CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.404/2015

Dated this Wednesday the 12th day of April, 2017

CORAM: **HON'BLE Dr. MRUTYUNJAY SARANGI, MEMBER (A)**

K. Chandran
Retired as Chief Accounts & Finance Officer,
C-DAC, Mumbai.
R/at. D-6/11, "Jal-Nidhi Co-op.
Housing Society", Bangur Nagar,
Goregaon (West),
Mumbai – 400 104. ... ***Applicant***

(By Advocate Ms. Priyanka Mehndiratta)

Versus

1. The Director General,
Centre for Development of
Advanced Computing,
Pune University Campus,
Ganesh Khind,
Pune – 411 007.

2. The Executive Director,
Centre for Development of
Advanced Computing,
Gulmohar Cross Road No.9,
Juhu, Mumbai – 400 049. ... ***Respondents***

(By Advocate Shri R.R. Shetty)

O R D E R

Per: Dr. Mrutyunjay Sarangi, Member (A)

The applicant had retired as Chief Accounts & Finance Officer from the Centre for Development of Advanced Computing ('C-DAC' in short), Mumbai on 30.11.2010. He has challenged the impugned orders dated 29.06.2014 and 16.07.2014 refixing his

pension and asking him to pay back the excess amount of Rs.4,05,857/- already drawn.

2. The brief facts of the case, as they appear from the OA, are as follows:-

(i) The applicant had joined the Tata Institute of Fundamental Research ('TIFR' in short), Mumbai on 21.05.1979 as Accounts Clerk. He was selected and appointed as Assistant Accountant with TIFR in 1981 and joined the National Centre for Software Development and Computing Techniques ('NSCDCT' in short) in July 1981 with continuity of service with TIFR. On 01.04.1985, the NCSDCT was re-designated as National Centre for Software Technology ('NCST' in short) and the applicant assumed the post as Accountant in NCST. In December 2002 the NCST merged with C-DAC and he became the Chief Accounts Officer in C-DAC in July, 2003. He retired from the above mentioned post on 30.11.2010. The applicant claims that he could not avail promotions due to him ever since he joined the TIFR in 1979 because of frequent organisational changes. From 1979 to 1985, he occupied positions of higher responsibility through competitive selection and not by departmental promotion. Within the C-DAC also not many promotional opportunities were

available to him although technical officers of equivalent grades had many more such opportunities. The applicant claims that he got his first promotion as Accountant in 1985 and was appointed as Chief Accounts Officer in 2003 after a gap of 18 years. On 27.09.2010, he filed an application with respondent No.2 for 'one time review' of his case for correcting the anomalies of his not getting appropriate promotions (*Annexure A-3*). On October 6, 2010, the Director Administration cum Head Corporate HRD – Shri George Arakal (Applicant in OA No.403/2015) wrote a note to the Director General recommending the case of Shri Chandran, the applicant in the present OA. The Director General made the following remarks on the note submitted by Shri George Arakal:-

> "ED, C-DAC, Mumbai may initiate action as appropriate, taking all aspects including precedents & practices into due consideration. The powers vested with ED, C-DAC, Mumbai for necessary action and implementation."

(ii) On a note submitted by Shri George Arakal, the Executive Director directed the formation of a Committee to examine the case of Shri Chandran, the applicant. A 4 Members Committee headed by Dr. S. Ramani, Professor, IIT, Bangalore with Shri T. Sahay, Sr. Vice President, Times Business School,

Shri Y.N. Srikant, Professor, IISc, Bangalore and Shri George Arakal, Director (Administration) & Head, Corporate HRD as Members met on 30.10.2010 and recommended the grant of three additional increments in his basic pay of Rs.44,720/- in the existing grade PB-4 with pay band of Rs.37400-67000 and grade pay of Rs.8700/- (pre-revised 14300-18300) w.e.f. 1st July 2009 on the basis of one time correction principle.

(iii) Vide letter dated 12.11.2010 from the Head, HRD, the applicant was informed that three additional increments were sanctioned to him w.e.f. 01.07.2009. His pay was fixed accordingly and his pension was calculated at the enhanced pay inclusive of 3 additional increments.

(iv) However, the respondent No.2 vide the impugned order dated 29.06.2014 informed him that consequent upon audit, an objection was raised on granting 3 additional increments to him. The 3 additional increments were disallowed and his basic pension without the 3 additional increments worked out to Rs.26,710/- and the residual pension was Rs.16,026/-pm + Dearness Relief as applicable. On recalculation of his pension without the additional increments, it was found that he had been paid an

excess amount of Rs.4,05,857/- and vide impugned order dated 16.07.2014, he was asked to make arrangements to pay back the above amount to C-DAC, Mumbai at the earliest. The applicant submitted a representation on 16.07.2014 (*Annexure A-8*) to the Executive Director, C-DAC protesting against the reduction of his pension, since the additional increments were granted to him keeping in view the past practice and precedents in the department. The applicant also filed an appeal dated 27.09.2014 (*Annexure A-9*) before the Director General, C-DAC, Pune (Respondent No.1). The respondent No.1 vide order No.C-DAC:Corp-HRD:2014/MVP/474 dated 16.10.2014 directed the respondent No.2 to keep the decisions of reduction in pension and recovery of excess amount of the applicant in abeyance, till the time the representations are disposed off (*Annexure A-10*). The applicant claims that despite the order from the respondent No.1, the respondent No.2 has not released the full payment of pension to him from October, 2014 onwards. The applicant has brought this fact to the knowledge of the respondent No.1 in his letters dated 20.11.2014 and 10.04.2015. But no action has been taken on his representations. Aggrieved by this, the applicant

