

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00891/2017

Monday, this the 24th day of September, 2018

CORAM

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

G.Appukuttan Pillai
Stenographer Grade-I (Retired)
Doordarshan Kendra, Thiruvananthapuram
Residing at ERA6, Erappukuzhi
Kudappanakunnu P.O.
Thiruvananthapuram-695 043.

Applicant

[Advocate: Mr.Vishnu S.Chempazhanthiyil]

Versus

1. The Deputy Director General
Doordarshan Kendra
Thiruvananthapuram-695 043.
2. The Director General, Doordarshan
Doordarshan Bhavan, Copernicus Marg
New Delhi-110 001.
3. Union of India, represented by the Secretary
Ministry of Communications
New Delhi-110 001.
4. The Pay and Accounts Officer
Doordarshan Kendra, Swami Sivananda Salai
Chennai-600 005.
5. The Director General
All India Radio, Akashvani Bhavan
Parliament Street
New Delhi-110 001.

Respondents

[Advocate: Mr. N.Anilkumar, Sr.PCGC]

The OA having been finally heard on 17th September, 2018, this Tribunal delivered the following order on 24th September, 2018:

ORDER

This OA is filed by Sri Appukuttan, retired Stenographer Grade-I, Doordarshan, Trivandrum, residing at Trivandrum against the recovery ordered from his eligible dues by operation of Annexure A2 re-fixation of pension and other benefits. He seeks the intervention of this Tribunal and a direction to the respondents to refund an amount to the tune of Rs.5,61,103/- recovered from his DCRG with interest @ 10%. He submits that the issue raised by him has been considered in respect of similarly situated persons in OA No.667/2014 and 707/2014 by this Tribunal and favourable orders had been issued to the benefit of the applicants therein.

2. The applicant had entered service under the respondents in December, 1975 as Stenographer Grade-III and after 39 years and 9 months, had retired on 30.9.2015. At the time of his retirement he was drawing a basic pay of Rs.21970/- + 4800 + 460 + DA. On the basis of this and also his service record, the applicant submits that he was eligible for Gratuity amount of Rs.9,57,000/- and commuted value of pension of Rs.5,35,494/- along with family pension. The pension papers were forwarded to Pay & Accounts Officer, DDK Chennai in June, 2015 and a copy of the same is available at Annexure A1.

All of a sudden, a re-fixation was ordered as per order No.1 (5) 2015-A1/DKT dated 3.12.2015 i.e., after 3 months of retirement of the applicant and a copy of the same is produced as Annexure A2 and is impugned in this OA. The essence of this re-fixation was to the effect that the pay of the applicant was re-fixed at Rs.19660+4600 GP by taking away the benefit of 2 advance increments granted to the applicant and withdrawal of one financial up-gradation under MACP. As a result of Annexure A2, the Gratuity of the applicant stood reduced

to Rs.8,76,629/- with proportionate reduction in the monthly pension as well as commuted value of pension. To put it briefly, out of Rs.8,76,629/- sanctioned as DCRG, an amount of Rs.5,61,103/- was recovered entirely without notice and the balance amounting to Rs.3,15,526/- was released as DCRG to the applicant in February, 2016.

3. The applicant took up his grievance before competent authorities but no positive action came forth. In the meanwhile, two similarly placed individuals by names, Sri V.Sekharan and Smt.Padma M.Pillai, filed OA No.667 of 2014 and 707 of 2014 respectively before this Tribunal. The applicant also points out that the recovery effected from his eligible dues after retirement would be violative of the decision in *Rafiq Masih* case wherein it had been categorically held that there can be no recovery from retired hands.

4. In the meanwhile the two OAs referred to above, filed by similarly placed employees, were decided in favour of the applicants therein and a copy of the same is produced as Annexure A4. The applicant seeks similar benefit that had accrued to the applicants in those two OAs and he made a representation on those lines on 22.9.2017(Annexure A5).

