

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA. 350/1011/2016
O.A 350/1012/2016
OA.350/1013/2016

Date of order 20.4.2018

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member

Hon'ble Ms. Jaya Das Gupta, Administrative Member

1. OA. 350/1011/2016: Nitya Gopal Roy Karmakar, son of Late Nagendra Nath Roy Karmakar residing at 11, Aambagan, Samrat Apartment, Police Station – Regent Park. Post office – Bansdrani, Kolkata – 700070. Working for gain in the Department of Posts in the office of the General Manager, (Postal Accounts & Finance) West Bengal Circle as Senior Accountant.
2. O.A 350/1012/2016: Dipika Gaine, Daughter of Late Haripada Maitra, of 48, Kazipara Road, Behala, Kolkata – 700034. Police Station- Parnasri Behala, Post Office – Behala, Kolkata – 700034. Working for gain in the Department of Posts in the office of the General Manager, (Postal Accounts & Finance) West Bengal Circle as Senior Accountant.
3. OA.350/1013/2016: Arun Prakash Pal, son of Late Kali Prasanna Pal, residing at Sonajhil, Police Station – Sonarpur, Kolkata – 700150. Working for gain in the Department of Posts in the office of the General Manager, (Postal Accounts & Finance) West Bengal Circle as Assistant Accounts Officer.

--Applicants

Versus.

1. Union of India, represented by the Secretary,
Ministry of Communications and I.T,
Department of Posts, Dak Bhawan, New Delhi – 110001.
2. The Secretary,
Ministry of Communications and I.T,
Department of Posts, Dak Bhawan,
New Delhi – 110001.
3. The Director General, Posts,
Department of Posts, India, Dak Bhawan,
New Delhi – 110001.
4. The General Manager (Postal Accounts & Finance),
Department of Posts, West Bengal Postal Circle,

/s/

Kolkata P-36, C.R Avenue, Yogayog Bhawan,
Kolkata- 700012.

5. Deputy Director of Accounts (Postal) Kolkata,
Office of the General Manager (Postal Accounts & Finance),
West Bengal Circle, Kolkata P-36, C.R Avenue,
Yogayog Bhawan, Kolkata- 700012

6. Accounts Officer (Postal), Kolkata
Admn.-II Section, having his office at General Manager (P.A.F),
West Bengal Postal Circle, Kolkata P-36,
C.R Avenue, Yogayog Bhawan, Kolkata- 700012

-- Respondents

For the Applicant(s) : Mr. A.N Ghosh, Counsel

For the Respondent (s) : Mr. B.B Chatterjee, Counsel

ORDER

Per Ms. Jaya Das Gupta, Administrative Member:

The above three O.As are analogous since it has been submitted in court that all are similarly situated. Accordingly, all the three cases are taken together, in particular, Shri Nitya Gopal Roy Karmakar.

The applicant Shri Nitya Gopal Roy Karmakar has approached CAT under section 19 of the Administrative Tribunals, Act seeking the following reliefs:

- a) To set-aside the order dated 10.03.2016 being No. Stepping-Up/Admn.-I(Cell)-235 issued by the Assistant Chief Accounts Officer, Postal (Kolkata) and also the order bearing No. Stepping-Up-Admn.I(Cell)-330, dated 06.05.2016 passed by the Deputy Director of Accounts(Postal), Kolkata and also the order being No. Cancellation of Stepping-Up of Pay/Admn.-II-814 dated 01.06.2016 issued by the accounts Officer (Postal) Kolkata, Admn.II, Section and direct the respondents not to recover the alleged excess amount of the applicant.
- b) To pass an order directing the respondents authorities not to recover any alleged excess amount;
- c) To pass such other or further order or orders and/or direction or directions as to Your Lordships may seem fit and proper. "

2. Heard both the Id. Counsels in extenso. It is the case of the applicant that he was initially appointed as Lower Division Clerk on 27.2.1979 in the Department of Posts. He was promoted as Junior Accountant on 02.11.1982, and again promoted to the Posts of

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Senior Accountant on 01.04.1987. The applicant is at present holding the posts of Senior Accounts Officer and posted in Yogayog Bhawan in Kolkata.

