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**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00530/2016

Friday, this the 10th day of August, 2018

C O R A M :

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

N.Ayyappan Nair
S/o.Narayanan Nair, aged 61 years
Anoop Bhavan, (Pattathil)
Thalayolaparambu P.O
Kottayam-686 605.

...**Applicant**

(By Advocates – Mr.R.Sreeraj & Mr.Rajesh R.Pillai)

V e r s u s

1. Union of India
represented by its Secretary to the Government of India,
Ministry of Information & Broadcasting,
New Delhi – 110 001.
2. The Director General, All India Radio,
Sansad Marg, New Delhi -110001.
3. The Pay and Accounts Officer,
Pay and Accounts Office,
Doordarshan Kendra,
Swami Shivananda Salai,
Chennai-600 005.
4. The Deputy Director (E),
Doordarshan Maintenance Centre,
Kakkanad, Kochi- 682 037.

...**Respondents**

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

This Original Application having been heard on 2nd August 2018, the Tribunal on 10th August 2018 delivered the following :

ORDER

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

O.A.No.180/530/2016 is filed by Shri.N.Ayyappan Nair, retired employee of All India Radio (AIR), who is aggrieved by order of recovery of an amount of Rs.3,79,301/- from service gratuity as alleged excess payment of pay and allowances, made due to re-fixation of pay as on 1.1.2006 in the revised pay structure pursuant to 6th Pay Commission recommendations. The reliefs sought in the O.A are as follows :

1. Call for the records leading to the issue of Annexure A-4 and A-5 and quash the same.
2. To direct the respondents to release an amount of Rs.379301/- wrongly deducted from the gratuity of the applicant forthwith with interest at the rate 12% per annum from the date of retirement till payment.
3. Such other relief as may be prayed for and this Tribunal may deem fit to grant.
4. Grant the cost of this Original Application.

2. The applicant had joined as Lower Division Clerk (LDC) under DG Doordarshan on 1.6.1981. Subsequently he was transferred to AIR Kerala Circle and went on to retire from service on 31.1.2016. As the dispute is with reference to the fixation of pay made in consequence to 6th Pay Commission revision, a copy of the fixation order dated 3.10.2012 issued by the 2nd respondent is made available as Annexure A-1. It is stated in the O.A that one month before his retirement, an order No.Misc/1/330/2012/PPC dated 31.12.2015 (Annexure A-3) was issued. It was stated therein that pay fixation as on 1.1.2006 has been amended as follows :

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“ The pay in the pay band will be determined by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. To ease the complexity of multiplication and rounding off, the fitment tables of privilege-revised scales of pay in which the officer has drawn his pay as on 1.1.2006 has to be used for arriving at the pay in the pay band and thereafter, the grade pay corresponding to the upgraded scale as indicated in Column-6 of Part B or Part C of CCS (Revised Pay) Rules, 2008 will be payable in addition.”

3. By then the applicant's pension papers and service book had already been forwarded to the 4th respondent office for calculation of pensionary benefits but these were returned stating that the 4th respondent had directed fixation of applicant's pay to be calculated at Rs.5500/- plus one additional increment as on 1.1.2006. Annexure A-4 was issued on 11.1.2016 and Annexure A-5 on 9.2.2016, further directing recovery of Rs.3,79,301/- as excess payment of pay and allowances due to erroneous fixation. This is stated to have been effected on the basis of the clarification issued by the Department of Expenditure, Ministry of Finance.

4. The respondents in their reply statement have explained the logic behind the correction and informs that the re-fixation was done on the basis of the clarification obtained from the Ministry of Finance. The minimum revised pay had been fixed at Rs.6500/- whereas the applicant had been eligible only for Rs.5500/- plus one additional increment as on 1.1.2006 which came to Rs.5675/-. They have also relied upon Rule 73 (Annexure R-1[d]) empowering the authorities to recover “*dues which come to notice subsequently and which remain outstanding till the date of retirement of Government servant....to be adjusted against the amount of retirement*

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gratuity becoming payable to the Government servant on his retirement.”

An order of the Principal Bench of this Tribunal at Annexure R-1 [e] upholding the principle involved in the fixation adopted as a result of the 6th Central Pay Commission has also been cited.

5. We have heard Shri.Sreeraj, learned counsel for the applicant and the standing counsel for the respondents. Recovery of amounts from Government employees has been considered at length before various judicial fora and the landmark judgment which holds the field on the subject is **State of Punjab v. Rafiq Masih (White Washer) reported in (2015) 2 SCC (L&S) 33** 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, 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.

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6. The applicant in this case has been served with an intimation that there had been an erroneous fixation in his pay, a few days before his retirement and the authorities took the easy route of recovering the large amount involved from his eligible gratuity. This is squarely covered under Rafiq Masih (supra). He checks the first three categories of being a Group C employee, recovery being ordered within one year period of his retirement as well as the dues pertaining to more than five years, which has specifically been prohibited by the Hon'ble Apex Court in Rafiq Masih (supra). This Tribunal itself in order dated 30.7.2018 in O.A.No.180/299/2018 has followed the same principle.

7. The O.A succeeds as we declare recovery of amount from the applicant's gratuity as illegal. The amount recovered shall be refunded to him with interest at applicable GPF rates within a period of two months from the date of receipt of a copy of this order. No costs.

(Dated this the 10th day of August 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

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List of Annexures in O.A.No.180/00530/2016

- 1. Annexure A1** - A true copy of the Pay fixation order No.A26022/02/2012-SII/1328 to 1330 dated 3.10.2012.
 - 2. Annexure A2** - True copy of the refixation order No.CHN/DMC/69(11) 2012-AC dated 29.10.2012.
 - 3. Annexure A3** - True copy of the order No. No.Misc-1/330/2012-PPC dated 31.12.2015.
 - 4. Annexure A4** - A true copy of the Order No.PAO/DDK/CHN/PEN/15-16/105/2776 dated 11.1.2016.
 - 5. Annexure A5** - A true copy of the Order No.CHN-DMC-21(1) 2016-S(NAN) 106 dated 9.2.2016.
 - 6. Annexure A6** - A true copy of the representation dated 11.3.2016 submitted to the 2nd respondent.
 - 7. Annexure A7** - True copy of Office Memorandum No.FNO18/03-2015-Estt.(Pay1) dated 2.3.2016.
 - 8. Annexure A8** - True copy of the Speaking Order No.M-1/128/2014/PPC dated 3.6.2016.
 - 9. Annexure A9** - A true copy of the order in O.A No.310/01119 of 2015 of Central Administrative Tribunal Madras Bench dated 17.8.2015.
 - 10. Annexure R1(a)** - True copy of the pay fixation order dated 18.1.2016.
 - 11. Annexure R1(b)** - True copy of the letter dated 12.5.2016.
 - 12. Annexure R1(c)** - True copy of the letter dated 7.6.2016.
 - 13. Annexure R1(d)** - True copy of the relevant page of pension compilation rules relating to adjustments and recovery of dues.
 - 14. Annexure R1(e)** - True copy of the order on O.A No.1854/2014.
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