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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

Goodn Guard
MACP

OA No.678 of 2014

Date of hearing: 21.12.2016

Dated of order: 23.12.2016

Present:

THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

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KAMLESH KUMAR PANDEY & ORS

V/S

UNION OF INDIA & ORS

Counsel for the Applicant :Mr.S.K.Datta
Mr.B.Chatterjee
Counsel

Counsel for the Respondents :Mr.B.K.Roy, Counsel

ORDER

MS.JAYA DAS GUPTA, AM:

The Applicants.(Kamlesh Kumar Pandey and 30 others)

have jointly filed this Original Application U/s. 19 of the

Administrative Tribunals Act, 1985 seeking the following reliefs:

"(a) An order granting leave to the applicants under Rule 4 (5) (a) of the Central Administrative Tribunals (Procedure) Rules, 1987 to move this application jointly;

(b) An order quashing and/or setting aside the impugned notice dated 09.04.2014;

(c) An order quashing and/or setting aside the impugned decision of recovery of the overpaid amount and further directing the respondents to refund the

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amount, if any, recovered pursuant to the notice dated 09.04.2014;

(d) An order holding that the decisions contained in RBE No. 140 of 2012 and 142 of 2012 are bad in law;

(e) An order directing the respondents to produce/cause production of all relevant records;

(f) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. It is the case of the Applicants, in a nut shell, that they are holding the post of Loco Pilot Passenger (Electrical) and have been posted under Asansol Division of the Eastern Railway. They were granted the benefits of MACP as per RBE No. 101 of 2009 and accordingly, their pay was fixed in the GP Rs. 4600/-. But suddenly, they were served a notice dated 09.04.2014 asking them to show cause as to why the GP Rs. 4600/- granted to them under the MACP Scheme should not be replaced by the GP Rs. 4200/-. They have submitted representation dated 22.04.2014 followed by another representation dated 12.05.2014. It has been alleged that as no action was taken on the said representations and on the other hand steps were taken to reduce the GP leading to recovery of the overpayment made to them, they have approached this Tribunal in the present OA seeking the reliefs mentioned above.

3. This matter was listed on 21.5.2014 before the then Hon'ble Judicial Member who upon consideration of the matter while

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granting time to file reply clarifying the matter, stayed the operation of the order dated 09.04.2014 which has been continuing till date.

4. Per contra, it is the case of the Respondents that in terms of para 8 of the Railway Board's Policy instruction on MACP Scheme dated 10.06.2009 promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACP Scheme. It has been stated that upon receiving the reference from different Railways, the Railway Board have issued clarification vide RBE No. 142/2012 on 13.12.12 as to how fixation of pay where grade pay in the feeder grade and promotional cadre is same was to be made. The illegality committed having been noticed, the same was rectified with an order of recovery of the excess payment made to the applicants. Accordingly, in compliance of the principles of natural justice, the applicants were allowed opportunity by the notice dated 9.4.2014. They have filed their representation. As the Respondent authorities have acted as per rules, they have prayed for dismissal of this OA.

5. We have heard the learned counsel for both sides. Consulted the records.

6. The issues that arise for our consideration in this case are as under:

- (i) Whether RBEs can be quashed?
- (ii) Whether the benefits of MACP can be extended beyond the hierarchy of the posts in the cadre and

can be more than the Grade Pay of promotional post;

(iii) Whether the recovery of overdrawn amount is tenable;

7. We find that these issues came up for consideration before this Bench in OA Nos. 457/2015, 675/2014, 1212/2015, 1231/2014 and 1232 of 2014 (Debasis Upla & Ors v Union of India and Others) and all the OAs were dismissed vide common order dated 07.12.2017 in which, so far as issue at (i) above, it has been held as under:

"ISSUE-(i) - Whether RBEs can be quashed?"