The applicant has referred that another Senior Accountant has approached Central Administrative Tribunal, Principal Bench, at New Delhi with a prayer that the Tribunal shall direct the respondents for grant of stepping up of pay of all Senior Accountants on par with Senior Accountants who are junior to the former in the cadre of Sr. Accountant. As per the applicant, the Central Administrative Tribunal, Principal Bench delivered a judgement on 01.02.2013, when the issue raised in that case was whether as senior person, although having received two promotions, is entitled to stepping up of pay at par with his junior who has been granted benefits under ACP Scheme and by virtue of which the junior is receiving higher pay than the senior. It is the case of the present applicant that Central Administrative Tribunal, Principal Bench gave an order in their favour regarding stepping up of pay to the pay of the junior.

The present applicant further submits that against the order of the Central Administrative Tribunal, Principal Bench, the respondent authorities filed a writ petition before the Hon'ble Delhi High Court, which was dismissed by the Hon'ble High Court. According to him, the Hon'ble Supreme Court also dismissed the Special Leave application which was filed by the respondent authorities against the Hon'ble Delhi High Court's order. It is the further contention of the applicant that, thereafter the authority concerned issued an order dated 14.02.2014 and implemented the orders of the Central Administrative Tribunal, Principal Bench by stepping up of the pay of the applicant at par with the pay of the junior, who got the benefit of ACP. After that the applicant suddenly received an order dated 10.03.2016 issued by the Assistant Chief Accounts Officer, Postal (Kolkata), wherefrom notice was given to the applicant that an amount of Rs. 1,86,158/- should be recovered from the applicant since this has been drawn in excess due to cancellation of the earlier stepping-Up of the pay of the applicant.

Such impugned letter dated 10.03.2016 (annexed at Annexure A-4) is set out below:

" DEPARTMENT OF POSTS: INDIA
OFFICE OF THE GENERAL MANAGER
(POSTAL ACCOUNTS & FINANCE)
WEST BENGAL POSTAL CIRCLE; KOLKATA

DM

P-36, CHITTARANJAN AVENUE, YOGAYOG BHAWAN,
KOLKATA - 700012.
Phone: (033) 2212-0366, Fax: (033) 2212-0722

No. Stepping Up./Admn-I(Cell) - 235

Dated: 10.03.2016

OFFICE ORDER

Consequent upon the implementation of Dte's Order No. 33(3)/10/PA-0 Adm- I/128 to 153 dated 14.02.2014 in connection with 'Stepping up' sanction of G.M (PA&F), Kolkata is hereby conveyed for payment of arrear pay & allowances in respect of the retired official mentioned below:-

a)

Sl.	Name and designation	Amount (Rs.)
1.	Sri Sajal Kumar Mukherjee, Ex-SA, retd. On 30.09.08	69,420
2.	Smt. Sipra Som, Ex-SA, retd. On 31.03.2013	1,32,087
	Total Rs.	2,01,507

b) An amount of Rs.,9,01,625/- may be recovered from the following officer/officials being the excess amount already drawn due to cancellation of the earlier stepping up.

Sl.	Name and Deg.	Arrear already paid (upto) 31.07.14	Excess pay & allowances paid (upto) 31.10.15	Total amount already paid.	Amount due	Amount to be recovered (Rs.)
1	Sri. Ananta Kr. Mondal, SA	3,11,903	85086	3,96,989	2,21,745	1,75,224
2	Smt. Chandrabati Basu, SA	3,11,903	90,663 (upto 30.11.15)	4,02,566	2,21,745	1,80,821
3	Sri. Nitya Gopal Roy Karmkar, SA	3,27,249	80,654	4,07,903	2,21,745	1,86,158
4	Arun Prakash Paul, AAO	3,27,249	80,654	4,07,903	2,21,745	1,86,158
5	Sri Ratan Kumar Das, SA	3,11,903	85086	3,96,989	2,21,745	1,75,224
					Total Rs.	9,01,625

Sd/-
Asst. Chief Accounts
Officer

Postal (Kolkata) "

3. The applicant was given a chance to give his reply to such notice of recovery and submitted a representation not to recover the excess amount in the light of DoP&T order dated 02.03.2016, which has been issued following the judgement of the Hon'ble Apex Court in *Rafiq Masih* case. Getting the representation of the applicant, the respondent authorities passed an order on 06.05.2016, rejecting the prayer of the applicant and directed the applicant to refund the excess amount. Such order dated 06.05.2016 is set out below:

" OFFICE OF THE GENERAL MANAGER (POSTAL ACCOUNTS & FINANCE)
WEST BENGAL POSTAL CIRCLE: KOLKATA
P-36, C.R. AVENUE, YOGAYOG BHAWAN, KOLKATA - 700012.