has filed the present OA praying for the following reliefs:-

> "8(i) This Hon'ble Court may graciously be pleased to call for the records of the case from respondents and after examining the same, quash and set aside the impugned orders dated 16.07.2014 and 29.06.2014 with consequential benefits.
> (ii) This Hon'ble Court may further be pleased to hold and declare that the applicant is entitled to draw Rs.29,120/- per month as basic pension and further direct the respondents to restore and release the full basic pension along with 3 additional increments that works out to Rs.29,120/- per month, for which the applicant is legally entitled.
> (iii) Costs of the Petition be provided for.
> (iv) Any other and further relief as this Hon'ble Tribunal deems fit in the circumstances of the case be granted."

3. The applicant had also prayed for an interim relief as follows:-

> "(a) Pending final determination of the present Original Application, the Hon'ble Tribunal may be pleased to restrain the respondents from giving effect to the implementation and execution of reduction of pension orders dated 29.06.2014 and 16.07.2014, and he may further be allowed to draw basic pension at the rate of Rs.29,120/- as per the original pension sanction order.
>
> (b) Ad-interim orders in terms of prayer clause 9(a) above may be granted."

The records show that on 27.07.2015, this Tribunal had ordered, "the recovery of excess payment made is stayed till the next date of hearing". The interim order was continued from time to time till the case was finally heard on 16.03.2017 and reserved for orders.

4. The grounds on which the applicant has based his prayer are at para 5 of the OA and are reproduced herein below:-

> "(a) The impugned orders dated 29.06.2014 (A-1) and 16.07.2014 (A-2) are *ex-facie illegal*, unjust, unfair and *void ab-initio*.
> (b) The impugned orders are passed without jurisdiction and authority of law.
> (c)The action of the respondents in reducing the pension of the applicant is absolutely illegal and void.
> (d) The respondents have reduced the pension of the applicant without following the due process of law and prescribed norms.
> (e) The respondents have misled themselves by ignoring fundamentals of natural justice.
> (f) The respondents have acted in an arbitrary manner and issued the impugned recovery order and reduction in pension in colourable exercise of power. The respondents have resorted to selective approach.
> (g) Once the respondent No.1 has directed to go ahead with reduction in pension, the action of respondent No.2 in defying the same is illegal.
> (h) The action of the respondents in initiating recovery proceedings against the applicant without following the due procedure of law is violative of the CCS(CCA) Rules. The Rules are very clear on the subject that the pension of an employee or Gratuity or both, either in full or in part, can be withheld or reduced only by an order of the President. In the instant case, the respondents have travelled beyond their jurisdiction and power before passing an ex-parte order of recovery.
> (i) The applicant has not been given a reasonable opportunity of being heard. His representations are pending consideration with respondents till date.
> (j) The applicant relies on the recent Judgment rendered by the Hon'ble Supreme Court in the case of State of Punjab and others versus Rafiq Masih where in it is held that the recovery, where payments have mistakenly been made by the employer, in excess of their entitlement would be impermissible in law. It has been further held by the Hon'ble Supreme Court therein that recovery from retired employee is impermissible in law. More so when the excess payments have been made for a period in excess of 4 years,

before the order of recovery is issued. The case of the applicant is on all the force of the above mentioned case.
(k) There is no misrepresentation or fraud on the part of the applicant in drawing the correct pay earlier. Therefore, the respondents are debarred from recovering the amount and also reducing his pension at such a belated stage.
(l) The applicant has been subjected to a disadvantageous position in as much as his basic pension has been reduced from Rs.29,120/- to Rs.26,710/- and the residual pension to Rs.17,472/- to 16,026/- per month. This is blatantly illegal and impermissible in the eyes of law.
(m) There is a violation of Article 14 & 16 of the Constitution of India in as much as similarly situated employees have also been granted the said benefit. However, only the applicant has been made a scape goat and recovery proceedings are initiated against him.
(n) Recovery and reduction in pension of the applicant has resulted in a huge pecuniary loss to him which has caused a great deal of prejudice to a retired employee.

5. The respondents in their reply dated 17.11.2015 have contested the claim of the applicant. It is their contention that the applicant has challenged the objection raised by the Audit department and the clarification given by the DeitY. Therefore, the DeitY and the Ministry of Finance are necessary parties. Since the applicant has not included them as parties, the OA suffers from non-joinder of necessary parties and deserves to be dismissed on this ground.

