

**Central Administrative Tribunal
Madras Bench**

OA/310/01505/2018

Dated Monday the 5th day of November Two Thousand Eighteen

P R E S E N T

**Hon'ble Mr. R.Ramanujam, Member(A)
&
Hon'ble Mr.P.Madhavan, Member(J)**

M.Bose,
Executive Engineer(Civil)(Rtd.), CPWD,
No.47/1, Maheswari Illam,
VOC Nagar, North Street,
Bodinayakanur(PO),
Theni (Dt.), Tamilnadu. .. Applicant
By Advocate **Dr.P.S.Vijayakumar**

Vs.

1. Union of India, rep by
The Seretary,
M/o Urban Development,
Nirman Bhawan, New Delhi.
2. The Director General,
Central Public Works Department,
Nirman Bhawan, New Delhi 110 011.
3. The Additional Director General,
Southern Region I, CPWD,
Rajaji Bhawan, Chennai 600 090.
4. The Pay & Accounts Officer,
PAO, CPWD(SZ), E-2-C-Wing,
Rajaji Bhawan, Besant Nagar,
Chennai 600 090. .. Respondents

By Advocate **Mr.SU Srinivasan**

ORAL ORDER

[Pronounced by Hon'ble Mr.R.Ramanujam, Member(A)]

Heard. The applicant has filed this OA seeking the following relief:-

“a) Quash/set-aside the impugned Revised Pay Fixation Office Order, issued under Lr.No.20/3/2013-Admn./ADG(SR)I/1717-27, dated 30.6.2014/01.7.2014 by the 3rd respondent and consequentially direct the respondents to refund the recovered excess paid pay and allowances amount of Rs.2,97,529/- (Rupees two lakhs ninety seven thousand five hundred and twenty nine only) to the applicant and thereby revise the pension with basic pay of Rs.29,570/- and with Grade Pay of Rs.7600/- as originally fixed by the 3rd respondent vide his Lr.No.F.No.23/1/2014-ADMN/ADG[SR]I/1525-28, dated 12/13.6.2014, within a time frame;

b) To allow the OA with costs and

c) To pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice.”

2. It is submitted that the applicant is a senior citizen who joined the respondents' department on 12.12.1979 and retired on superannuation as Executive Engineer(Civil) on 31.5.2014. He was granted and paid annual increments as also the third MACP on 18.1.2010 alongwith other statutory benefits during the period 01.1.1996 to 31.5.2014 for about 18 years continuously without any break. After retirement on 31.5.2014, the applicant was granted encashment of leave salary for 300 days at a basic pay of Rs.29,570/- and GP Rs.7600/-. However, all of a sudden, the impugned Pay Refixation order dated 13.6.2014/01.7.2014 was issued by which his pay was reduced from Rs.29,570/- to Rs.27,990/- as on 01.7.2013 as a result of which an amount of Rs.2,97,529/- had been recovered from his Gratuity. Aggrieved

by the action of the respondents, the applicant made several representations inter alia invoking the OM of DoPT dated 02.3.2016, but to no avail.

3. Learned counsel for the applicant would submit that the applicant was in receipt of a copy of Annexure A11 communication addressed from the Office of the Deputy Controller of Accounts, Ministry of Urban Development, Internal Audit Wing(SZ), Chennai, dated 11.4.2016 in which it was stated that the OM dated 02.3.2016 of the DoPT was not applicable to Group 'A' and 'B' officers and waiver of any recovery in terms of the OM would be impermissible in law as stated in the OM itself. It is submitted that there is no such mention in the OM that Group 'A' and 'B' officers were not covered by the OM. On the other hand the applicant was entitled to waiver of recovery as a retired employee/employee due to retire within one year of the order of recovery. Further, no recovery could be made from the employee who had been made excess payment for a period in excess of 5 years before the order of waiver.

4. Learned counsel for the applicant would, further, submit that by Annexure A10 representation, the applicant drew the attention of the authorities that there was no such condition in the OM dated 02.3.2016 for exclusion of Group 'A' and 'B' officers or a statement to the effect that waiver of recovery in respect of Group 'A' and 'B' officers would be impermissible in law. The applicant had been informed by Annexure A23 communication dated 15.6.2018 that the matter was being examined in consultation with Department of Expenditure (DOE) who had sought some clarifications and advised to submit a single proposal for all similar cases. ince it was

a policy matter it could not be decided in a time bound manner and required considerable time to settle the issue with inter-ministerial consultation. A decision on his request would be conveyed in due course of time. Not satisfied with such an open ended reply, the applicant was left with no option but to approach this Tribunal.

5. On perusal, it is seen that the applicant's contention that being an employee who was due to retire within one year, he was entitled to a waiver of recovery has not been satisfactorily answered by the respondents. From Annexure A23 communication it is also clear that while the matter being taken up with the Department of Expenditure, the authorities have given themselves indefinite time to settle the matter which in our view is not in the interest of justice. We accordingly deem it appropriate to direct the competent authority to consider the applicant's case against recovery of alleged excess payment strictly in terms of the OM dated 02.3.2016 of the DoPT and pass a reasoned and speaking order within a period of two months from the date of receipt of a copy of this order.

6. OA is disposed of with the above directions at the admission stage.

(P.Madhavan)
Member(J)

05.11.2018

(R.Ramanujam)
Member(A)

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