7. The RBE No. 142/2012 based on which, according to the Applicants, the impugned order is issued reads' as under:

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8. Now, we may refer to an Apex Court judgment which decides the issue (i). In the case of the **Railway Board and Others Vs P.R.Subramaniam and others**, reported in 1978 Vol.I SCC 158, the Hon'ble Apex Court declared that the orders issued by the Railway Board are of general application to non gazetted railway servants and **are treated as rules having provision to Article 309 of the Constitution of India**. It is further clarified in para 3, which reads as under:

(iv) "3. In the Indian Railway Establishment Code Vol.I are the Rules framed by the President of India under Article 309 of the Constitution. Contained in the said Code is the well known Rule 157 which authorises the Railway Board, as permissible under Article 309, to have "full powers to **make rules of general application to non gazetted railway servants under their control**. Railway Board have been framing Rules in exercise of this power from time to time. No special procedure or method is prescribed for the making of such Rules by the Railway Board. But they have been treated as rules having the force of rules framed under Article 309 pursuant to the delegated power to the Railway Board....."

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Hence the RBEs have the sanctity of provision to Article 309 of the Constitution is no more *res integra*. This view was also taken by the Division Bench of this Tribunal in OA Nos. 1020/2015 disposed of on 13.05.2016 (**Smt. Mitali Ghosh & Ors V E.Railway and Others**). Therefore, the plea of the applicants for setting aside the RBE No. 142 of 2012 is not correct."

So far the prayer of the applicant to quash the RBE No. 140/2012 is concerned, we fail to understand as to how this RBE No. 140 of 2012 is relevant to the present case as it deals with regard to grant of Dearness relief to the Railway pensioners who are in receipt of provisional pension or pension in the pre revised scale of 5th CPC w.e.f. 1.7.2012.

8. Hence issue No. (i) in the present case is disposed of accordingly. *ie RBEs can not be quashed JN7.*

ISSUE - (ii) Whether the benefits of MACP can be extended beyond the hierarchy of the posts in the cadre and can be more than the Grade Pay of promoted post. The Guard cadre consists of four grades which are given herein below:-

Grade	Pay band	Grade Pay	Remarks
Goods Guard	PB-1(Rs.5200-20200)	Rs:2800	Entry Grade
Senior Goods Guard	PB-2(Rs.9300-34800)	Rs.4200	Promotional Grade
Senior Passenger Guard	PB-2(Rs.9300-34800)	Rs.4200	-do-
Mail Express Guard	PB-2 (Rs.9300-34800)	Rs.4200	Apex Grade

It is the contention of the Applicants that since Apex Grade PB is Rs. 4200/- on promotion they should get the next higher GP of Rs. 4600/-. It is pertinent to add that in the cadre of Guards the

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highest GP awarded to them is Rs. 4200/- and any promotional post, carrying the GP Rs. 4600/- does not exist. However, these issues have been discussed in similar cases which came up for consideration before this Bench in OA No. 598/2014 & OA No.1020 of 2015 disposed of on 20.04.2015 and on 13.05.2016 (Smt. Mitali Ghosh & Ors v E.Railway and others) separately. Relevant portion of the reliefs sought in OA No. 1020 of 2015 is extracted herein below for ready reference:

"7. The case of Smt. Mitali Ghosh has a chequered history. She had earlier approached this Tribunal in OA No. 598 of 2014 (Mitali Ghosh vs Eastern Railway), filed on 29.04.2014, seeking the following reliefs:

"(i) Railway Board's Circular as well as office order dated 13.12.2012, 30.07.2013 and 16.09.2013 issued by Senior Divisional Personnel Officer, Eastern Railway, Asansol cannot be tenable in the eye of law and the same may be quashed;

(ii) An order do issue directing the respondents to allow the applicant to draw grade pay of Rs. 6, 600/- as she completed 30 years of regular service;

(iii) Any other order or orders the Hon'ble Tribunal may deem fit and proper."

9. The aforesaid OA No. 598 of 2014 and OA No. 1020/2015 were dismissed by this Bench vide judgment dated 20.04.2015 and 13.05.2016 holding that GP beyond the hierarchy cannot be granted. Therefore, issue (ii) in the present case is also decided that the benefit of up gradation cannot be more than benefit of promotion and grade pay beyond the apex grade cannot be paid.

ISSUE - (iii) - Whether the recovery of overdrawn amount is tenable?

