

**Central Administrative Tribunal
Ernakulam Bench**

OA/180/00470/2016

Wednesday, this the 3rd day of October, 2018

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

T.Vijayan, aged 60
S/o Late Narayanan
Administrative Officer (Retired)
All India Radio, Panaji, Goa
Residing at "Vaishnavi",
KRA-61, Kanathur Road
Pallikkunnu Post, Kannur District
Kerala: PIN 670 004

Applicant

[Advocate: Smt.R.Jagada Bai]

versus

1. Union of India represented by its Secretary
Ministry of Information and Broadcasting
'A' Wing, Shastri Bhavan
New Delhi-110 001.
2. The Director General
All India Radio, Akashwani Bhavan
Parliament Street, New Delhi-110 001.
3. The Assistant Director (Programme)
(Head Office), All India Radio
Altinho, Panaji, Goa 403 001.
4. The Pay and Accounts Officer
All India radio, AIR Complex
Backbay Reclamation
Mumbai-400 020

Respondents

[Advocate: Sri Thomas Mathew Nellimoottil, Sr.PCGC]

This OA having been heard on 1st October, 2018, the Tribunal delivered the following order on 3rd October, 2018:

ORDER

This OA is filed by Sri T.Vijayan, retired Administrative Officer, All India Radio, Panaji, Goa, aggrieved by the recovery being effected from the DCRG due to him. The reliefs sought in the OA are as follows:

- (i) *Quash Annexure A5 and A6.*
- (ii) *Declare that the applicant is entitled to retirement benefits such as Death cum Retirement Gratuity, Pension etc., in full without any deductions on account of revision of pay of the applicant from 2.1.2006.*
- (iii) *Direct the respondents to refund Rs.4,21,305/- already recovered from his DCRG with interest.*

2. The applicant had retired as Administrative Officer from All India Radio, Panaji, Goa on 30.11.2015. Upon his retirement, respondent No.3 issued Annexure A6 order dated 8.3.2016 proposing to recover an amount of Rs.4,21,305/- from the DCRG of the applicant. It is stated in the impugned communication, Annexure A6 that the recovery is necessitated on account of the decision of the respondents to re-fix his pay with effect from 1.1.2006.

3. The applicant points out that the action taken by the respondents is violative of the judgment of the Apex Court in ***State of Punjab & Ors vs. Rafiq Masih*** (Whitewasher's case) wherein it is declared that no recovery is permissible from retired hands, among others. By way of representation, copy of which is made available at Annexure A3(1), the applicant represented his case before the 3rd respondent but to no avail. The applicant also relied on the judgment of CAT, Madras Bench in OA 310/01119 of 2015 wherein, on the lines of ***Rafiq Masih's*** case, recovery from retired hands was held to be impermissible (Annexure A9). Respondents replied with order dated 8.3.2016, copy of which is available at Annexure A6, totally ignoring Annexure A7 Office Memorandum of DoPT which had been issued in pursuance to ***Rafiq Masih*** judgment. The respondents also refused to consider the categoric judicial pronouncements on the subject and

rejected the contentions of the applicant. Left with no alternative, the applicant had to approach this Tribunal.

4. The respondents have filed a reply statement wherein the erroneous re-fixation of pay, brought on by “a series of errors in deducing the relevant part of the 6th CPC recommendation”, is cited as the reason for the action which is impugned in this OA. The statement goes into details about the Prasar Bharati organization with a background of the two Directorates of AIR and Doordarshan working under it. It also details the error in estimation which has resulted in over-payment with effect from 1.1.2006, which has been sought to be corrected by the re-fixation, resulting in recovery. It also quotes various Office Memoranda issued by the Department of Expenditure on the stated subject.

5. In the view of the respondents, the ***Rafiq Masih*** judgment does not apply in this case as it pertains to misrepresentation of the provisions of 6th CPC although they have no case that the misrepresentation has been made from the side of the applicant. Attention is drawn to the order of the Hon'ble Supreme Court in ***Chandi Prasad Uniyal*** case wherein it has been ordered that none can be allowed to benefit from negligence or carelessness. Reliance has also been placed on the order of the CAT, Principal Bench, New Delhi in OA No.1854/2014 (Annexure R10) to fortify the defence of the respondents.

