

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00047/2017

Date of decision 10.10.2018

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

P.Vijayan S/o, Late M.K. Kottan,
aged 57 years, Stenographer to AD (Staff)
O/oPMG, Northern Region,
Calicut 673 011,
Department of Posts, residing at 'Vishnu',
Puzhakulangara,
Taliparamba, Kannur 670 141.

..... **Applicant**

(By Advocate – Mr.V. Sajith Kumar)

V e r s u s

1. Union of India, represented by the Secretary to Government,
Department of Posts, Ministry of Communications,
Government of India, New Delhi 110 001.
2. The Chief Post Master General, Kerala Circle, Trivandrum – 695 033.
3. The Postmaster General, Northern Region, Calicut 73011.
4. Accounts Officer, Office of the Postmaster General, Northern Region,
Calicut 673 011. **Respondents**

(By Advocate – Mr.Anil Ravi, ACGSC)

This Original Application having been heard on 10.10.2018, the Tribunal on 10.10.2018 delivered the following in open court:

O R D E R (ORAL)

The present Original Application is filed seeking a direction to the respondents to reimburse Rs.10,000/- recovered from the Applicant for the month of December, 2016 and quash and set aside Annexure A1 and Annexure A2. However, the 2nd relief is not pressed.

2. Brief facts of the case are that the applicant entered into the service as stenographer with effect from 1982 at Jabalpur. He got first ACP in the year

1991 and the second ACP in the year 2006. He has been awarded 3rd MACP with effect from 2012. The applicant is a Group C employee. The applicant received Annexe A2 letter from the Accounts Officer informing that Chief Accounts Officer of Director of Accounts ordered to recover an amount of Rs. 93353/-.. Annexure A.3 representation was submitted to respondents No.3 by the applicant and the same was rejected vide Annexure A.4 order . Feeling aggrieved by the action of the respondents, the applicant approached this Tribunal for redressal of his grievance.

3. Notices were issued. Respondents put appearance and filed detailed reply statement contesting the claim of the applicant.
4. In the reply statement it is submitted on behalf of the respondents that the applicant joined this Department on 29.06.1982 as Stenographer at Jabalpur. First Financial upgradation under Assured Carrier Progression (ACP) Scheme was granted to the official with effect from 09.08.1999. In the revised pay structure of 6 CPC the pay of the official was fixed at Rs. 11820 + 4200 Grade Pay with effect from 01.01.2006. Again the applicant got 2nd Financial Upgradation under ACP Scheme with effect from 27.07.2006 and the pay was fixed at Rs. 12800 + 4600 Grade Pay. The applicant was granted financial upgradation under Modified Assured Carrier Progression (MACP) Scheme 2nd MACP with effect from 16.07.2010. It is submitted by the respondents that the pay fixation of the applicant as on 1.1.2006 with effect from 27.07.2006 under ACP scheme is in order.

5. It is submitted by the respondents that the Assistant Chief Accounts Officer, Office of the DA(P), Trivandrum vide Annexe R.11 letter No. 471/CIS/IAIR-2015/VADAKARA HO/C.2 dated 08.12.2016 has intimated

that seeking clarification/guidance without effecting recovery is not in order and also instructed to process the case at this end itself. Hence the official was intimated again that the recovery of overpayment will be commenced from the pay of December, 2016 at a rate of Rs.10000/- per month vide Annexure R.12 issued by Respondent No.3 dated 30.12.2016. Ist recovery was made from the pay of the official for the month of December, 2016. The respondents prays for dismissal of the O.A.

6. Heard the learned counsel appearing on both sides and also perused the pleadings in the O.A. and the case laws on the subject.

7. During the course of arguments learned counsel for the applicant cited the judgement in the case of *State of Punjab & Ors v. Rafiq Masih (White Washer)* in CA No. 11527 of 2014 (arising out of SLP(C) No. 11684 of 2012) in which the following guidelines have been laid down by the Hon'ble Apex Court.

- (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.

In pursuance of the above principle of law laid down by the Hon'ble Apex Court, Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training had issued Annex A.4 Office Memorandum dated 2.3.2016 implementing the orders of the Hon'ble Apex Court.

8. Having considered the above cited judgement of the Hon'ble Apex Court and the Annexure A4 Office Memorandum issued by the DOPT, this Tribunal is of the view that the applicant's case is squarely covered by the above cited judgement. The applicant in the present case is a Group C employee. The pay was not fixed not on account of any misrepresentation by the Applicant. He is having hardly three years for retirement. This Tribunal find force in the arguments of the learned counsel for the applicant and there is merit on the side of the applicant.

9. In view of the above conclusion, it is hereby ordered that the Annexure A.1 and Annexure A.2 issued by the respondents will not stand in the eyes of law and is held unsustainable. They are hereby quashed and set aside. Respondents have forfeited their right of recovery from the applicant.

10. Applicant has not pressed relief No.2. Original Application stands allowed on the above terms. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

sj*

List of Annexures of the Applicant in O.A. No. 180/00047/2017

Annexure A-1. A true copy of the order No. A&P/51-3/DLG/2012 dated 30/12/2016 issued by the 4th respondent.

Annexure A-2 A true copy of the letter No. A&P/51-3/DLG/2012 dated 26/09/2016 along with documents.

Annexure A3. A true copy of the Representation dated 03/10/2016 submitted by the Applicant to the 3rd Respondent.

Annexure A.4 A true copy of the F.No. 18/03/2015 Estt. (Pay-1) dated 02/03/2016 issued on behalf of the 1st Respondent.

List of Annexures filed by the respondents in O.A. No. 1890/47/2017

Annexure R1 : Copy of O/o Chief PMG, Trivandrum order No. ST/51-7/2007 dated 19.03.2007

Annexure R2 Copy of O/o Chief PMG, Trivandrum orders No.ST/101-6/M/51/2010 dated 01.06.2010.

Annexure R3 Copy of O/o Chief PMG, Trivandrum orders No.St/101-6/M/51/2010 dated 28-06-2010

Annexure R4 Copy of O/o Chief PMG, Trivandrum orders No.ST/101-6/M/51/2010 dated 14.06.2011

Annexure R5 Letter No. IAIR/2016-2017 dated 24.06.2016.

Annexure R.6 Memo No. ST/101-6/M/51/2010 dated 13.06.2011

Annexure R7 DOPT OM No. 35034/3/2008-Estt (D) dated 19.05.2009

Annexure R8. Chief PMG, Kerala Circle letter No. ST/101-6/M/ST/2010 dated 07.03.2013.

Annexure R.9 Letter No. IAIR/2016-2017 dated 20.07.2016

Annexure R.10 Memo No.A&P/51-3/DLG/2012 dated 05.09.2016.

Annexure R.11 Letter No.471/CIS/IAIR-2015/VADAKARA HO/C.2 dated 08-12-2016

Annexure R.12 Memo No. A&P/51-3/DLG/2012 dated 30.12.2016

Annexure R.13 Extract of Rule 86 of Financial Hand Book Vol.I Chapter 4

Annexure R.14 Letter No. A&P/51-3/2012 dated 03.02.2017

Annexure R.15 Extract of Rule 87 of Financial hand Book Vol. I Chapter 4.

Annexure R16 Copy of salary certificate of the applicant.