No. Stepping up/Admn: I(Cell)- 330

dated: 06.05.2016

To

Shri Nitya Gopal Roy Karmakar,
Sr. Accountant,
CC-IV(B)-Section

Sub: Prayer for exemption of recovery of excess payment due to stepping up of pay.

With reference to your representation dated 30.03.2016 regarding prayer for exemption of recovery of excess payment due to stepping up of pay in the light of provisions quoted by you at Para (ii) of DoP&T-OM-F.No. 18/03/2015 -Estt. (Pay-I) dated 02.03.2016, Shri Nitya Gopal Roy Karmakar, Sr. Accountant is reminded of the following facts-

1. Consequent upon the judgement dated 01.02.2013 in O.A No. 2124/2011 delivered by Principal Bench of Hon'ble CAT & upheld by Hon'ble High Court, Delhi, Dte (PA Wing) vide letter No. 33(3)/10/PA-Admn. I/128 to 153 dated 14.02.2014 issued an order to implement the judgement in toto at the earliest.
2. The main gist of the judgement was to allow stepping up of pay to those senior Senior Accounts who were appointed as LDC & by virtue of their two promotions in service career denied the benefits of ACP in respect to their juniors who were appointed as Junior Accountants & by virtue of their one promotion in Senior Accountant cadre got financial upgradation under ACP and started drawing more pay than their seniors from the day they got ACP.
3. Since this was not a normal stepping up case & had the legal sanctity of the judiciary, the Competent Authority formed a Special Cell to dispose of the pending cases within the framework of this judgement in the stipulated time period.
4. You to vide your representation dated 13.08.2014 prayed for stepping up of pay with respect to your junior Shri Amar Nath Dey, SA.
5. Though most of the information furnished by you was correct in nature but you failed to mention that even prior to granting of financial upgradation under ACP

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to your so called junior, Shri Amar Nath De, SA, your junior was getting more pay than you.

6. This was a vital parameter which your wilfully or unintentionally failed to mention.
7. Since it was a new concept based on the judgment of Hon'ble CAT, the Competent Authority inspite of taking measures to curb any wrong interpretation / miscalculations requested all the beneficiaries of stepping up of pay to execute an undertaking of refund of the entire amount in the eventuality of any overdrawal being detected.
8. You were also a party to that & gave a written assurance of refund dated 13.08.2014 should any such thing cropped up.
9. Completion of work within the stipulated time to avoid adverse criticism of the Hon'ble CAT compelled the Special Cell to do away from making a comparative pay parity statement between the junior and the senior employees. This clerical aberration proved too costly as by then excess payment to the tune of Rs. 1,86,158/- had already been made in your case.
10. However, this irregularity was detected while doing subsequent checks & it was decided to recover the overpaid amount because two wrongs cannot make a thing right.

Now coming back to DoP&T OM F.No. 18/03/2015 -Estt. (Pay-I) dated 02.03.2016, it is pertinent to state that-

1. This was a case of unintentional mistake committed by the employer.
2. The employee i.e. you furnished incorrect information either unintentionally or wilfully.
3. You had already given an undertaking to refund the entire amount and were thus aware that such a situation crop up it would not cause you any financial hardship.
4. Para 4 of the OM was not applicable in the instant case because-
 - (i) You belong to Group 'B' Non-Gazetted service in your substantive capacity.
 - (ii) The situation which lead to grant of stepping up of pay, application made requesting stepping up of pay, execution of undertaking to refund the overdrawn amount, actual payment made & issue of recovery order happened in quick succession. Since you had given a written assurance of refund of excess paid amount which was detected within a short time of its payment, it should not be construed as per the contents of para 4 (ii).
 - (iii) As stated in (ii) above. Moreover, there is no question of a period in excess of five years.
 - (iv) There is no question of the employee i.e. you been wrongfully required to discharge duties of a higher post & paid accordingly.
 - (v) You have been drawing a monthly gross salary of above Rs. 70,000/-. You were well aware that should a situation so arises where the amount paid as arrears to stepping up of pay stands irregular you will have to refund it. The declaration to this fact executed by you never mentioned about financial hardships. Hence, now the recovery order issued by the employer on the basis of that undertaking should not construed as iniquitous or harsh or arbitrary to such an extent

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as would far outweigh the equitable balance of the employers' right to recover.