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The above issue has also been considered by this Bench in OA No. 598 of 2014 and OA No. 2010 of 2015 and by orders dated 20.04.2015 and 13.05.2016, both the OAs were dismissed. The relevant portion of the order in OA No. 1020 of 2015 is extracted herein below:

"For the sake of argument, if we allow the prayer of the applicants for not recovering the over drawal amount as per the decision of the Hon'ble Apex Court in the case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.**, Civil Appeal No. 11527 of 2014 (arising out of SLP (C) No. 11684 of 2012 dated 18th December, 2014, it would tantamount to reviewing our earlier order at this distance place of time which is not allowed as per Judicial discipline. For argument's sake, only, let us consider Rafiq Masih' case. The aforesaid decision of the Hon'ble Apex Court reveals that a Division Bench of two Judges of the Hon'ble Apex Court have placed the matter for consideration to a Larger Bench of Three Judges with the following reference:

"In view of an apparent difference of views express on the one hand in Shyam Babu Verma and Ors vs. Union of India & Ors, (1994) 2 SCC 521 and Sahib Ram Verma vs. State of Haryana, (1995) Supp. 1 SC 18 and on the other hand in Chandi Prasad Uniyal and Ors vs. State of Uttarakhand & Ors, (2012) 8 SCC 417, we are of the view that the remaining special leave petitions should be placed before a Bench of Three Judges. The Registry is accordingly directed to place the file of the remaining special leave petitions before the Hon'ble Chief Justice of India for taking instructions for the constitution of a Bench of three Judges, to adjudicate upon the present controversy."

The aforesaid reference was answered by a Bench of three Judges on 08.07.2014. While disposing of the reference, the three judges of Division Bench recorded the following observations in paragraph - 7:

"In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant-therein were in exercise of its extra ordinary powers under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice."

Having recorded the above observations, the reference was answered as under:

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"12. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments and the latter judgment.

13. In that view of the above, we are of the considered opinion that reference was unnecessary. Therefore, without answering the reference, we sent back the matters to the Division Bench for its appropriate disposal."

It is evident that a Three Judges Bench of the Hon'ble Apex Court have observed that direction given by the Hon'ble Apex Court in **Shyam Babu Verma and Ors vs. Union of India & Ors.** (1994) 2 SCC 521 and **Sahib Ram Verma vs. State of Haryana.** (1995) Supp. 1 SC 18 were given while exercising the extraordinary power under Article 142 of the Constitution of India. The three Judges Bench of the Hon'ble Apex Court have not held that the decision in the case of **Chandi Prasad Uniyal and Ors vs. State of Uttarakhand & Ors.** (2012) 8 SCC 417 is wrong or iniquitous.

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It is also noteworthy that while making payments, on the basis of revisions under a Pay Commission, a certificate is invariably obtained from the employee, undertaking to refund any excess drawal. This is a regular practice in dealing with fixation of emoluments on the basis of Pay Commission recommendations. Therefore, the applicants are aware that any overpayment has to be recovered.

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It is also relevant to quote the relevant portion of the decision of the Hon'ble Apex Court rendered in the case of **Chandi Prasad Uniyal v. State of Uttarakhand** reported in AIR 2012 SC 2951 which is extracted herein below:

"16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is



whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (ret'd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.

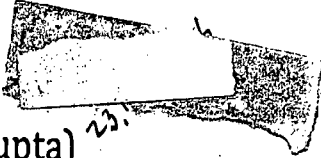
18. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly instalments starting from October 2012. The appeal stands dismissed with no order as to costs. IA Nos.2 and 3 are disposed of."

11. In view of the above, the issue (iii) is thus decided in this case that the overdrawn amount can be recovered.


12. The Applicants have not produced any material or authority so as to take a view other than the view taken in the batch of cases, cited supra.

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13. Thus, in view of the discussions made above, we hold that the applicants are not entitled to the relief claimed in this OA. This OA is, therefore, held to be without any merit. Accordingly this OA stands dismissed. Consequently, the interim order of stay of the notice dated 09.04.2014 stands vacated. However, additional increments in lieu of MACP should be given as per Rules and the amount paid in excess shall be subject to the adjustment against the amount on account of accruing the additional increment. Till the adjustment there shall be no further recovery. There shall be no order as to costs.



(Jaya Das Gupta)
Member (Admn.)



(Justice V.C. Gupta)
Member (Judl.)