

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.205 of 2014

Cuttack this the 13th day of April, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(j)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

P.Vaidyanath, S/o. P.B.K.Murty, M.V.Driver, presently working under
SEN/TM/KUR, East Coast Railway, At/PO-Khurda Road, Dist-Khurda

...Applicant

By the Advocate(s)-M/s.C.A.Rao

S.Ku.Behera

S.Ku.Parida

-VERSUS-

Union of India represented through:

1. The General Manager (P), East Coast Railway, Rail Sadan
Chandrasekharpur, Bhubaneswar-751 017, Dist-Khurda.
2. Chief Personnel Officer, E.Co.R.Sadan, 2nd Floor, South Block,
Chandrasekharpur, Bhubaneswar-751 017, Dist-Khurda.
3. Senior Personnel Officer(Staff), Rail Sadan, Chandrasekharpur,
Bhubaneswar-751 017, Dist-Khurda.
4. Sr.E.N.(T.M), E.Co.R., At/PO/Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant was working as Motor Vehicle Driver in the East Coast
Railways at the time of filing the O.A. He has prayed for the following reliefs:

“to admit this case, call for records and after hearing the parties be pleased to set aside the order dt. 7.12.2013 and 5.2.2014(Annexure-9) and (Annexure-11 & 11/1) directing recovery of excess payment drawn on account of alleged wrong fixation from the salary arising out of financial upgradation under ACP and MACP;

And/or any other orders, directions as may be deemed fit and proper be passed”.

2. Brief facts of the case are as follows:

The applicant was initially appointed as Vehicle Helper on 29.6.1988. He was granted temporary status with effect from 30.07.1989 and was promoted as Vehicle Driver, Gr.III in the scale of Rs.950-1500 with effect from 29.6.1989. Subsequently, he was promoted as Motor Vehicle Driver, Gr.II and Gr.I with effect from 1.8.1991 and 8.12.1994 respectively, after clearing the required tests. However, he along with others were reverted to the post of Driver, Gr.III in the scale of Rs.3050-4590 with effect from 1.12.2001 (A/1) when he was already working as Grade-I Vehicle Driver in the pay scale of Rs.4500-7000/-. He was granted 1st financial upgradation under ACP Scheme with effect from 22.6.2003 in the pay scale of Rs.4000-6000/- from the scale of Rs.3050-4590 drawn by him at that time vide Office Order No.424/2011 and No.425/2011 dated 15.9.2011. Accordingly, the order was passed granting first ACP with Grade Pay of Rs.2400 from the existing GP Rs.1900 consequent to the passing

of the trade test. Subsequently, on 5.4.2012, vide office order No.187/2012, the applicant was granted 2nd financial upgradation under MACP Scheme on completion of 20 years of service from the date of 50% T.S. with effect from 22.6.2011 and his Grade pay was raised from Rs.2400 to Rs.2800 in PB-1. On 17.12.2013, Office of Chief Personnel Officer, East Coast Railway wrote a letter to the applicant that his Grade Pay has been erroneously fixed at Rs.2800 at the time of grant of 2nd MACP instead of GP Rs.2000 since he was in PB-1 with GP Rs.1800 at the time of grant of 2nd financial upgradation under MACP Scheme. The excess payment drawn on account of wrong fixation was reversed from his salary. The applicant submitted a representation to the Chief Personnel Officer, East Coast Railways (Res.Ho.2) on 23.12.2013 praying for restoration of his Grade Pay and not to recover any excess amount from him. Reply was sent to him on 5.2.2014 rejecting his representation and revised pay fixation office order No.47/2014 dated 31.1.2014 was sent to him wherein he was granted 2nd financial upgradation under MACP in PB-1 with GP of Rs.2000 with effect from 22.6.2011. Aggrieved by this, the applicant has filed this O.A. praying for the reliefs as at Para-1 above.

3. The applicant has based his prayer on the following grounds:

- i) The order of recovery of excess payment has been passed without any notice to the applicant and without giving him an opportunity to defend his case. It is therefore against the

principles of natural justice and is illegal, arbitrary and mala fide. It also suffers from non-application of mind and contrary to the settled position of law.

- ii) The applicant was granted 1st ACP after successfully clearing the trade test and his GP was fixed at Rs.2400 with effect from 22.6.2003. He was again granted the 2nd financial upgradation under MACP enhancing the GP of Rs.2800 with effect from 22.6.2011 with the approval of competent authority and after passing of the screening test conducted by the nominated Screening Committee.
- iii) Similarly placed persons are being allowed to enjoy the benefit of Grade Pay of Rs.2400 and Rs.2800 respectively, and therefore, reducing his Grade Pay and directing recovery is illegal, arbitrary and discriminatory.