The post of retirement liabilities & responsibilities were not linked to this stepping up of pay because it resulted due to a judgment of Hon'ble CAT regarding which you had no premonition beforehand. Hence now claiming of financial hardships due to this recovery is an attempt to break your own assurance which is very unfortunate.

Having examined the matter meticulously, the Competent Authority is sorry to accept your plea for exemption of recovery of the excess paid amount & directs you to refund the overpaid amount as agreed upon by you in terms of the undertaking executed by you on 13.08.2014 forthwith failing which recovery as per departmental rules will be initiated suo moto by the office.

This issues with the approval of GM9PAF), WB Postal Circle, Kolkata.

Sd/

(T.K Saha)

Deputy Director of Accounts (Postal)
Kolkata "

4. It is the submission of the respondent authorities that the applicants namely Shri Nitya Gopal Roy Karmakar (O.A 1011/2016), Smt. Dipika Gaine (O.A 1012/2016), Shri Arun Prakash Pal (O.A 1013/2016) had submitted to get the benefit of DoPT OM F.No. 18/03/2015-Estt.(Pay-1) which postulates the direction of Hon'ble Supreme Court in the Rafiq Masih case that in cases if employees, who are due to retire within one year, no order of recovery can be issued.

However, according to the respondents, such recovery can be made as undertakings have been given in writing by the above three applicants that they have no objection whatsoever to refund the excess amount paid in case it is found that the stepping up of pay to the pay of the junior Amarjeet Dey in line with the order of the Principal Bench in O.A 2124/2011 and M.A 1617/2011, pronounced on 01.02.13 in the matter of All India Postal Accounts Employees Association Vs. Union of India through the Secretary, Department of Posts and Secretary of Department of Personnel and Training should be withdrawn. Such undertakings are set out below:

" (1) Undertaking of Shri Arun Prakash Pal

Sub. Stepping up as per Directorate letter No.33(3)/10/PA-Admn 1/ 128 to 153 dated 14th Feb 2014

Sir,

I, Arun Prakash Pal, SA would like to inform you that I am eligible for the stepping for the stepping up of my pay with respect to Amar Nath Dey As he is junior to me.

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Therefore my humble request to you kindly grants stepping up of my pay at the earliest.

Thanking you

Yours faithfully,

Sd/-

UNDERTAKING

I Arun Prakash Pal of office of the G. M. (PA&F), Kolkata hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment future payment due to me or otherwise.

I am also fully aware that granting of financial benefit in my case has been done as per Dt's Order No.33(3)/10/PA-Admn 1/128 to 153 dated 14.02.2014 (displayed on Office Notice Board) regarding judgment passed by Hon'ble CAT, Principal Bench in OA No. 2124/2011 upheld by Hon'ble High Court, Delhi. However, if so happens from the outcome of the SLP filed in the APEX Court by the Department that I had earlier been wrongly given financial benefit, I will have no objection whatsoever to have the benefit withdrawn forthwith & refund the excess amount paid on this score instantly.

Place_Kolkata
Dated 13.08.14

(Signature of the Officer/Officials)

Name

(2) Undertaking of Shri Nitya Gopal Roy Karmakar

Sub. Stepping up as per Directorate letter No.33(3)/10/PA-Admn 1/ 128 to 153 dated 14th Feb 2014

Sir,

I, Nitya Gopal Roy Karmakar, SA would like to inform you that I am eligible for the stepping for the stepping up of my pay with respect to **Amar Nath Dey** As he is junior to me.

Therefore my humble request to you kindly grants stepping up of my pay at the earliest.

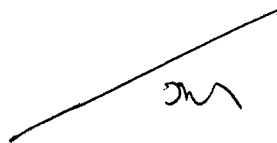
Thanking you,

Yours faithfully,

Sd/-

UNDERTAKING

I Nitya Gopal Roy Karmakar of office of the G. M. (PA&F), Kolkata hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment future payment due to me or otherwise.