5.1. The CAG Audit had raised an objection in granting of increment to the applicant under "one time correction" principle on the ground that it involved huge financial impact. The respondents

have proposed to recover only the additional increments and the consequent additional pension amount from the applicant as per the objection raised by the CAG Audit. The application is premature since the applicant has not exhausted all his remedies by approaching the higher authorities for redressal. The respondents have alleged that the applicant has colluded with the then Director (Administration) and Head Corporate HRD – Shri George Arakal (Applicant in OA No.403/2015) and both of them have got the benefit of additional increments against the rules. There is no rules or bye-laws which guarantee promotion after five years or at periodical intervals. The applicant has, therefore, used a wrong ground for obtaining the additional increments. The applicant has also referred to a precedent which was not applicable in C-DAC, post merger, ignoring the extant rules. The respondents, while agreeing that the additional increments have been granted by the Four Members Committee under the Chairmanship of Dr. S. Ramani, have strongly pleaded that there are no C-DAC Rules and Bye-Laws for granting of such increments. The applicant was, therefore, directed to pay back the excess amount drawn. The DeitY vide its letter

No.K-11011(12)/1/2014-ABC dated 07.05.2014 has directed the C-DAC to deal with the matter of applicant's representation in accordance with the existing rules and regulations of C-DAC. Since C-DAC has no Rules/Bye-Laws to grant additional increments during service period and more specifically immediately before retirement, the applicant is not entitled to such additional increments. Moreover, para 27 of FR also clearly stipulates that the clause of additional increments should not be invoked for meritorious service. The applicant and Shri George Arakal had supported each other for one time increment and the said issue had been placed before the ad-hoc committee and led to the sanction of additional increment which is not permissible under the rules. They have acted in a quid pro quo manner by supporting each other's cause and obtaining benefits not due to them.

6. The applicant in his rejoinder filed on 25.01.2016 has challenged the contention of the respondents that DeitY and the Ministry of Finance should have been made necessary parties. It is the applicant's contention that the entire cause of action has arisen because of the wrong action taken by the respondents by not defending their own

decision with the Department of Audit and by hurriedly reducing the pension of the applicant and raising the recovery bill. The applicant has also submitted that the pension scheme of NCST which was later merged with C-DAC is not controlled, financed or operated by DeitY or the Ministry of Finance. The observations of the Audit Department were only suggestions to seek clarifications from DeitY and MOF. The pension paid to the employees of C-DAC is from a pension trust controlled by C-DAC which is an autonomous institution of the DeitY. The applicant disputes the claim that the entire funds are received as grant-in-aid from DeitY. It is his contention that while a considerable portion of amount is received by C-DAC as grant-in-aid, C-DAC is also engaged in various business and commercial activities which earns substantial revenue from external sources for the organisation. The applicant has reiterated that the recommendation of the audit was to take up the issue with DeitY and Ministry of Finance for clarification whereas the respondents have resorted to a hurried and vindictive action against the applicant by reducing his pension and raising a demand for recovery. The applicant has also denied that there was collusion

between him and any other person. He claims that he has not given wrong advice to the authorities as Chief Accounts and Finance Officer to get any undue benefits for himself. The C-DAC, as an Institution, does not have any promotion policy. Performance-based guaranteed promotions were carried out in C-DAC in several cases with additional increments in 2008, 2010, 2011, 2014 and 2015. In the years, 2008, 2010 and 2011, additional increments were also granted to many individuals with the approval of the then Director General of C-DAC (Respondent No.1). The precedents quoted by the applicant relate to the post-merger scenario and the consideration of Shri S.H.K. Iyer, Shri P. Kumaran and Shri M.V. Rohra happened in the post C-DAC merger scenario. The above cases were considered with the approval of the then Director Generals of C-DAC viz. Dr. R.K. Arora and Shri S. Ramakrishnan, with the recommendation of the 4 Members Committee headed by Dr. S. Ramani. Wherever there were no written rules, the Institution relied on precedents and on the decisions taken by the previous heads of the Institution and Chief Executive. The Director General, C-DAC (Respondent No.1) is vested with sufficient powers under the Rules and Bye-Laws of

C-DAC to take decision on staff matters. Therefore, advance increments granted to the applicant are justified and any re-fixation of pension and recovery will be illegal.

7. The respondents have also filed a further reply on 29.08.2016 in which they have enclosed the particulars of promotions given to the applicant from time to time, copy of the Bye-Laws of C-DAC and the internal correspondence which resulted in grant of one time increments to the applicant.

8. The applicant filed the sur-rejoinder on 19.12.2016 in which he contested the claim of the respondents that he has got five promotions from NCST. The applicant joined TIFR in 1979 and was appointed as Assistant Accountant through direct recruitment in 1981 and was subsequently moved to NCSDCT, TIFR where he worked till 1985. These career upgradations were not promotions but through direct recruitment. The applicant claims that his first promotion was only in the year 1989 at NCST. He has also challenged the claim of the respondents that grant of additional increments is unknown to the organisation and unknown to service jurisprudence. As per the applicant, the respondents had considered a few cases and granted

additional increments on one time correction principle in 2004, 2005, 2006 and 2009. The applicant has also contested the claim of the respondents that he has colluded with Mr. George Arakal and they have helped each other in a quid pro quo to get the illegal benefits. The applicant has enclosed to the rejoinder the copy of the promotion policy of NCST and C-DAC and the copy of the office orders during the years 2008, 2010, 2011, 2014 and 2015 on promotion matters.

