

OA/310/00277/2017

PRESENT

I.K.Vijayakumar,
S/o Israel,
No.11, Thanthai Periyar Kudil,
Kolathur, Chennai 600 099. .. Applicant
By Advocate **M/s.R.Malaichamy**

1. Union of India, rep by the
Chief Postmaster General,
Tamil Nadu Circle,
Anna Salai,
Chennai 600 002.
2. The Senior Manager,
Mail Motor Service,
Chennai 600 006.
3. The Manager,
Mail Motor Service,
Madurai 625 002.

.. Respondents

By Advocte **Mr.G.Dhamodaran**

ORDER

Pronounced by Hon'ble Mr.P.Madhavan, Member(J)

Heard. The applicant in this OA is seeking the following reliefs:-

“1. To call for the records of the 2nd respondent pertaining to his order which is made in MSA/PA II/I.K. V./09/2016-17 dated 12.1.2017 and set aside the same; consequent to

2. direct the respondents to refund the amount of recovery from the retirement service benefits of the applicant, if any; and

3. to pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case.”

2. Learned counsel for the applicant would submit that the applicant is working as Technical Supervisor in the 2nd respondent office and he is due to retire on 28.2.2017. He was initially appointed as outsider in the Mail Motor Service Wing of the respondents department and, thereafter, he was promoted as M.V.Electrician etc. It is submitted that the applicant was given regularization in the post of Skilled Electrician w.e.f. 01.9.1989 and he was granted ACP II also w.e.f. 08.9.2005. Thereafter, the applicant was promoted as Charge hand on 07.3.2008. He was, thereafter, granted MACP III also. Now the respondents have issued an impugned order dated 12.1.2017 (Annexure A7) stating that there is an over payment of one increment w.e.f. 07.3.2008 and he is liable to pay an amount of Rs.82,421/- towards excess payment upto 31.10.2016. The respondents had also intimated the applicant that the said amount will be recovered from the retirement gratuity due to him on retirement.

3. Counsel for the applicant mainly relies on the decision of the Hon'ble Supreme

Court in *State of Punjab & Others etc. vs. Rafiq Masih (White Washer) (2015) 4 SCC 334* wherein it was held that no recovery can be effected from the retired employees or employees who are due to retire within one year of the order of recovery. Therefore, payment was mistakenly made by the employer.

4. Learned counsel for the respondents filed reply stating that immediately on coming to the knowledge of the excess payment in the Audit, the respondents had issued a letter to the applicant regarding the same and there is no merit in the application. According to the respondents, when financial benefit is allowed under ACPs it shall be final and no fixation benefits can be granted at the time of regular promotion. It is submitted that the applicant was given upgradation of ACP II after regular promotion in the post of Skilled Electrician. Thereafter, he was promoted as Charge hand. But mistakenly he was given the benefit of fixation and it had resulted in over payment and hence the respondents are entitled to recover the excess amount from the retirement gratuity of the applicant.

5. We have carefully considered the facts of the matter. The only contention pressed for by the applicant is that since the applicant is about to retire on 28.2.2017, Annexure A7 order cannot be implemented in view of the decision of the Hon'ble Apex Court in 'White Washer's' case. On going through the records, it is seen that Annexure A7 impugned order was issued only on 12.1.2017 and the employee was to retire on 28.2.2017. It is not in dispute that the alleged erroneous fixation of pay was made in the year 2008 and never noticed by the respondents thereafter till 2017. The period of recovery begins from 07.3.2008 and the respondents did not notice the error

for as long as 9 years prior to the retirement of the applicant. The total amount due is Rs.82,421/- and the said amount was drawn much before the retirement date. It is not in dispute that the Hon'ble Apex Court passed order against recovery in ***State of Punjab & Ors. vs. Rafiq Masih*** (Whitewasher's case) dated 18.12.2014 and has categorically laid down that when an amount is paid erroneously to an employee for a long period and if it is sought to be recovered within one year of his retirement it should not be allowed. The judgment of the Hon'ble Apex Court was accepted by the DoPT which also issued the OM F.No.18/03/2015-Estt.(Pay-I) dated 02.3.2016. Therefore, the respondents are not entitled to recover the said amount from the applicant which was erroneously made long back.

On a careful examination of facts, we find that the matter is squarely covered by the judgment of the Hon'ble Apex Court in ***State of Punjab & Ors. vs. Rafiq Masih*** (Whitewasher's case) dated 18.12.2014. Since the competent authority in Government has already accepted the judgment of the Hon'ble Apex Court in the said case and issued the OM, we are of the view that the claim of the applicant in the instant case should be processed accordingly in line with the directions contained in the said OM of the DoPT. In the result, Annexure A7 impugned order of the respondents dated 12.1.2017 stands quashed. The respondents are directed to process the matter in terms of the DoPT OM dated 02.3.2016 and stop the recovery of the excess amount forthwith, refund the amount, if any, already recovered in violation of the law laid down by the Hon'ble Apex Court in the Rafiq Masih (Whitewasher) case.

Further, we deem it appropriate to mention here that the respondents be directed to fix responsibility for the lapse occurred.

7. OA is allowed in the above terms. No costs.

(T.Jacob)
Member(A)

12.09.2018

(P.Madhavan)
Member(J)

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