I am also fully aware that granting of financial benefit in my case has been done as per Dt's Order No.33(3)/10/PA-Admn 1/128 to 153 dated 14.02.2014 (displayed on Office Notice Board) regarding judgment passed by Hon'ble CAT, Principal Bench in OA No. 2124/2011 upheld by Hon'ble High Court, Delhi. However, if so happens from the outcome of the SLP filed in the APEX Court by the Department that I had earlier been wrongly given financial benefit, I will have no objection whatsoever to have the benefit withdrawn forthwith & refund the excess amount paid on this score instantly.

Place: Kolkata
Date 13.8.2014

(Signature of the Officer/Officials)

Name-----

(3) Undertaking of Smt. Dipika Gaine

Sub. Stepping up as per Directorate letter No.33(3)/10/PA-Admn 1/ 128 to 153 dated 14th Feb 2014

Sir,

I, Dipika Gaine, SA would like to inform you that I am eligible for the stepping for the stepping up of my pay with respect to Amar Nath Dey.
As he is junior to me.

Therefore my humble request to you kindly grants stepping up of my pay at the earliest.

Thanking you,

Yours faithfully,

Sd/-

UNDERTAKING

I Dipika Gaine of office of the G. M. (PA&F). Kolkata hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment future payment due to me or otherwise.

I am also fully aware that granting of financial benefit in my case has been done as per Dt's Order No.33(3)/10/PA-Admn 1/128 to 153 dated 14.02.2014 (displayed on Office Notice Board) regarding judgment passed by Hon'ble CAT, Principal Bench in OA No. 2124/2011 upheld by Hon'ble High Court, Delhi. However, if so happens from the outcome of the SLP filed in the APEX Court by the Department that I had earlier been wrongly given financial benefit, I will have no objection whatsoever to have the benefit withdrawn forthwith & refund the excess amount paid on this score instantly.

Place_Kolkata
13.8.14

(Signature of the Officer/Officials)

Name-----

"
[Signature]

5. It is the further contention of the respondents authorities that initially Shri Nitya Gopal Roy Karmakar, Shri Arun Prakash Pal and Smt. Dipika Gaine came to know about the cancellation of the order granting them the stepping up of pay in their favour in the month of Nov. 2015/Dec. 2015 which have been set out below :

“
DEPARTMENT OF POSTS: INDIA
OFFICE OF THE GENERAL MANAGER (POSTAL ACCOUNTS & FINANCE)
WEST BENGAL POSTAL CIRCLE : KOLKATA
P-36, CHITTARANJAN AVENUE, YOGAYOG BHAWAN, KOLKATA-700 012
Phone : (033) 2212-0366, FAX (033) 2212 - 0722

No. Stepping up/Admn 1(Cell) – 95

Dated: 27.11.2015

To
The Accounts Officer,
Admn – II Section

Sub: Forwarding of recommendation of re-examination committee in connection with stepping up of pay.

This is to inform that as approved by the competent authority the re-examine committee for stepping up of pay has recommended 18 (eighteen) cases for cancel vide No. Rev. Com/Stepping up/Admn-I-460 dated 13.11.2015, who were previously recommended for stepping up of pay. Out of them the following (8) eight officer/officers have already been benefitted with stepping up of pay:-

Sl. No.	Name and Designation	Stepped up w.r.t
4.	Sri Arun Prakash Pal, SA	Sri Amar Nath Dey, SA
5.	Sri Nitya Gopal Roy Karmakar	Sri Amar Nath Dey, SA.

As such it is requested to take necessary action at your end by regularizing of the above mentioned officer/officials with immediate effect and also arrange recovery of overdrawn amount of paid so far at the earliest. The concerned officer may be informed accordingly.

Sd/-

Accounts Officer
Admn – I Section “

(2. No. Stepping up/Admn 1(Cell) – 135 Dated: 22.12.2015

CV

To

The Accounts Officer,

Admn – II Section

*Sub: Forwarding of recommendation of re-examination committee
in connection with stepping up of pay.*

This is to inform that as approved by the competent authority the re-examine committee for stepping up of pay has recommended 3(three) cases for cancellation vide No. Rev. Com/Stepping up/Admn-I-4963 dated 03.12.2015, who were previous recommended for stepping up of pay. Out of them the following 2 (two) officials have already been benefitted with stepping up of pay:-

Sl.	Name and Designation.	Stepped up w.r.t.
1.	Smt. Dipika Gaine, SA	Sri Amarnath Dey, SA

As such it is requested to take necessary action at your end by regularizing of the above mentioned officer/officials with immediate effect and also arrange recovery of overdrawn amount of paid so far at the earliest. The concerned officer may be informed accordingly.

