

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00601/2016

Monday, this the 29th day of October, 2018.

CORAM:

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

Jacob Paul @ M.P. Yacob, 66 years,
S/o. P.M. Poulose (late),
Retired Deputy Superintendent (Finger Print),
Central Finger Print Bureau,
National Crime Records Bureau, East Block, 7,
R.K. Puram, New Delhi – 110 066.
Residing at : Mangattampillil House,
Akapparambu, Mekkad – 683 589,
Ernakulam District. - Applicant

[By Advocate Mr. M.P. Krishnan Nair]

Versus

1. The Union of India represented by Secretary to the Government, Ministry of Home Affairs, North Block, New Delhi – 110 001.
2. The Secretary, Ministry of Finance, North Block, New Delhi – 110 001.
3. The Secretary, Department of Expenditure, Ministry of Finance, North Block, New Delhi – 110 001.
4. The Director, Central Bureau of Investigation, 5-B, CGO Complex, Lodi Road, New Delhi.
5. The Director, National Crime Records Bureau, East Block, 7, R.K. Puram, New Delhi – 110 066.
6. The Pay & Accounts Officer, Central Pension Accounting Office, Government of India, Trikoot – 2, Bhikaji Cama Place, New Delhi – 110 066.
7. The Manager, Syndicate Bank, Central Pension Processing Centre, II nd Floor, Syndicate Bank, Head Office : Manipal, TQ. Udupi, Udupi, Karnataka – 576 104.

8. The Pay & Accounts Officer (DCPW),
Block No. 9, CGO Complex, Lodhi Road,
New Delhi – 110 003. - Respondents

[By Advocate : Mr. T.C. Krishna, Senior PCGC for R-1 to 6 &8]

The application having been heard on 29.10.2018, 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 is as follows:-

The applicant was appointed as Assistant Central Intelligence Officer Grade-II with effect from 12.05.1975 in the pay scale admissible to similarly placed officers of corresponding rank in the Central Bureau of Investigation (CBI), Government of India. The post was re-designated as Sub-Inspector (FP). It was assured that the decision to re-designate the posts in the Central Finger Print Bureau (CFPB) does not in any way affect the professional/financial privileges admissible to the CFPB employees as on 19.06.1976. The applicant made representations for grant of parity of pay scale with that of Deputy Superintendent of Police (CBI). The matter was considered by the authorities concerned and recommended for giving parity of pay. However, parity of pay was not given to the applicant. It is further submitted that appropriate action was not taken by the respondents pursuant to O.A No. 473/2011 in which applicants prayed for parity of pay scales of Deputy Superintendent of Police (CBI) at Rs. 8000-13500 (Pre-revised) as per

the terms and conditions of his initial appointment. This Tribunal had directed to re-consider the grievances of the applicant and pass appropriate orders and if parity is granted, the question of discontinuance of the special allowance may be considered. But the respondents considered and rejected the representation of the applicant without any reason. Therefore, another O.A. No. 596/2013 has been filed by the applicant and that O.A was allowed and the respondents were directed to re-consider the claim of the applicant and place the applicant in the pre-revised pay scale of Rs. 8000-13500 with effect from the date of promotion as Deputy Superintendent (Finger Print) and grant all consequential benefits and re-fix the retiral benefits and arrears thereof.

2. It is further submitted that instead of complying the above order, the respondents filed OP (CAT) No. 167/2016 before the Hon'ble High Court. As an interim measure, Hon'ble High Court has stayed the order of this Tribunal. In the meantime, Respondent No. 6, the Pay and Accounts Officer, issued the impugned order dated 09.05.2016 to the Manager, Syndicate Bank, Central Pension Processing Centre, Karnataka, by which a recovery of Rs. 2,17,203/- was ordered by the respondents. According to the applicant, it is victimisation of the proceedings initiated by the respondents before this Tribunal. It is submitted by the applicant that pursuant to the

recommendation of the VI CPC, the applicant has not received the Grade Pay of Director. But the Department allowed the following Grade Pay to the applicant herein on the basis of VI CPC on MACP as under:-

*“Sub-Inspector (FP): Rs. 4200/-
1st MACP : Rs. 4600/- on completion of 10 years
2nd MACP : Rs. 4800/- on completion of 20 years
3rd MACP : Rs. 5400/- on completion of 30 years.”*

which was correctly fixed as per the recommendation of the VI CPC. Absolutely, no excess payment or wrong calculation in fixing the MACP is there. Therefore, it was prayed that issuance of the said recovery is absolutely incorrect, illegal and same may be set aside.