9. The respondents in their sur-rejoinder filed on 31.01.2017 have reiterated their earlier stand that the applicant has got five promotions as Senior Accountant in NCST on 01.01.1989, as Administrative Officer-II in NCST on 01.01.1994, Administrative Officer-III in NCST on 01.01.1998 and re-designated as Senior AO in NCST on 05.05.2000, Chief Accounts Officer in NCST on 01.01.2002 and Chief Accounts & Finance Officer in C-DAC on 01.01.2008. The additional increments granted to the applicant was always subject to audit scrutiny and the auditors have raised objection to the issue of additional increments and had recommended that the DeitY and the Ministry of Finance, should be consulted for verification. The

DeitY had directed the C-DAC to follow the prevalent Rules and Bye-Laws of the C-DAC. Since there is no provision for grant of additional increments in the Rules and Bye-Laws of C-DAC, additional increments sanctioned to the applicant have been withdrawn, his pension has been refixed and recovery of the excess amount already paid has been ordered. The applicant himself had voluntarily given an undertaking subjecting himself to future deductions, if any. Since there has been objection by the Audit department, the action by the respondents in withdrawing the additional increments is justified and legal.

The cases referred to by the applicant on sanction of additional increments were prior to the notification of C-DAC Bye-Laws. Once the Bye-Laws have been notified in 2006 and there is no provision for additional increments, the action of the respondents in withdrawing the additional increments sanctioned to applicant is valid and legally justified. Therefore, the OA deserves to be dismissed.

10. The applicant has cited the judgment of the Hon'ble Supreme Court of India in ***State of Punjab***

and others etc. Vs. Rafiq Masih (White Washer) in ***Civil Appeal No.11527 of 2014*** to support his plea that the recovery will be impermissible in law from retired employees or employees who are due to retire within one year, of the order of recovery.

11. The respondents have cited the judgment of the Hon'ble Supreme Court in ***State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, 2000 SCC (L&S) 845*** to advance the argument that "When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them". Similarly wrong judgments passed in favour of one individual does not entitle others to claim similar benefits, since the concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced to perpetuate a wrongful decision.

They have also cited the judgment of the Hon'ble Supreme Court in ***Aligarh Muslim University and Others Vs. Mansoor Ali Khan, 2000 SCC (L&S) 965*** to advance the Theory of useless formality on the ground that on the admitted and undisputable facts

only one view is possible.

The learned counsel for the respondents also cited the judgment of the Hon'ble Supreme Court in ***High Court of Punjab and Haryana Vs. Jagdev Singh***, ***Civil Appeal No.3500 of 2006*** pronounced on 29.07.2016 in which the principle was laid down that 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, a future re-fixation or revision may warrant an adjustment of the excess payment.

FINDINGS:-

12. I have heard the learned counsels from both the sides and perused the documents submitted by them. The issue to be resolved in the present OA is whether the additional increments paid to the applicant by C-DAC in 2011 can be justified and held to be legally sustainable. The second issue is whether the recovery orders can be allowed, as per rules.

13. From the facts of the case presented by both the sides, it is obvious that the applicant has travelled in his career from the TIFR to NCSDCT to NCST to C-DAC. The respondents claim that the

applicant has got five promotions whereas the applicant admits to have only three promotions, the first two being through competitive selection and not promotion. The last three promotions have been in the year 1998 as Administrative Officer and re-designated as Senior AO on 05.05.2000, Chief Accounts Officer on 01.01.2002 at NCST and as Chief Accounts & Finance Officer on 01.01.2008 at C-DAC. The last mentioned post of Chief Accounts & Finance Officer is the highest in the hierarchy that the applicant could have risen in the organisation. The respondents claim that the applicant had also earlier been granted three advance increments in the year 2008. The relevant entry in his service book shows 'promoted as CA&FO & Pay Fixed'. However, the applicant himself has admitted that he was promoted to the post of Chief Accounts and Finance Officer in the year 2008.

14. On October 13, 2010, Shri George Arakal, Director (Administration (Applicant in OA No.403/2015) had put up the following note:-

> "Note for Executive Director
>
> This refers to the appeal (confidential) of Shri K. Chandran dated 27th Sept 2010 regarding consideration of one time review. Certain queries raised by you are being answered:
> 1. Shri K. Chandran was promoted last in 2008. Therefore, the one time review does not call for a review for

consideration of a promotion at this stage.

2. The one time reviews which were carried out earlier are not based on C-DAC Policy on promotions. It has nothing to do with the Promotion Policy as we are not considering promotion per se. The precedents quoted by Shri Chandran are not that of NCST. All those one time considerations happened during 2003, 2004 and 2005 with respect of Shri S.H.K. Iyer, Shri P. Kumaran and Shri M.V. Rohra. Since there was no Executive Director at those points fo time, the cases were referred to Director General in his capacity as ED, C-DAC, Mumbai Viz. Shri R.K. Arora and Shri S. Ramakrishnan. Reviews were authorized and a few increments were permitted to be given from a date which was found reasonable by the Committee and these were granted to them. The officers who retired after more than 30 years of service got a couple of increments in the salary which helped them to improve their terminal benefits. This is exactly what Shri Chandran has asked for in his representation.
3. MRP for 14300 grade (pre revised) is 5 years and since there is no consideration of promotion at this stage, the MRP does not come in the way of one-time consideration review.
4. I have talked to Shri Rajan Joseph, DG on the issue and this being a local issue, he preferred that this be settled at our level. "

15. Accordingly, a Committee was formed under the Chairmanship of Professor Dr. S. Ramani and the Committee met on 30.10.2010. An extract of the relevant paras of the minutes of the Committee are reproduced herein below:-