Sd/-

Sr. Accounts Officer
Admn – I (Cell) "

But they did not lodge any protests or reservation in respect of this cancellation in spite of the fact that the pay of Shri Arun Prakash Pal and Shri Nitya Gopal Roy Karmakar were reduced to Rs. 21,930 + 4600/- as Grade Pay from Rs. 241900 + 4600/- as Grade Pay from November 2015, while the pay of Dipika Gaine was reduced to Rs. 21930+4600/- Grade Pay from Rs. 24190+4600/- w.e.f 2015.

The respondent authorities further submitted that the mere silence on the aforesaid cancellation and subsequent reduction of pay of applicant was itself testimony to the fact that they fully agree with the steps taken by the office. Rather all the three applicants applied for a fresh stepping up of pay with respect to another junior Shri Sunil Chandra Biswas on 01.02.16, and hereto, without any reservation, all of them executed an undertaking to refund knowing fully well they were going to retire within one year. Such undertakings is set out below:

(1) Undertaking of Arun Prakash Paul

"To

The General Manager (PA&F),
West Bengal Circle,
Kolkata-12

Sub. Prayer for stepping - up of Pay & Allowances as per Dte. Order



No.33(3)/10/PA Admn-1-128 to 153 dated 14.02.2014

Respected Sir,

I Arun Prakash Paul would like to inform you that I am eligible for the stepping for the stepping up of my pay with respect to Sunil Chandra Biswas as he is junior to me.

Therefore my humble request to you kindly grants stepping up of my pay at the earliest.

Thanking you

Yours faithfully,

Dated at Kolkata on 1/2/2016

UNDERTAKING

I Arun Prakash Paul of office of the G. M. (PA&F). Kolkata hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment future payment due to me or otherwise.

I am also fully aware that granting of financial benefit in my case has been done as per Dte's Order No.33(3)/10/PA-Admn-1/128 to 153 dated 14.02.2014 (displayed on Office Notice Board) regarding judgment passed by Hon'ble CAT, Principal Bench in OA No. 2124/2011 upheld by Hon'ble High Court, Delhi. However, if so happens from the outcome of the SLP filed in the APEX Court by the Department that I had earlier been wrongly given financial benefit, I will have no objection whatsoever to have the benefit withdrawn forthwith refund the excess amount paid on this score instantly.

Place :-

Date :-

Signature of the Officer/Officials

Name:

Designation:

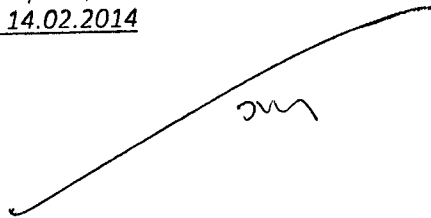
Address :

(2) Undertaking of Nitya Gopal Roy Karmakar:

"To
The General Manager (PA&F),
West Bengal Circle,
Kolkata-12

Sub. Prayer for stepping - up of Pay & Allowances as per Dte. Order
No.33(3)/10/PA Admn-1-128 to 153 dated 14.02.2014

Respected Sir,



I Nitya Gopal Roy Karmakar would like to inform you that I am eligible for the stepping for the stepping up of my pay with respect to Sunil Chandra Biswas as he is junior to me.

Therefore my humble request to you kindly grants stepping up of my pay at the earliest.

Thanking you

Yours faithfully,

Dated at Kolkata on 1/2/2016

UNDERTAKING

I Nitya Gopal Roy Karmakar of office of the G. M. (PA&F). Kolkata hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment future payment due to me or otherwise.

I am also fully aware that granting of financial benefit in my case has been done as per Dte's Order No.33(3)/10/PA-Admn-1/128 to 153 dated 14.02.2014 (displayed on Office Notice Board) regarding judgment passed by Hon'ble CAT, Principal Bench in OA No. 2124/2011 upheld by Hon'ble High Court, Delhi. However, if so happens from the outcome of the SLP filed in the APEX Court by the Department that I had earlier been wrongly given financial benefit, I will have no objection whatsoever to have the benefit withdrawn forthwith refund the excess amount paid on this score instantly.

