

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

ORIGINAL APPLICATION No. 170/00407/2017

TODAY, THIS THE 17th DAY OF SEPTEMBER, 2018

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER

B.M. Jadi
Programme Executive (Retd),
House No. 31,
Veerabhareshwara Krupa, Part – 1
Basava Nagara, Haliyal Road,
Dharwad, Karnataka – 580 003

... Applicant.

(By Advocate Shri N. Obalappa)

Vs.

1. The Union of India,
Represented by its Secretary,
Ministry of Information and Broadcasting
'A' Wing, Shastry Bhavan,
New Delhi – 110 001

2. The Chief Executive Officer,
Prasar Bharati, "C" Tower,
Doordarshan Bhavan,
Copernicus Marg,
New Delhi – 110 001

3. The Director General,
All India Radio, Akashvani Bhavan
Parliament Street,
New Delhi – 110 001

4. The Head of Office
All India Radio
Raichur – 584 103

5. The Pay & Accounts Officer,
Ministry of I & B, All India Radio,
Mylapore, Chennai – 04

... Respondents.

(By Advocate Shri Vishnu Bhat, Senior Panel Counsel)

ORDER

Hon'ble Shri Dinesh Sharma, Administrative Member

The case of the applicant, in brief, is as follows:

The applicant joined as Field Reporter / Family Welfare at All India Radio, Dharwad, with effect from 14.08.1986 in the pay scale of Rs.1400-2600 (4th CPC pay scale w.e.f. 1.1.1986) and the said pay scale was revised to Rs. 5000-8000 by 5th CPC with effect from 1.1.1996. Again the applicant got regular promotion to the post of Programme Executive with effect from 15.1.1999 in the pay scale of Rs. 6500-10500. The 1st respondent upgraded the said pay scale to Rs. 6500-12000 and to 7500-12000. The 5th respondent has declined to count the upgraded pay scale of Rs. 6500-200-10500 as one upgradation resulting into non-consideration of his 1st MACP and suggested recovery of DCRG amount of Rs. 9,99,975/-. The applicant continued in the same grade for more than 10 years and is entitled for 3rd MACP with effect from 1.1.2009. The 5th respondent while processing the pension papers of the applicant found the pay fixation given to him as incorrect and recovered a sum of Rs. 11,48,855/- and his pay and grade pay of Rs. 5400/- has also been reduced to Rs. 4800/-. The applicant submitted a representation to refund the recovered amount and refix his pay, but no reply has been received from the respondents since 30.09.2016. The applicant has cited State of Punjab and Others etc. vs. Rafiq Masih (hereinafter referred to as the White Washer case) to support his claim about non-recoverability of sums, even if wrongly paid, after an inordinate delay of time.

2. Though the respondents have not materially differed with the facts mentioned by the applicant, they have justified the actions taken by the 4th and 5th respondents (Head Office and Pay and Accounts Officer of All India Radio, respectively) to recover the sum which, according to them, were wrongly paid to the applicant. They have quoted the decision of the Hon'ble Supreme

Court in Civil Appeal No, 3500 of 2006 (High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh) in which the Apex court had distinguished the facts of that case from the White Washer case and allowed recovery of wrongly paid excess amount.

3. After going through the pleadings and hearing both the sides, the main issue to be decided in this case is whether the decision in White Washer case applies to the facts of this case. What is sought to be recovered in this case is admittedly to have been paid since 1996. The applicant has already retired. We quote here the relevant portion from the White Washer case (conditions where recovery 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.”

It is very clear that conditions No. 2 and 3 and, to some extent, 5 apply to the facts of this case.

4. Regarding the case cited by the respondents (High Court of Punjab & Haryana vs. Jagdev Singh, Annexure R/2), the facts in that case are vastly different from the facts of this case. There the recovery was for a revision done in 2004 of pay scales given following a notification of 2001 and there was also an express undertaking given by the applicant therein to recover the amount.

5. The O.A is, therefore, allowed. The impugned orders at Annexures A-9, A-10, A-11, A-12 and A-16 are quashed. The respondents are directed to the issue revised orders granting him pay, pension, DCRG etc. without “correcting” what they have described as errors in Annexure A-9, within 2 months from the date of receipt of a copy of this order.

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

(DR. K.B. SURESH)
JUDICIAL MEMBER

Cvr.

Annexures filed by the applicant in OA:

Annexure-A1: Copy of the standard pay scales of 3rd to 6th CPC and 7th CPC along with a draft pay fixation for the period from 04.06.1982 to 01.01.2016

Annexure-A2: Copy of OM dated 25.07.2011

Annexure-A3: Copy of 1st respondent order dated 25.02.1999

Annexure-A4: Copy of Ministry of Finance OM dated 13.09.2008

Annexure-A5: Copy of DoPT OM dated 19.05.2009
Annexure-A6: Copy of 1st respondent communication dated 08.09.2014
Annexure-A7: Copy of PAO letter dated 23.10.2014
Annexure-A8: Copy of PAO circular No. PAO/DDK/CHN/PENSION
Annexure-A9: Copy of letter dated 30.10.2015, communication dt. 21.01.2016
Annexure-A10: Copy of 4th respondent order dated 02.02.2016
Annexure-A11: Copy of 5th respondent DCRG authorization of the applicant
Annexure-A12: Copy of PPO dated 15.07.2016
Annexure-A13: Copy of representation of the applicant dated 30.09.2016
Annexure-A14: Copy of 3rd respondent reply in the O.A. No. 37/2017
Annexure-A15: Copy of order of Tribunal in O.A. No. 37/2016 dt. 15.06.2017
Annexure-A16: Copy of due, drawn and difference statement for the
period from January 1996 to 28.02.2016
Annexure-A17: Copy of Hon'ble Apex Court order dated 12.04.2010
and 18.12.2014
Annexure-A18: Copy of extract of rule 32 of CCS Pension Rules
Annexure-A19: Copy of draft pay fixation statement of the applicant for
the period from 14.08.1986 to 31.05.2016

Annexures with reply statement by the respondents:

Annexure-R1: Copy of the order dated 13.04.2012
Annexure-R2: Copy of the order dated 13.07.2017 in Writ Petition
No. 4151/2003
Annexure-R3: Copy of the letter dated 31.01.2018
Annexure-R4: Copy of the order dated 29.07.2015 in Civil Appeal
No. 3500/2006