"The Committee met at C-DAC, Visvesvaraya Centre, Bangalore on Saturday, the 30th October 2010 at 12 noon and reviewed the case. The review covered a total of 31 years of Shri Chandran's service during the period between 1979 and 1981 (with TIFR), 1981 to 1985 (with NCSDCT, TIFR) and 1985 to 2002 (with NCST) and 2002 till date with C-DAC Mumbai (when NCST was merged with C-DAC)

The Committee has gone through the letter of Shri Chandran addressed to the Executive Director dated 27th September 2010 which was referred to it and also heard the briefing on the subject by C-DAC. The committee noted that Shri Chandran had consistent excellent performance during his career and his contribution to the institution has been exceptional. The Committee considered his case and found it to be a fit case for review to acknowledge his overall performance and his exceptional contribution to C-DAC.

The Committee also felt that in all fairness to Shri Chandran, he should have been considered for a suitable fixation/upgradation when the merger took place in 2002 and should have been placed in an appropriate position considering his seniority. This did not happen.

The Committee noted that Shri Chandran is one of the senior officers of C-DAC, Mumbai, today. He has started his career from the parent institution, TIFR. The career progression avenues were limited in the earlier years of his career. The Committee has also taken cognizance of the fact that very limited promotion opportunities were available to Shri Chandran whereas staff from other constituents of current C-DAC received enhanced opportunities through fast-track promotion policies which prevailed in their organisations prior to merger. Since rationalization of the personnel did not take place at C-DAC after the merger, we understand that a number of senior officers were deprived of opportunities for the right fixation/upgradation.

It is in this context that the one time career review of this sort assumes importance. The Committee, after going through the entire case, found it to be a fit case and therefore strongly recommends that Shri Chandran be granted three increments in his basic pay of Rs.44,720/- in the existing grade PB-4 with pay band of Rs.37400-67000 and grade pay of Rs.8,700/- (pre-revised 14300-18300) w.e.f. 1st July 2009 on the basis of one time correction principle."

16. The applicant was accordingly granted 3 additional increments w.e.f. 01.07.2009. He retired

on 30.11.2010 after drawing the benefit of the advance increments. His pension was also fixed taking into account the 3 advance increments.

17. During the inspection of CAG Audit, an objection was raised in September and October, 2013 at C-DAC raising objection to the payment of the additional increments to Mr. G.R. Arakal (Applicant in OA No.403/2015) and K. Chandran (applicant in the present OA). The Executive Director, C-DAC had written a letter to the Director General, C-DAC regarding this audit objection. Copy of the letter dated 02.01.2014 is reproduced herein below :-

> "Ref.:- C-DACM/CAG-Audit/ZS/1261/ January 2, 2014
>
> Prof. Rajat Moona
> Director General
> C-DAC
> Pune University Campus
> Ganeshkhind Road
> Pune – 411 007.
>
> Sub: CAG Audit held at C-DAC Mumbai during September/October, 2013
>
> Ref: Para No.13 - "One time Correction Principle".
>
> Dear Sir,
>
> As you are aware, CAG Audit took place during September/October 2013 at C-DAC, Mumbai.
>
> There is a specific Audit Para that requires the intervention of C-DAC Corporate Office and DeitY.
>
> Para 13 refers to "One -time correction principle" and relates to the 5 increments and 3 increments given to Mr. George Arakal and Mr. K. Chandran, respectively.
>
> CAG Auditors noted that the salary fixation of Mr. George Arakal and Mr. K. Chandran were done just one year before the retirement,

which had involved huge financial impact on pay and allowances, retirement benefits, pension, etc.

CAG Auditors further contended that as no specific orders are available in this regard, the matter may be referred to the DeitY for clarification.

All the relevant documents related to this Audit para are enclosed herewith for your ready reference.

I request Corporate Office to kindly refer the matter to DeitY for clarification, as mentioned in the CAG Audit inspection report."

Thanking you,

Yours sincerely,
sd/-
(Dr. Zia Saquib)"

18. On April 25, 2014 the Executive Director, C-DAC had written a letter to the Secretary, Department of Electronics & Information Technology (DeitY) which is reproduced herein below:-

"Ref:- C-DACM/CAG-Audit/ZS/1272/ April 25, 2014

The Secretary
Department of Electronics & Information Technology (DeitY)
Ministry of Communications & IT, Government of India
Electronics Niketan 6, CGO Complex, Lodhi Road,
New Delhi – 110 003.

Phone:- 011-24364041

Sub: CAG Audit Objections to "One time Correction Principle" relating to 5 increments and 3 increments to two officers of C-DAC, Mumbai.

Dear Sir,

This is for your kind information that CAG Audit was held during September-October 2013 at C-DAC Mumbai.

One of the Audit paras as a result of this Audit relates to "One-time Correction Principle" related to 5 increments to the then Director (Administration), C-DAC, Mumbai and 3 increments to the then Chief Accounts and Finance Officer (CA&FO), C-DAC Mumbai. CAG has observed that the salary fixation was done just prior to their retirement and has involved a huge financial impact on the pay & allowances, retirement benefits, pension etc. of these concerned staff members. Furthermore, it was contended that this matter may be

referred to DeitY for clarifications.