3. After the receiving the present O.A by this Tribunal, notices were issued to the respondents and respondents filed a detailed reply statement.

4. In the reply statement, it is submitted that the applicant had retired from service on attaining the age of superannuation on 31.05.2010 and his pension and pensionary benefits were fixed by Pay & Accounts Office on 26.05.2010. It is further submitted by the learned counsel for the respondents that after retirement of the applicant, this Bureau has granted the Grade Pay of Rs. 5400/- in 3rd MACP to all eligible Deputy Superintendents including the applicant with effect from 01.09.2008 vide order dated 01.11.2010. Thus, for

this upward revision of the pension in respect of the Deputy Superintendents, who have already retired, pension of the applicant was revised with effect from 01.06.2010.

5. The Grade pay of Rs. 5400/- which was granted in 3rd MACP to all eligible Deputy Superintendent (FP) including the applicant was reversed downwards to Grade Pay of Rs. 4800/- plus Special Pay of Rs. 800/- vide order dated 30.08.2012 based on clarifications obtained from the DoPT through Ministry of Home Affairs. Accordingly, the respondents have issued revised calculation based on the revised Grade Pay of Rs. 4800/- in respect of the applicant and other Officers working with the Department. It is further submitted that pursuant to the downward revision of pay, the pensionary benefits like pension, gratuity, commutation, leave encashment, DA arrears, etc are needed to be revised and excess amount paid on these accounts was also required to be recovered from the retirees concerned. However, it is further submitted that action could not be taken by the PAO due to some administrative reasons inadvertently. Lastly, it is submitted by the learned counsel for the respondents that pensioners are bound by their undertaking, which they have submitted along with their papers stating therein to deposit any over/excess payment made to them on account of pension/DCRGE, etc. and any payment due towards them on account of license fee, etc. to deposit the same on demand within time. In the

event of their failing to do so, the whole amount may be recovered from their pension. The Department has also given the calculation, as follows:-

(a) Excess pension paid	=	Rs. 73092/-
(b) Gratuity paid	=	Rs. 32522/-
(c) Commutation paid	=	Rs. 28712/-
(d) Leave Encashment paid	=	Rs. 19710/-
(e) Excess Salary paid	=	Rs. 63167/-

Total Amount recoverable	=	Rs. 217203/-
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6. Heard Mr. M.P. Krishnan Nair, learned counsel for the applicant and Mr. T.C Krishna., learned Senior PCGC for the respondents at length.

7. Learned counsel for the applicant submitted that the applicant is victimised because he has filed some contempt petition for implementation of the order passed in O.A No. 596/2013, whereby this Tribunal had ordered revision of the pay scale of the applicant to pay scale of Rs. 8000-13500 pre-revised and also submitted that the respondents has taken action of this. The case is covered by the Apex Court decision in *State of Punjab and Others v. Rafiq Masuh (Whitewasher's) Civil Appeal No. 11527/2014*. Particularly, learned counsel for the applicant emphasised that the recovery shout not have been made excess of 5 years before the order of recovery was issued. Thus, it is submitted by the applicant that the Department is not correct

after any recovery was made. Learned counsel for the applicant has also submitted that O.P (CAT) is pending before the Hon'ble High Court pursuant to the order passed in O.A No. 596/2013, which was allowed and the Deputy Superintendents were given benefit of promotion. Para 19 of O.A No. 596/2013 is as follows:

“ 19. The O.A is allowed and the respondents are directed to re-consider the claim of the applicant. Applicant be considered for placement in the pre-revised pay scale of Rs. 8000-13500 with effect from his date of promotion as Deputy Superintendent (Finger Print) and grant all consequential benefits and re-fix the retiral benefits and arrears thereof within a period of three months from the date of receipt of a copy of this order taking note of the special circumstances pointed out above and to mitigate the grievance of the applicant who was initially recruited as Sub Inspector in CBI along with other similarly placed person in the 4th respondent organisation. No order as to costs.”