5. He argues that the advance increments which had been objected to by the respondents at this late stage, had been granted to various other employees and it was in keeping with the policy of the respondents current at that time. To the best of his knowledge, none of these increments had been subjected to cancellation at a later stage. Further, it is submitted that the applicant had been granted 2 financial up-gradations under ACP on completion of 12/24 years of service. Later, when the MACP Scheme was introduced with effect from 9.8.1999, he was granted the benefit of 2nd and 3rd MACP instead of 2nd ACP.

This also came to be illegally withdrawn on the ground that the applicant had opted for reversion on 6.4.1998 and therefore would not be eligible for the benefit of ACP. This withdrawal itself was based on specious ground.

6. The applicant argues that the action on the part of respondents 1 & 2 in re-fixing the pay of the applicant without notice and also three months after his retirement is against the basic tenets of natural justice. The present applicant is similarly situated as the applicant in Annexure A4 judgment. Citing other instances, the applicant argues that he alone has come for such adverse notice whereas other retired persons who are similarly situated were allowed to get terminal benefits like DCRG, Pension, Commutation of Pension etc on the basis of the last pay drawn by them without any re-fixation and recovery. The special increments that had been granted to him and sought to be withdrawn now were granted to the applicant in recognition of his excellent performance as Stenographer and ought not to be recalled at this stage after his retirement.

7. The respondents have filed reply statement wherein the action taken by the them has been defended. It is submitted the the Pay and Accounts Officer had ordered that the re-fixation was to be undertaken on account of the error detected. Pay and Accounts Officer is the competent authority to check the pay fixation of retiring government employees and is authorized to set right anomalies. It is further stated that the contention of the applicant that the benefit of two advance increments having been withdrawn is not correct. The benefit of these increments had already been availed of by the applicant and his pay w.e.f. 1.1.1986 had been fixed after taking into account the advance increments. The continued drawal of advance increments by showing it as a separate element even after merging with the basic pay was wrong and in excess. This the PAO

had ordered to recover.

8. In the order of the Hon'ble Supreme Court in ***Chandi Prasad Uniyal vs. State of Utharakhand, 2012 (8) SCC 417***, their Lordships had ordered that “*if anything wrong has been done by the department, it has to be rectified at one point or other and wrong cannot be allowed to run in perpetuity.*” The two OAs cited by the applicant namely, OA No.667/14 and 707/14 had been decided in favour of the applicants by this Tribunal. However, these orders have not attained finality as these are pending before the Hon'ble High Court of Kerala. In fact, the operation of these orders has been stayed by the High Court as is seen at Annexure R2 and R3.

9. Sri Vishnu S.Chempazhanthiyil, learned counsel, was heard on behalf of the applicant and Sri N.Anilkumar, Sr.PCGC was heard on behalf of the respondents and all pleadings were examined.

10. The applicant is aggrieved by the recovery from DCRG and commuted value of pension effected through Annexure A2 order which, for all practical purposes, is Pension Payment Order. This order also undertakes to revise his salary from the year 1976 onwards, as is detailed therein. The reason adduced is that the two advance increments granted to the applicant at the early stage of his career had already been merged in the subsequent revision of his salary and further calculation of the same amounts to uncalled for duplication. Whatever be the reason, for an employee to be told after his retirement that the authorities have decided to re-fix his salary from a stage 39 years ago, amounts to a bolt from the blue. That this has been done without any notice to the applicant makes the move doubly hurtful. An employee who had spent nearly 4 decades in the service of the respondents, to be told that his DCRG has been reduced to nearly

one third of the amount that had been estimated for him by none other than the Head of Office as per Annexure A1 is indeed a shock which few employees would be able to bear. As pointed out, recovery from an employee who retired is expressly barred by the decision in *Rafiq Masih* case and this squarely applies to this particular case as well. The subsequent case of *Jagdev Singh* did indeed permit recovery from all categories but only if the concerned employee had submitted an undertaking allowing such recovery. In the instant case, there has been no such undertaking sought or given.

11. Also, as pointed out in the OA, the issue involving similarly placed employees as seen in OA 667/2014 and OA 707/2014 had been decided in farour of the applicants therein and there is no reason why the applicant herein is to be denied the same benefit.