This matter was referred to Director General, C-DAC vide letter No.C-DACM/CAG-Audit/ZS/1261 dated January 2, 2014. In his reply, Director General, C-DAC has mentioned that the undersigned may refer the matter to DeitY for clarification, if deemed fit.

The increments in question were processed under direction from the former Director General, Shri Rajan Joseph, although the Rules & Bye-laws of C-DAC do not have provisions for granting such increments, just prior to superannuation.

I am now referring this matter to you for your comments and advice on the future course of action, as has been referred to in the CAG Audit Report.

The complete set of documents listed as Annexures, are also being sent along with this letter, for your kind information.

Thanking you,

Yours Sincerely,
sd/-
(Zia Saquib)"

19. The Audit Team during their next round of inspection again raised objection on 23.06.2014 to the additional increments granted and noted that no clarification has been given by the DeitY. The copy of the Memo dated 23.06.2014 reads as follows:-

"Inspecting Officer's Remarks /Suggestions/Objections:-

Irregular payment of Rs.11.37 lakh Pension benefits when the additional increments were paid under one time correction principle was under audit objection.

During Last Local Audit Inspection then audit party had raised an objection on granting of 5 Additional Increments to, Shri George Arakal, Director (Admin) and of 3 Additional Increments to Shri K. Chandran, CAO under one time correction principle. The objection was raised due to the fixation was done on their retirement year. It also involved huge financial impact on their pay and allowances, retirement benefits, pension etc.

As no specific orders were available for granting such increments, audit instructed the center to take the

matter to DIT for clarification and till such time continuity of similar pay fixation may be kept in abeyance and the over payment if any paid to the above officers based on one time review may be regularized.

But on scrutiny of records it was noticed that so far no clarification on granting such additional increments was received from the DIT. But the Center had paid Pension, commuted value of pension, leave encashment etc were calculated and paid to these two officials along with the above additional increments. This had Resulted irregular pension benefits of Rs.11.37 lakh.

Further, it was also stated that Shri K. Chandran CAO already got 2 Additional increments on his promotion as CAO during 2008. As per OM No.16/10 dated 19/04/10 of C DAC, (under clause 10) Consideration to the performance of the candidate during the review period being very good or above, one additional increment per every completed year over and above the Minimum Residency period (MRP) can be considered, subject to a maximum of 3 increments (total) at the discretion of the committee. Such decisions should form part of the minutes of the Promotion Review Committee. Whereas, in the above officials' case more than 3 increments were given.

In this regard, it also may be considered that as per GFR (Rule 209 6 iv (a) all grantee institutions or organisation which receive more than fifty per cent of their recurring expenditure in the form of grant in aid, should ordinarily formulate terms and conditions of service of their employees which are, by and large, not higher than those applicable to similar categories of employees in central government. In exceptional cases relaxation may be made in consultation with the ministry of finance. Hence, these cases may be taken to Ministry of Finance through DIT for relaxation.

Hence the pension to these officials may be paid without these additional increments till such clarification received from the Ministry of Finance and DIT and compliance may be intimated to audit."

20. On this Memo, the Executive Director made the following remarks:-

"The pension for Mr. George Arakal & Mr. K. Chandran has been calculated & they are paid pension without 5 & 3 additional increments respectively, effective from June, 2014.

The process for recovery has been initiated.

sd/-
Dr. Zia Saquib
Executive Director."

21. On 07.05.2014, the DeitY wrote the following letter to the Executive Director, C-DAC:-

"K-11011(12)/1/2014-ABC 07.05.2014

To

Dr. Zia Saquib,
Executive Director,
C-DAC,
Mumbai.

Subject: CAG Audit Objections to "One time Correction Principle" relating to 5 increments and 3 increments to two officers of C-DAC, Mumbai – regarding.

Sir,

I am directed to refer to your letter No.C-DACM/CAG-Audit/25/1272 dated 25.04.2014 on the subject cited above and to state that the matter may be dealt with in accordance with the existing rules and regulations of C-DAC.

2. Further, it is also advised that in future such references should not be referred to the Department directly.

Yours faithfully,
sd/-
(Surender Jeet)
Deputy Director
Tel . No.24301250."

22. The applicant and the respondents were directed by this Tribunal to produce the Bye-Laws and the rules relating to payment of additional increments as has been done to the applicant in the

present OA. I have perused the Bye-Laws and also the Fundamental Rules relating to sanction of increments. I find that there is no provision under Bye-Laws or the Fundamental Rules for sanction of additional increments.

23. The respondents have submitted the OM No.01/08 dated 08.01.2008 which reads as follows:-

"Ref: C.HRD/GLA/OM January 8, 2008

OFFICE MEMORANDUM 01/08

1. A uniform Promotion Policy for the non S&T staff of C-DAC is under consideration. In the meantime, it has been decided to authorize C-DAC Centres to carry out a one-time exercise of screening and promotion of non S&T staff subject to certain provisions and guidelines given in this Office Memorandum (OM) . The promotion will be based on performance and residency period of the staff member.
2. The review and promotion exercise will be carried out by each C-DAC Centre on the basis of the Promotion Policy of pre-merged entity of the constituent concerned and adhering to certain additional conditions specified by the competent authority to ensure uniformity in the process and procedures.
3. The Minimum Residency Period (MRP) for consideration of a staff member for screening would be completed 5 years as on 31.12.07.
4. All Centres are directed to strictly comply with the procedures, process and guidelines attached as Annexure A to this OM while carrying out the promotion exercise.
5. The HR Heads of C-DAC Centres are requested to acknowledge the receipt of this OM, implement the instructions contained in the OM and confirm the action taken through an Action Taken Report (ATR) which shall be sent to the undersigned with a copy marked to DG, C-DAC, on or before 15th February 2008.
6. This OM is issued with the approval of the competent authority.