8. Learned counsel for the applicant prays that the matter may be heard after the final decision of the High Court in the above OP (CAT).

9. On the other side, learned counsel for the respondents have made submission that OP (CAT) has nothing to do with the present case as that is a different cause of action and the applicant will get benefits from that day because the same applicant is placed with the O.A No. 596/2013. He has submitted that the erroneous fixation of 3rd MAPC was granted to the applicant and Grade Pay was fixed with the applicant at Rs. 5400/-, whereas after clarification from the DoPT, it is re-fixed at the Grade Pay of Rs. 4800/-. There is error on the part of the Department while fixing the 3rd MACP in the case of the applicant.

Thus, the Department is entitled for recovery to the excess amount paid to the applicant.

10. He has relied upon the judgment passed by Apex Court in the matter of ***High Court of Punjab and Haryana and Others v. Jagdev Singh AIR 2016 SC 3523*** Para 11 is quoted below:

“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 undertaking.”

11. The applicant has assailed action of respondents to the extent of recovery ordered on the ground if it is made after five years, then liable to be set aside. Such a discrimination is not made in the judgment passed by the Apex Court in Jagdev Singh's matter. It is clear where an undertaking is furnished, the Department is entitled to recover excess money. This Tribunal is of the considered opinion that the present case before this Tribunal, there is no illegality made by the respondent Department. Thus, the O.A is devoid of merit, hence rejected. No order as to costs.

(Dated, 29th October, 2018.)

**(ASHISH KALIA)
JUDICIAL MEMBER**

Applicant's Annexures

Annexure A1	-	True copy of the Order dated 17.11.2015 in O.A. No. 596/2013.
Annexure A2	-	True copy of the Order/letter dated 09.05.2016 issued by the 6 th respondent the Pay & Accounts Officer, Central Pension Accounting Office, New Delhi.
Annexure A3	-	True copy of the Office Memorandum dated 02.03.2016 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi.

Annexures of Respondents

Annexure R-5 A	-	PPO dated 26.05.2010
Annexure R-5 B	-	NCRB Office Order No. 42/3/2009-Ad.I(B) dated 01.11.2010.
Annexure R-5 C	-	PPO dated 07.12.2010
Annexure R-5 D	-	NCRB Office Order dated 30.08.2012
Annexure R-5 E	-	DoPT's ID note dated 25.04.2012
Annexure R-5 F	-	DoPT's ID note dated 30.07.2012
Annexure R-5 G	-	NCRB letter No. 66/51/2009-10/Accounts/ NCRB dated 20.09.2012
Annexure R-5 H	-	Undertaking of Shri Jacob Paul dated 10.09.2009
Annexure R-5 I	-	Shri Jacob Paul's letter dated 20.12.2014
Annexure R-5 J	-	Bureau's letter to Shri Jacob Paul dated 31.12.2014
Annexure R-5 K	-	Bureau's letter to PAO dated 31.12.2014
Annexure R-5 L	-	PAO's letter dated 26.02.2016
Annexure R-5 M	-	Revised PPO dated 26.04.2016
Annexure R-5 N	-	DoPT's O.M 18/26/2011-Estt(Pay.I) dated 06.02.2014.
Annexure R-5 O	-	CBI ID Note dated 06.06.1986
Annexure R-5 P	-	MHA's approval and DoE's disagreement to the upgradation proposal.
Annexure R-5 Q	-	Inputs to 7 th CPC
Annexure R-5 R	-	MHA ID note dated 01.08.2017