6. The issue involved has been subject matter for consideration on more than one occasion before this Tribunal itself. The seminal judgment concerning recovery of amounts from government employees is the ***Rafiq Masih*** judgment wherein it has been ordered thus:-

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, summarize 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.

7. The only exception is that it is qualified by a subsequent judgment rendered in **Jagdev Singh's** case (*AIR 2016 SC 3523*) that if an undertaking had been obtained from the concerned employee that he or she is ready to return any excess payment effected, recovery is permissible. The respondents have no case that any such undertaking has been obtained. The applicant also submitted copies of the judgments of this Tribunal in OA 530/2016 and 299/18 wherein similar relief had been granted. The present OA being identical, the applicant being a retired employee, we are of the view that the reliefs sought for are to be granted to the applicant. Accordingly, the reliefs sought for are granted to the applicant in full with the interest portion being restricted to applicable GPF rates. The OA is disposed of with no order as to costs.

(E.K.Bharat Bhushan)
Administrative Member

Annexures filed by the applicant:

- Annexure A1: Copy of the order No.Pen-1(2)2015-S dated 30.11.2015 issued by the Assistant Director (P), All India Radio, Panaji, Goa (Respondent No.3) permitting him to retire on superannuation.
- Annexure A2: Copy of the pay slip of the applicant for the month of November, 2015.
- Annexure A3: Copy of the representation dated 2.11.2015 along with pension papers in Form 8.
- Annexure A4: Copy of the order No.Pen-10(2)2015-S/1419 dated 1.12.2015 issued by the Assistant Director (P) All India, Radio Panaji, Goa (Respondent No.3).
- Annexure A5: Order of the Assistant Director (P) All India Radio, Panaji, Goa (Respondent No.3 under No. Pen-13(2)2015-S(TV)/348 dated 3.3.2016.
- Annexure A6: Order of the Assistant Director (P) All India Radio, Panaji Goa (Respondent No.3) under No. Pen-13(2)2015-S (TV)/361 dated 8.3.2016 withholding an amount of Rs.4, 21,305/- from the Death cum Retirement Gratuity of the applicant.
- Annexure A7: Copy of the order of Government of India, Ministry of Personnel, Public Grievance & Pensions, Department of Personnel & Training, New Delhi Office Memorandum No.F No.18/03/2015-Estt (Pay-I) dated 2.3.2016.
- Annexure A8: Copy of the order of the Hon'le Apex Court in *State of Punjab & Others vs. Rafiq Masih* in CA No.11527 of 2014 (Arising out of SLP© No.11684 of 2012) pronounced on 18.12.2014.
- Annexure A9: Copy of the order of the CAT, Madras Bench in OA No.310/01119 of 2015 pronounced on 17.8.2015.
- Annexure A10: Copy of the Govt of India, Ministry of Finance, Department of Expenditure, Implementation Cell Office Memorandum F.No.1/1/2008-IC dated 13.11.2009.
- Annexure A11: Copy of the Due-Drawn difference statement prepared by the AIR Panaji Goa in respect of the applicant for effecting recovery of Rs.4,21,305/-.

Annexures filed by the respondents:

- Annexure R1: Copy of circular No.26022/02 dated 3.4/10/2012.
- Annexure R2: Copy of letter bearing No.26022/02/2012-S.II dated 22.5.2013.
- Annexure R3: Copy of I.D.No.Misc.1/330/2012-P dated 10.2.2014.
- Annexure R4: Copy of letter No.A-26015/3/2014- dated 20.8.2014.
- Annexure R5: Copy of letter No.Misc.1/330/2012 dated 20.10.2014.
- Annexure R6: Copy of OM No.FTS154226/2015 dated 28.7.2015.
- Annexure R7: Copy of letter No.Misc.1/330/2012 dated 19.8.2015.
- Annexure R8: Copy of letter No.Misc.1/330/2012 (Vol.II) dated 31.12.2015.
- Annexure R9: Copy of letter No.A-26022/02/2012 dated 5.1.2016.
- Annexure R10: copy of order dated 1.6.2016/1854/2014 of the Principal Bench of CAT.
- Annexure R11: Copy of order dated 9.9.2016 of CAT in OA 24/2016.