sd/-
(George Arakal)
Head Corporate HRD"

24. However, the Office Memorandum itself says that the Uniform Promotion Policy for the non S&T

staff of C-DAC was under consideration at the time of issue of the Office Memorandum. Pending such policy to be approved by the competent authority which also requires the approval of the concerned Financial Wings of the C-DAC and possibly the DeitY, any unilateral promotion granted in pursuance of the OM cannot be held to be legally valid. The Office Memorandum dated 08.01.2008 is for an one-time exercise for promotion of non S&T staff and it obviously can not cover the applicant who was already occupying the apex post to which he was eligible.

25. The applicant has taken a plea that such additional increments have been granted to three individuals namely Shri S.H.K. Iyer, Shri P. Kumaran and Shri M.V. Rohra in the past.

26. I had directed the respondents to produce the personal files of the above three individuals and I found from the records that Shri S.H.K. Iyer was granted three increments in the year 2003 under the 'one time correction during service' principle. He was working as Chief Accounts Officer in NCST and a Committee with four members namely Shri Dr. S. Ramani, Director, Shri V.K. Sridhar, Registrar, IIT, Mumbai, Col. Vinay Verma, Head, HRD, C-DAC,

Pune and Shri George Arakal, Registrar, C-DAC, Mumbai recommended that Shri S.H.K. Iyer will be awarded three increments in the existing grade of Rs.12,000-375-16500 w.e.f. 01.01.2002 on the basis of one time correction principle. Shri S.H.K. Iyer retired on 30.04.2003.

27. In the case of Shri P. Kumaran, he was working as Senior Administrative Officer, C-DAC. A 4 members Committee consisting of Dr. S. Ramani, Research Director, Dr. Y.N. Srikant, Professor & Chairman, Bangalore, Mr. C.M. Abraham, Registrar, IIIT, Bangalore and Mr. George Arakal, Registrar, C-DAC, Mumbai had granted three increments in the grade of Rs.10,000-325-15,200 w.e.f. 01.01.2004 on the basis of 'one time review during service' principle. Shri P. Kumaran retired on 30.11.2004.

28. The 3rd individual - Shri M.V. Rohra was working as Senior Administrative Officer in C-DAC. A 4 members Committee of Dr S. Ramani, Reserch Director, Dr. Y.N. Srikant, Professor & Chairman, IISc., Bangalore, Mr. C.M. Abraham, Registrar, IIIT Bangalore and Mr. George Arakal, Director (Admin.), C-DAC, Mumbai had recommended the award of three increments in the existing grade of 12000-375-16500 w.e.f. 01.04.2005 on the basis of 'one time review

during service' principle. Shri M.V. Rohra retired on 31.03.2006.

29. I have perused the Bye-Laws and the Rules of the C-DAC annexed by the applicant at *Annexure A-12*. I have also perused the Promotion Policy for NCST enclosed by the applicant at *Annexure A-15*. There is no provision for a 'one time correction during service' principle in either the Bye-Laws of the C-DAC or the Promotion Policy of the NCST. The only authority on the basis of which the respondents have granted the advance increments to Shri George Arakal and Shri Chandran is the Office Memorandum No.01/08 dated January 8, 2008 by which it was decided to authorise C-DAC to carry out one time exercise of screening and promotion of non-S&T staff subject to certain provisions and guidelines. It is, therefore, not known how the three individuals namely Shri S.H.K. Iyer, Shri P. Kumaran and Shri M.V. Rohra were given three increments each as a 'one time correction during service' principle. However, the three increments granted to them is not under challenge in the present OA.

30. In the case of Shri Chandran, applicant in the present OA, there is no legal foundation for

the grant of the three additional increments just a few days before his retirement. The applicant has quoted the precedents of grant of additional increments to the three individuals namely Shri S.H.K. Iyer, Shri P. Kumaran and Shri M.V. Rohra. Even in their case also I do not find that grant of such additional increments is permitted under any rules.

31. Learned counsel for the respondents has rightly cited the judgment of ***State of Bihar and Others Vs. Kameshwar Prasad Singh and Another (supra)*** to argue that the concept of equality is not a negative concept and cannot perpetuate a wrong already committed. In the present case, therefore, I come to the conclusion that in the absence of enabling rules or provisions of law, the sanction of three additional increments to the applicant is without any legal validity and cannot be continued. The applicant is, therefore, entitled only to a reduced pension after re-fixing his pay without the three additional increments.

32. So far as the recovery of the amount already paid to the applicant, it is to be examined in the context of various judicial pronouncements and provisions of law:-

In a catena of judgments the Hon'ble Supreme Court has laid down the principles on recovery of excess payment made to the Government employee.