4. The respondents in their counter-reply filed on 8.12.2014 have contested the claim of the applicant. It is their contention that a complaint was received from another Motor Vehicle Driver regarding wrong fixation of pay of the applicant. His service record was verified and it was found that he had been erroneously granted the financial upgradation under ACP and MACP Scheme. His date of regularization in Group-D post was 14.5.1993 and in Grade -C post was 15.2.2005. He was erroneously awarded with the benefits of ACP/MACP taking into account 14.5.1993 as the date of his regularization for both Group-D and C posts and when the error was detected the competent authority ordered recovery of the excess amount and re-fixation of his pay. Accordingly, re-fixation was done vide Office Order No.47/2014 dated

31.1.2014. The respondents have cited the judgment of the Hon'ble Apex Court in Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors., wherein it was held that whenever excess payment is made either due to fault on the part of the recipient or the concerned office, public money has to be recovered. After counting 50% of his temporary service, applicant's initial date of service was ante-dated to 22.6.1991. After completion of 20 years of service from 22.6.1991, he was eligible for 2nd MACP with effect from 22.6.2011 in PB-1 with GP Rs.2000 as per RBE No.101/09 which stipulates that the 2nd MACP has to be granted after completion of 20 years of service and after taking into account 50% of temporary service from the initial appointment or 10 years of service from the last promotion/ACP. He is eligible for 1st ACP in the scale of Rs.3050-4590 with effect from 22.6.2003 and for the 2nd MACP in PB-1 with GP of Rs.2000 with effect from 22.6.2011. Therefore, the applicant's representation has been rejected. The Respondents also claim that the other three Drivers who were granted MACP had been regularized as group-C on 14.5.1993 and accordingly, they were granted MACP in GP Rs.2800 whereas the applicant was regularized as Group-D on 14.5.1993 and Group-C on 15.2.2005. Hence, he was eligible for 1st financial upgradation under ACP with effect from 22.6.2003 in the scale of Rs.3050-4590 with GP of

Rs.1900 and 2nd MACP with effect from 22.6.2011 with GP Rs.2000 after completion of 20 years of service.

5. We heard the arguments from the learned counsels from both the sides on 20.3.2018 and perused the documents submitted by them. The issue to be decided in the present O.A. is whether the re-fixation of pay/GP of the applicant by Respondent No.2 in the order dated 17.12.2013 and dated 5.2.2014 (A/9 & A/11, respectively) are legally valid and sustainable.

6. From the records it is obvious that the applicant had been granted 1st financial upgradation under ACP Scheme with effect from 22.6.2003 vide office order No.425/11 dated 15.9.2011 and his pay was fixed at Rs.5200-20200 with GP of Rs.2400 on completion of 12 years of service. He was granted 2nd financial upgradation under MACP Scheme on completion of 20 years of service with effect from 22.6.2011 and his pay was fixed at PB-1 with GP Rs.2800/-. The same has been cancelled by a cryptic order dated 17.12.2013 which reads as follows:

“Sub: Re-fixation of pay due to wrong assessment of MACP.
Ref: This office order No.188/2012 dated 05.04.2012

You have been granted 2nd financial upgradation in scale of Rs.5200-20200/- with GP Rs.2800/- wef 22.6.2011 under MACP scheme vide this office order referred above. On review of your service particulars, it is found that you have been granted Grade Pay of Rs.2800/- erroneously instead of GP Rs.2000/- in PB-1 for your 2nd financial upgradation

under MACP scheme on completion of 20 years service in PB-1 with GP Rs.1800/-. The excess payment drawn on account of wrong fixation is to be recovered from your salary.

This is for your information”.

7. The applicant submitted a representation dated 23.12.2013 which was rejected by the order dated 5.2.2014 with another cryptic order which is quoted herein below:

“Sub: Recovery of excess payment:

Ref: Your representation dtd. 23.12.2013:

With reference to above, it is informed that your representation has been examined in detail. It is ordered by the competent authority to start recovery of the excess payment paid, due to erroneous wrong fixation of pay arising out of financial up-gradation under ACP and MACP. The revised pay fixation Office Order No.47/2012 dated 21.01.2014 is enclosed herewith”.

8. The above quoted two orders suffer from the vice of unwarranted brevity bordering on obfuscation and opaqueness. No reason has been given and no explanation has been elucidated to convince the helpless employee why his pay has been reduced after having been granted earlier. There is nothing on record to show that the applicant had misrepresented at any time to obtain a wrongful pay fixation. The applicant has also rightly pleaded that he was not given a notice before reducing his pay by re-fixation.

