively from 1.1.2006 onwards and the respondents unilaterally arrived at a sum of Rs.2,41,614/- as alleged excess payment. Deducting the alleged over-payment from the due DCRG amount, respondents paid Rs.4,99,023/- against the entitled amount of Rs.7,40,817/-. Applicant submits that the action on the part of the respondents is in gross violation of the judgment in **Whitewasher's** case (Civil Appeal No.11527/2014 in **State of Punjab & Others v. Rafiq Masih**). His attempts to seek cancellation of the recovery did not bear fruit. It was informed by the DDG, DDK Trivandrum that recovery was effected as per the instructions received from the Pay & Accounts Officer, Chennai. Applicant maintains that by virtue of **Whitewasher's** judgment, no recovery is permissible from a retired employee and this has been confirmed by O.M A-45016/27/2016-S-11/260 of DoP&T dated 10.3.2017, a copy of which is available at Annexure A-10.

5. Respondents have filed a reply statement where they have gone into the details of the alleged over-payment. It is stated that the Department of Expenditure, Ministry of Finance in their I.D Note dated 19.2.2015 advised that "fixation of pay in the applicable Pay Band will be done by multiplying the existing basic pay (pay drawn in the pre-revised pay scale) as on 1.1.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of 10 and thereafter the applicable Grade Pay will be payable." This resulted in Prasar Bharati Secretariat concluding that their action in giving the minimum of the corresponding stage of Rs.6500/- in the pre-revised scale of pay of Rs.6500/- to 10500/- was wrong and needed to be rectified. Hence, the re-fixation was resorted to. In so far as the judgment in **White washer's**

case (Civil Appeal No.11527/2014 in **State of Punjab & Others v. Rafiq Masih**) is concerned, it is stated that this case does not merit the application of the judgment of the Hon'ble Apex Court in its true spirit "as it involves misappropriation of provisions of the 6th Central Pay Commission." Further the order in **Chandi Prasad Uniyal** is also quoted wherein recovery can be resorted to if the employee had benefited from over-payment on account of fraud, misrepresentation, collusion, or negligence. Some orders of the Bangalore Bench of this Tribunal are also quoted to justify the recovery.

6. Heard Mr.Vishnu S Chempazhanthiyil, learned counsel for the applicant and Mr.N.Anilkumar,SCGSC, learned counsel for the respondents and perused the documents.

7. In the light of the judgment in **White washer's** case, recovery from pensioners is impermissible. The categories to be exempted from recovery are detailed in the judgment thus:

"(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." (emphasis supplied)."

8. The *Rafiq Masih*'s case has been qualified by the judgment of the Apex Court in ***High Court of Punjab and Haryana v. Jagdev Singh*** in C.A No.3500 of 2006 dated 29 July 2016, which has permitted recovery provided an undertaking from the beneficiary had been obtained stating his readiness to pay back any excess payment made. No such undertaking has been obtained from the applicant in this case to justify such recovery. In the case of the judgments brought out by the Bangalore Bench of this Tribunal, such undertakings were made and taken into consideration.

9. Based on the above, the recovery ordered by the impugned orders at Annexure A-2, Annexure A-7 and Annexure A-10 orders are set aside. The recovered sum is ordered to be refunded to the applicant with interest at applicable GPF rates. This shall be done within thirty days from the date of receipt of a copy of this order.

10. The Original Application is disposed of as above. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

- Annexure A-1 - True copy of the Authority for Gratuity vide PPO No.286601401017 dated 18.11.2014 issued by PAO Chennai
- Annexure A-2 - True copy of the Communication No.63(18) 2011-12/AC-I/DKT/6109 dated 02/12/2014 issued by the 4th respondent
- Annexure A-3 - True copy of the representation 19.02.2015 submitted to the 4th respondent by the applicant
- Annexure A-4 - True copy the representation dated 16.4.2015 submitted to the 1st respondent by the applicant
- Annexure A-4(a) - True copy of representation dated 16.4.2015 submitted to the 3rd respondent by the applicant
- Annexure A-5 - True copy of the representation dated 16.06.2015 submitted by applicant to CEO, Prasara Bharathi
- Annexure A-6 - True copy of Communication No.27(2) (11) 2014-A1/DKT/52 dated 15.07.2016 issued by 4th respondent
- Annexure A-7 - True copy of the order No.A-45016/27/2016-S-11/1960-1961 dated 9.9.2016 issued by the 2nd respondent
- Annexure A-8 - True copy of the O.M No.F.No.18/03/2015-Estt(Pay-I) dated 2.3.2016 issued by DOPT
- Annexure A-9 - True copy of Communication No.29.4.2012-S11(A)/1062-1063 dated 19.10.2016 issued by 3rd respondent
- Annexure A-10 - True copy of communication No.A-45016/27/2016-S-II/260 dated 10.3.2017 issued by the 2nd respondent
- Annexure A-11 - True copy of the communication No.515/04/2014-BA(E) Pt. Dated 17.2.2015 issued by Ministry of Information and Broadcasting
- Annexure A-12 - True copy of the order dated 23.1.2017 in O.A No.170/00927/2016 of the CAT, Bangalore Bench
- Annexure R-1 - True copy of the PB Secretariat communication No.AD(G&A)/PB.7(9)/2012-Fin(Vol-III) dated 10.6.2013

Annexure R-2 - True copy of the Hon'ble CAT, Patna Bench order dated 9.9.2016 in OA No.24 of 2016

Annexure R-3 - True copy of the Hon'ble CAT, Principal Bench order dated 01.06.2016

Annexure R-4 - True copy of the Hon'ble CAT, Bangalore Bench order dated 16.6.2017 in O.A No.170/813 of 2016

Annexure R-5 - True copy of Ministry of Law & Justice, Department of Legal Affairs, Branch Secretariat, Kolkata UO No.108/17 dated 6.2.2017

Annexure A-13 - True copy of the judgment dated 17.8.2015 in O.A No.310/01119/2015 of the Madras Bench of the Tribunal

Annexure A-14 - True copy of the order No.F.No.A-56013/21/2017-BAP dated 5.2.2018 issued by the Ministry of I&B

Annexure A-15 - True copy of the communication No.Chen.1(5) 2017/S/RTI-(40)/9 dated 1.9.2017 issued by the Director E, All India Radio, Chennai

Annexure R-6 - True copy of the Hon'ble Supreme Court's order dated 29.7.2016 in Civil Appeal No.3500 of 2016

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