In the case of ***Shyam Babu Verma Vs. Union of India (1994) 2 SCC 521)*** which was a three-Judge Bench judgment, a higher pay scale was erroneously paid in the year 1973 and the same was sought to be recovered in the year 1984 after a period of 11 years. The Court felt that the sudden deduction of the pay scale from Rs.330-560 to Rs.330-480 after several years of implementation of said pay scale had not only affected financially but even the seniority of the petitioners. Under such circumstances, the court had taken the view that it would not be just and proper to recover any excess amount paid.

In ***Yogeshwar Prasad and Ors. Vs. National Institute of Education Planning and Administration and Ors. (2010 (14) SCC 323)*** a two-Judge Bench judgment of the Hon'ble Supreme Court had held that the grant of higher pay could not be recovered unless it was a case of misrepresentation or fraud.

In ***Col. B.J. Akkara (retd.) Vs. Government of India and Ors. (2006 (11) SCC 709***, the Hon'ble Supreme Court had observed as follows:-

> "Such relief, restraining recovery back 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."

In ***Syed Abdul Qadir and Ors. Vs. State of Bihar and Ors. (2009 (3) SCC 475)***, the Hon'ble Supreme Court had restrained the department from recovery of excess amount paid, but held as follows:-

> "Undoubtedly, the excess amount that has been paid to the appellants – teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted

> that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made."

In ***Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors*** in ***Civil Appeal No.5899 of 2012*** and SLP (C) No.30858/2011 dated 17.08.2012 on the other hand, the Hon'ble Supreme Court had firmly laid down the principle that excess payment unduly paid to a Government employee is liable to be recovered. The relevant paragraph Nos.15 & 16 are reproduced herein below:-

> "15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative

hierarchy.

> 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."

The Hon'ble Supreme Court in the case of ***State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc., 2015 (1) CLR 398 = (2015)4 SCC 334*** has made elaborate analysis of the rationale of recovery of excess payment and has observed as follows:-

> "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.

.....

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits

wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.

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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.
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> (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.
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> (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.

33. Recently, the Hon'ble Supreme Court has examined the issue in ***High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh (supra),*** wherein it was held, "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, a future re-fixation or revision may warrant an adjustment of the excess payment."

34. In the present O.A., the applicant has been granted three additional increments on the recommendation of a Committee constituted by the Director General of C-DAC. The Committee has given detailed justification for its award of 3 additional increments to the applicant and the then Director General had sanctioned the payment of the

additional increments w.e.f. 01.07.2009 as recommended by the Four Members Committee. I do not accept the contention of the respondents that the applicant was in collusion with Shri George Arakal (Applicant in OA No.403/2015) and together they have manipulated the sanction of the increments. I have perused the note submitted by the applicant on different dates. These notes have been submitted in his official capacity and they have been duly considered by the Director General while constituting a Four Members Committee and while sanctioning the additional increments. The applicant therefore cannot be held accountable for the sanction of three additional increments which has been done after due consideration by a Four Members Committee appointed by the DG, C-DAC. It cannot be presumed that the applicant had knowledge that the "Payment received was in excess of what was due or wrongly paid." (***Col. B.J. Akkara (retd) Vs. Government of India and Ors.)(supra)***.

35. The applicant has given the precedents of payment made to Shri S.H.K. Iyer, Shri P. Kumaran and Shri M.V. Rohra. He had genuinely believed that three additional increments and the consequent increments in salary and pension, as sanctioned by

the DG, C-DAC was legitimately due to him. Any error in sanctioning the additional increments can be attributed to the then DG who did so without the foundation of any prevalent rules and passed an arbitrary and illegal order. I find it difficult to come to the conclusion that there was any mis-representation or fraud on the part of the applicant or any knowledge that the amount that was being paid to him was more than what he was entitled to. {***Syed Abdul Qadir and Ors. Vs. State of Bihar and Ors (supra)***}.

36. The respondents have relied upon the judgment of ***High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh (supra)*** to claim that the applicant had given an undertaking for refunding any excess amount paid to him. The respondents have not enclosed any undertaking purportedly given by the applicant while receiving the benefits of the additional increments in pay and subsequently in pension. However, in the accompanying OA No.403/2015, the respondents have submitted an undertaking given by Shri George Arakal, applicant in OA No.403/2015 for refunding any excess amount on the fixation of his pay on the implementation of the 6th pay commission. It is obvious that the

undertaking given by Shri George Arakal does not relate to the 5 additional increments given to him. It was, on the other hand, with regard to the pay fixation in the revised pay structure w.e.f. 01.01.2006. In the present OA, however, in case of Shri Chandran, the respondents have not been able to produce any undertaking whatsoever relating to return of excess payment on account of the additional increments.

37. In view of the discussion in the above paragraphs, the judgments in the case of ***Chandi Prasad Uniyal (supra)*** and ***Jagdev Singh (supra)*** will not be applicable in the present case. The applicant is squarely covered under para 12.2 of the ***Rafiq Masih's*** judgment. The applicant being a retired employee, the order of recovery of the excess amount in the impugned letter dated July 16, 2014 deserves to be quashed and set aside.

38. In view of the facts of the case and points of law involved in the present OA, the OA is partly allowed. The action of the respondents in reducing the pay and basic pension of the applicant without the three additional increments is upheld. However, the respondents are directed not to recover the excess amount paid to the applicant in pay and

pension due to the sanction of three additional increments to him w.e.f. 01.07.2009. No order as to costs.

(Dr. Mrutyunjay Sarangi)
Member (A)

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