9. The counter reply filed by the respondents is equally confusing. In Para-7 of the counter reply, the respondents have mentioned that the applicant was eligible for 1st ACP at Rs. 3050-4590 with GP Rs.1900 with effect from 22.6.2003. However, after counting 50% of his temporary service, his service “antedated” to 22.06.1991. After completion of 20 years of service from 22.06.1991, he is eligible for 2nd MACP w.e.f. 22.06.2011 in PB-1 with GP Rs.2000/- as per RBE No.101/2009, which stipulates that 2nd MACP is to be granted after completion of 20 years of service (taking into account 50% of temporary service) from initial appointment or 10 years of service from last promotion/ACP, whichever is earlier, in the next hierarchy of the scale in VIth CPC. A perusal of the order dated 15.9.2011 shows that the applicant was granted the 1st financial upgradation under ACP on 22.6.2003 at a time when he was already drawing Rs.5200-20200 + GP Rs.1900 and therefore, ACP in PB-1(Rs.5200-20200 with GP Rs.2400/- was granted to him. Similarly, he was granted 2nd MACP on 22.6.2011 when his GP was raised to Rs.2800. The Respondents have not explained in their counter-reply how the ante-dating of his service to 22.6.1991 materially affects the calculation of the number of years for grant of ACP and MACP nor there is any record to show that the applicant was drawing less scale of pay than what was calculated at the time of grant of ACP. The pay fixation statement at A/4 clearly mentions that the

applicant was drawing the pay of Rs.5200-20200 + GP Rs.1900 at the time of grant of 1st ACP. Therefore, the stand taken by the respondents that the applicant's pay fixation was erroneous at the time of grant of ACP does not stand to reason.

10. In Paragraph-11 of the counter-reply, the Respondents have mentioned that the applicant had been regularized as Group-D on 14.5.1993 and Group-C on 15.2.2005. Hence, he is eligible for 1st ACP with effect from 22.6.2003 in the scale of Rs.3050-4590 (GP Rs.1900 in 6th CPC) and 2nd MACP with effect from 22.6.2011 with GP Rs.2000 after completion of 20 years of service. The Respondents have not explained under what circumstances they have passed order No.425/2011 dated 15.9.2011 and Order No.187/2012 dated 5.4.2012 granting the 1st financial upgradation under the ACP Scheme with GP Rs.2400 and the 2nd financial upgradation under MACP with G.P Rs.2800 respectively. When they have failed to put forth cogent reason for their action in respect of pay fixation in the above two mentioned orders dated 15.9.2011 and 4.5.2012, the cryptic orders dated 7.1.2014 and dated 5.2.2014 do not offer enough explanation for re-fixation of applicant's pay. The pay fixation particulars vide office order No.47/2014 dated 31.1.2014 also does not offer any explanation for the erroneous pay fixation, if any, and the reason for re-fixation. Nor the

respondents have issued a show cause notice to the applicant before re-fixing his pay and ordering recovery of excess amount.

11. The Hon'ble Apex Court in the Land Mark judgment in **State of Punjab & Ors. Vs. Rafiq Masih (Whitewasher) (AIR 2015 SC 696)** have analyzed the rationale behind grant of monetary benefits and withdrawal/reduction of the same and its impact on the employees. The relevant paragraphs are reproduced herein below for reasons of clarity and consistency.

- “2. All the private respondents in the present bunch of cases, were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay-scales; or for having been granted allowances, for which the concerned employee was not authorized. The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due.
3. Another essential factual component in this bunch of cases is, that the respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private

respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent-employees, is totally ruled out. It would therefore not be incorrect to record, that the private respondents, were as innocent as their employers, in the wrongful determination of their inflated emoluments.

11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.

(ii). Examining a similar proposition, this Court in Col. [B.J. Akkara v. Government of India](#), (2006) 11 SCC 709, observed as under: "28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may

on the facts and circumstances of any particular case refuse to grant such relief against recovery." (emphasis is ours) A perusal of the aforesaid observations made by this Court in Col. B.J. Akkara's case (supra) reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or arbitrary. In the observation extracted above, this Court also recorded, that recovery from employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e., Class-III and Class-IV - sometimes denoted as Group 'C' and Group 'D') of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in [Article 14](#) of the Constitution of India.

12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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.

12. In view of the judgment of the Hon'ble Supreme court in Rafiq Masih case (supra) the applicant being in Group-C category any recovery ordered by the respondents on the presumed wrong fixation of pay is also legal and untenable. However, it is to be remembered that we ab initio hold that the order of refixation of the applicant's pay does not stand legal scrutiny and is, therefore, liable to be set aside. On this ground also, the recovery order against the applicant is unsustainable.

13. Keeping the analyzed facts of the case and the legal points involved, we quash and set aside the impugned orders dated 17.12.2013(A/9), 05.02.2014(A/11) and hold that the applicant will continue to enjoy the benefits granted to him vide order dated 15.09.2011(A/3) and order dated 05.04.2012(A/6). It is directed that excess amount, if any, recovered from the salary of the applicant, be refunded to him within a period of eight weeks from the date of receipt of this order.

14. Accordingly, the O.A. is allowed with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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