Place :-Kolkata

Date :- 1/2/16

Signature of the Officer/Officials

Name:

Designation:

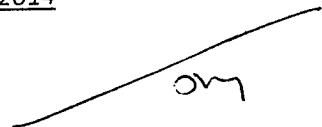
Address :

3) Undertaking of Dipika Gaine:

To
The General Manager (PA&F),
West Bengal Circle,
Kolkata-12

Sub. Prayer for stepping - up of Pay & Allowances as per Dte. Order
No.33(3)/10/PA Admn-1-128 to 153 dated 14.02.2014

Respected Sir,



I Dipika Gaine would like to inform you that I am eligible for the stepping for the stepping up of my pay with respect to Sunil Chandra Biswas as he is junior to me.

Therefore my humble request to you kindly grants stepping up of my pay at the earliest.

Thanking you

Yours faithfully,

Dated at Kolkata on 1/2/2016

UNDERTAKING

I Dipika Gaine of office of the G. M. (PA&F), Kolkata hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment future payment due to me or otherwise.

I am also fully aware that granting of financial benefit in my case has been done as per Dte's Order No.33(3)/10/PA-Admn 1/128 to 153 dated 14.02.2014 (displayed on Office Notice Board) regarding judgment passed by Hon'ble CAT, Principal Bench in OA No. 2124/2011 upheld by Hon'ble High Court, Delhi. However, if so happens from the outcome of the SLP filed in the APEX Court by the Department that I had earlier been wrongly given financial benefit, I will have no objection whatsoever to have the benefit withdrawn forthwith refund the excess amount paid on this score instantly.

Place :- Kolkata

Date :- 1/2/16

Signature of the Officer/Officials

Name:

Designation:SA

Address : PA - VI "

The respondent authorities further goes on to add that the respondent authorities had to examine more than 300 cases in a short span of time. The applicants as mentioned above had applied for fresh stepping up of pay with respect to Shri Sunil Chandra Biswas. For the Sixteen cases where stepping up of pay was carried out

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including the applicants, thirteen persons including the retired persons have refunded the overdrawn amount either in lump or in installments honouring their commitment to refund as per the undertaking executed by them and without raising any objection. Only the applicants have failed to honour their commitments.

6. The applicants had relied on a direction given by the Hon'ble Apex Court in the Rafiq Masih case, but we are also aware of the Supreme Court case where the Rafiq Masih case has been examined in detail and a judgement pronounced that if any undertaking for refund has been given by any applicant, the direction of the Rafiq Masih case shall not apply in such cases. Such order of the Hon'ble Supreme Court is set out below:

" IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 3500 OF 2006
HIGH COURT OF PUNJAB & HARYANAAPPELLANTS
& ORS
Versus
JAGDEV SINGHRESPONDENT

J U D G M E N T

Dr. D Y CHANDRACHUD, J.:

1. The High Court of Punjab and Haryana allowed, by its judgment dated 1 August 2005, a petition filed by the Respondent under Article 226 of the Constitution to challenge a direction issued by the State to the Accountant General for the recovery of an excess payment towards salary.

2 The facts lie in a narrow compass. The Respondent was appointed as a Civil Judge (Junior Division) on 16 July 1987 and was promoted as Additional Civil Judge on 28 August 1997 in the judicial service of the State. By a notification dated 28 September 2001, a pay scale of Rs. 10000-325-15200 (senior scale) was allowed under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2001. Under the rules, each officer was required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise.

3 The Respondent furnished an undertaking and was granted the revised pay scale and selection grade of Rs. 14300-400-18000-300. While opting for the revised pay scale, the Respondent undertook to refund any excess payment if it was so detected and demanded subsequently. The revised pay scale in the selection grade was allowed to the Respondent on 7 January 2002.

4 The Respondent was placed under suspension on 19 August 2002 and eventually, was compulsorily retired from service on 12 February 2003.

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5 In the meantime, this Court in Civil Writ (C) 1022 of 1989 accepted the recommendations of the First National Judicial Pay Commission (Shetty Commission). Thereupon, the Haryana Civil Services (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2003 were notified on 7 May 2003.

6 In view thereof the pay scales of judicial officers in Haryana were once again revised with effect from 1 January 1996. An exercise was undertaken for adjustment of excess payments made to judicial officers, following the notification of the revised pay rules. On 18 February 2004, a letter for the recovery of an amount of Rs. 1,22,003/- was served upon the Respondent pursuant to the direction of the Registrar of the High Court.

