

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00330/2017

Wednesday, this the 24th day of October, 2018.

CORAM:

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

C.D. Valsakumari,
Retired Upper Division Clerk,
All India Radio, Thiruvananthapuram – 695 014.
Residing at Archana, Kattacha Kuzhi (P.O),
Balaramapuram, Thiruvananthapuram – 695 501. - Applicant

[By Advocate Mr. Vishnu S. Chempazhanthiyil]

Versus

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 Deputy Director General,
All India Radio, Thiruvananthapuram – 695 014.
4. The Pay and Accounts Officer (All India Radio),
Mylapore, Chennai – 600 004. - Respondents

[By Advocate : Mr. N. Anilkumar, Senior PCGC (R)]

The application having been heard on 24.10.2018, the Tribunal on the same day delivered the following:

O R D E R (Oral):-

Per: Ashish Kalia, Judicial Member

The brief facts of the case are that the applicant retired from service on 31.10.2014. He was eligible for gratuity and other

pensionary benefits. However, it is submitted that based upon the objection by Pay and Accounts Office, Chennai the pay of the applicant was revised and re-fixed with effect from 1.1.2006 onwards. The applicant had raised her objection against the re-fixation and made a representation dated 1st October, 2013. At the time of retirement the respondents unilaterally recovered an amount of Rs. 3,53,647/- on the ground of excess payment made to the applicant. The applicant has relied on the judgment of the apex court in ***State of Punjab and Others v. Rafiq Masih*** - AIR 2015 SC 696 and submitted that no recovery can be effected from the DCRG dues of the applicant even if it is presumed that there was excess payment of pay and allowances on account of mistake on the part of the respondents.

2. Notices were issued to the respondents and they entered appearance through Shri N. Anilkumar, SCGSC. They filed a reply statement opposing grant of relief to the applicant. They submitted that after the recommendation of the VIth Pay Commission the posts of Head Clerk and Assistants were in the pay scale of Rs. 5500-9000/-. The applicant while working as UDC was granted 2nd ACP w.e.f. 29.7.2005 in the scale of pay of Rs. 5500-175-9000/-. Further while recommending parity between Field and Secretariat Offices, the VIth Pay Commission recommended merger of a few grades in the

subordinate/field offices at para 3.1.14 of its report and accordingly the posts of Head Clerks, Assistants, Office Superintendent and Administrative Officer Grade III in the pay scales of Rs. 5000-8000/-, Rs. 5500-9000/- and Rs. 6500-10500/- will stand merged and the revised pay structure for these categories of employees recommended by the Pay Commission was pay band-2 with Grade Pay of Rs. 4,200/-. Subsequently, the respondents in consultation with their internal financial unit found that there was an error apparent in giving bunching effect and it was decided to withdraw the pay fixation of Head Clerks, Assistants and Stenographer Grade-II done by applying the multiplication factor of 1.86 at Rs. 6500/- w.e.f. 1.1.2006 and ordered recovery of overpayment. In the nutshell they are entitled to recover all the dues. In support of their arguments the respondents have relied upon the judgment of the apex court in ***High Court of Punjab & Haryana & Ors. v. Jagdev Singh*** – Civil Appeal No. 3500/2006.

3. Heard Shri Vishnu S. Chempazhanthiyil, learned counsel appearing for the applicant and Shri N. Anilkumar, SCGSC learned counsel appearing for the respondents. Perused the records.

4. The short question raised before this O.A is that the recovery are made from the pension of the applicant herein was amounting to

Rs. 3,53,647/- allegedly on account of erroneous fixation of pay pursuant to 5th Pay Commission with effect from 01.01.2006. Learned counsel for the applicant in para (D) of the O.A has categorically relied upon the Apex Court judgment in ***Civil Appeal No. 11527/2014 in State of Punjab & Others v. Rafiq Masih (Whitewasher's)*** and also in ***Sahib Ram v. State of Haryana 1995 (Supp) 1 SCC 18*** and approached this Tribunal for redressal of his grievance.

5. During the course of the argument, learned counsel for the respondents drew my attention explaining that in similar circumstance, Bangalore Bench of this Tribunal, had allowed recovery. The main thrust of the case is that there is an undertaking given by the applicant and as per the judgment of the apex court in ***Jagdev*** Singh's case (supra) recovery is permissible where undertaking is given by employee in case excess payment is made to him he shall be liable to refund the same. Learned counsel for the applicant has read out the judgment in ***Rafiq Masih***'s case (supra) and laid emphasis that discretion is always there with the Court. The Department has not taken steps well within the time prescribed under the law. He has also relied upon Paragraph 10(iii) of ***Rafiq Masih***'s case (supra) where the excess payment has been made for a period more than five years is not recoverable.

6. Taking shelter of the principle laid down in *Rafiq Masih*'s case (supra) though this Tribunal is not taking away the right of the respondents for recovering the said excess amount paid to the applicant on the ground of erroneous fixation restricted to five years only, ends of justice would be met, if the respondents are directed to recover the dues from the applicant of not exceeding five years because of wrong fixation to that the respondents are entitled to recover from the pension of the applicant.

7. With the above direction, the O.A is disposed of. No order as to costs.

(Dated, 24th October, 2018.)

**(ASHISH KALIA)
JUDICIAL MEMBER**

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Applicant's Annexures

Annexure A1 - True copy of the Authority for Gratuity vide No. 285541401015 file No. 101/2014 dated 10.10.2014 issued by PAO, Chennai.

Annexure A2 - True copy of Order No. TVM.10(2)/2014-S dated 08.08.2014 issued by 3rd respondent refixing pay of the applicant.

Annexure A3 - True copy of the representation dated 01.10.2014 submitted to the 2nd respondent by the applicant.

Annexure A4 - True copy of communication No. TVM-1(4) 2014-15/AC/3185 dated 16.10.2014 issued by 3rd respondent.

Annexure A5 - True copy of communication No. A-45016/58/2016-S-11/11 dated 04.01.2017 issued by 2nd respondent.

Annexure A6 - True copy of communication No. TVM-13(2) 2016-S/401 dated 31.01.2017 issued by the 3rd respondent.

Annexure A7 - True copy of the communication No. PAO/AIR/CHEN/PEN/2016-17/596 dated 23.03.2017 issued by the 4th respondent.

Annexure A8 - True copy of the O.M. No. F. No. 18/03/2015-Estt(Pay-1) dated 02.03.2016 issued by DoPT.

Annexures of Respondents

Annexure R1 - True copy of the pay fixation of employees with correct calculation as per right interpretation as well as incorrect calculation.

Annexure R2 - True copy of the judgements.