12. Based on a consideration of all factors, this Tribunal concludes that this OA has merit on its side. Therefore, the OA is allowed. It is ordered that respondents will take action to reimburse the applicant of all recoveries effected by virtue of Annexure A2 document. It is further ordered that the applicant will be eligible for interest on the recovered amount as well which will be limited to the applicable GPF rates. The orders as outlined above are to be implemented within a month of the receipt of a copy of this order. No order as to costs.

In view of the order passed above, MA/180/00074/2018 filed by the applicant for a direction to the respondents to refund the amount of Rs.5,61,103/- recovered from the DCRG of the applicant is disposed of.

(E.K.Bharat Bhushan)
Administrative Member

Annexures filed by the applicant:

- Annexure A1: Copy of the pension papers No.27(2)(5) 2015-A1/DKT/127 dated 8.6.2015 of the applicant submitted by the 1st respondent to the 4th respondent.
- Annexure A2: Copy of the order No.1(5) 2015-A1/DKT dated 3.12.2015 issued by the 1st respondent.
- Annexure A3: Copy of the representation dated 6.2.2016 submitted by the applicant to the 5th respondent.
- Annexure A4: Copy of the order dated 16.3.2017 in OA No.180/00667/2014 of this Tribunal.
- Annexure A5: Copy of the representation dated 22.9.2017 to the 5th respondent.
- Annexure A6: Copy of order No.1(5)/2011-A1/DKT dated 13.12.2012 issued by the 1st respondent.
- Annexure A7: Copy of the O.M.No.18/44/88—Estt(Pay)I dated 7.12.2009 issued by the Department of Personnel and Training, New Delhi.
- Annexure A8: Copy of the order No.CESZ/10(2)2011-Estt.743 dated 28.7.2011 issued by the Addl. Director general (E) (SZ) Chennai.
- Annexure A9: Copy of the order No. NSD-21 (Steno) Adv.inc./2010 dated 18.8.2011 issued by the News Services Division, AIR, New Delhi.
- Annexure A10: Copy of the order No.10(2)2011-S dated 19.7.2011 issued by the Administrative Officer, AIR, Thiruvananthapuram.
- Annexure A11: Copy of letter No.2/12/2011/S-VI/411 dated 23.7.2013 issued by the Dy. Director Admn., AIR
- Annexure A12: Copy of communication No.2/12/2011/S-VI/110 dated 26.3.2014 issued by the 5th respondent.
- Annexure A13: Copy of communication No.F.No.2/12/2013/SVI/195 dated 28.5.2014 issued by the DG, AIR.
- Annexure A14: Copy of OM F.No.18/03/2015-Estt (Pay-I) dated 2.3.2016 issued by the Department of Personnel and Training, New Delhi.
- Annexure A15: Copy of the communication No.19/3/2016-SII/920 dated 14.7.2017 issued by the Directorate General, Doordarshan, New Delhi.
- Annexure A16: Copy of the communication No.F.No.A-56013/35/2017-BAP dated 8.9.2017 issued by the Ministry of Information and Broadcasting, New Delhi.

Annexures filed by the respondents:

- Annexure R1: Copy of the relevant page of FR (FR-27-Page 140 to 145)
- Annexure R2
and R3: Copies of the interim order dated 15.2.2018 of the Hon'ble High Court in OP (CAT) No.307 of 2017 and 314 of 2017.
- Annexure R4: Copy of the MACP clarifications by the DoP&T in FAQ (Sl.No.27)(iii) & (iv).
- Annexure R5: Copy of the DG:AIR Circular No.F.No.2/12/2011 S.VI/680 dated 5.9.2012.

- Annexure R6: Copy of the letter No.PAO/DDK/CHN/PEN 2013-14 dated 5.12.2013.
- Annexure R7: Copy of the affidavit filed by the 4th respondent in OA No.667/2014.
- Annexure R8: Copy of the communication dated 10.6.2013.
- Annexure R9: Copy of the Hon'ble Supreme Court judgment dated 29.7.2016 in Civil Appeal No.3510 of 2006.
- Annexure R10: Copy of CAT, Bangalore Bench order dated 16.6.2017 in OA No.813/2016.