7 The Respondent challenged the action for recovery in writ proceedings under Article 226. The petition was allowed by the impugned judgment of the High Court. The High Court found substance in the grievance of the Respondent that the excess payment made to him towards salary and allowance prior to his retirement could not be recovered at that stage, there being no fraud or misrepresentation on his part.

8 The order of the High Court has been challenged in these proceedings. From the record of the proceedings, it is evident that when the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit which has been filed by the Respondent in these proceedings, this position has been specifically admitted. Subsequently, when the rules were revised and notified on 7 May 2003 it was found that a payment in excess had been made to the Respondent. On 18 February 2004, the excess payment was sought to be recovered in terms of the undertaking.

9 The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10 In *State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc.* this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.” (emphasis supplied).

11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the

first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable installments. We direct that the recovery be made in equated monthly installments spread over a period of two years.

13 The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs.

.....CJI

[T S THAKUR]

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[Dr D Y CHANDRACHUD]

New Delhi

JULY 29, 2016. "

7. It was the contention of the applicant that the order of Principal Bench in O.A 2124/2011 had reached finality since the order of the Principal Bench in O.A 2124/2011 and M.A 1617/2011 was upheld by Delhi High Court and the S.L.P which was filed by Respondent authorities against the Hon'ble Delhi High Court was dismissed. The order of Hon'ble Apex Court runs as follows:-

ITEM NO. 32.

COURT NO. 8

SECTION XIV

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4952/2014

(From the judgement and order dated 27.11.2013 in CWP No. 7421/2013 OF THE HIGH

COURT OF DELHI AT N. DELHI)

UOI & ANR

(Petitioner(s))

VERSUS

ALL INDIA POSTAL ACCOUNT EMPLOYEES & ANR Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned judgment and

Prayer for interim relief and office report)

Date 26/03/2014 This Petition was called on for hearing today.

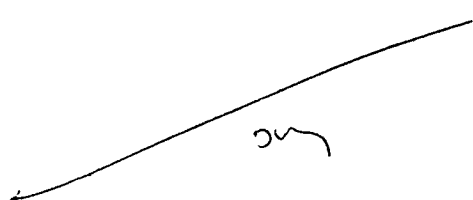
CORAM: HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

HON'BLE MR. JUSTICE A.K SIKRI

For Petitioner(s)

Mr. Jayanth Muth Raj adv.

Mr. D.S. Mahra , Adv.



For Respondent(s)
Mr. B.K Barera, Adv.
Mr. K.K Mishra, Adv.

UPON hearing counsel the Court made the following:

ORDER

The special leave petition is dismissed.

(Sukhbir Paul Kaur) (Indu Bala Kapur)
Court Master Court Master "

We note it is a single line order of dismissing SLP without any reason. Going through Article 141 of the Constitution of India, it is amply clear that dismissal of appeal in limine³⁵⁷ by Hon'ble Supreme Court at admission stage is not a binding precedent -**Sun Export Corporation Versus Collector of Customs (1997) Vol-6 SCC 564**.- A virtually non speaking order not setting out facts and circumstances in which directions came to be used against Government, not to be treated as a binding precedent - **Government of India .vs. Workmen of State Trading Corporation (1997) Vol. 11 SCC 641**- Where Supreme Court itself cautioning that directions issued by its³⁵⁷ not to be treated as precedent in other case decision not a precedent - **Delhi Administration .Vs. Nandlal Pant (1997) Vol-11 SCC 488**.

Therefore, it is clear that no finality has reached in this case as the Hon'ble Apex Court has dismissed SLP in one line without giving any reasons.

8. Also as per the guidelines of the ACP Scheme which followed from the recommendations of the 5th Pay Commission, the benefits of upgradation under ACP Scheme is personal to the beneficiary and no senior can claim stepping up of pay with the Junior as a result of upgradation under ACP Scheme.

9 Considering the above facts, we find no merit in the case and the case deserves to be dismissed and consequently all the three OAs 350/1011/2016: Nitya Gopal Roy Karmakar, O.A 350/1012/2016 : Dipika Gaine and OA.350/1013/2016: Arun Prakash Pal are dismissed. No costs.

(Jaya Das Gupta)
Member (A)

(Bidisha Banerjee)
Member (J)