

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR.**

O.A.210/00734/2016

DATED THIS MONDAY THE 24TH DAY OF SEPTEMBER, 2018.

CORAM: DR.BHAGWAN SAHAI, MEMBER (A) .

Smt.Pushpa Nandkishor Thakre,
aged about 57 years, working
as Fitter Electron HS-I in
O.F. Ambajhari,
R/o.Plot No.15, Sham Nagar,
Beltarodi Road,
Nagpur - 440 015. .. Applicant.

(By Advocate Shri B. Lahiri).

Versus

1. Union of India, through
The Secretary, Ministry of
Defence, D(Fy-II),
Sena Bhawan,
New Delhi - 110 011.
2. The D.G.O.F./Chairman,
Ordnance Factory Board,
10/A, Shaheed K. Bose Road,
Kolkata - 700 001.
3. The General Manager,
Ordnance Factory Ambajhari,
Nagpur - 440 021. .. Respondents.

(By Advocate Shri R.G. Agrawal).

Order reserved on : 29.08.2018

Order delivered on : 24.09.2018.

O R D E R

1. Through this O.A. the applicant, Smt.Pushpa N. Thakre, seeks quashing and setting aside of the order dated 17.08.2016 issued by the Sr.General Manager, Head of Section/Labour Bureau, Ordnance

Factory, Ambajhari for recovery in 10 instalments from August, 2016 of excess payment of Rs.65,133/- made to her earlier.

2. Facts of the case in brief:

2(a). The applicant, Smt.Pushpa N. Thakre, was appointed in Ordnance Factory, Ambajhari as unskilled labourer on 29.05.1994. Subsequently she was promoted as Fitter Electron (Semi-Skilled) on 02.02.2007, Fitter Electron (Skilled) on 11.02.2010, Fitter Electron (HS-II) on 12.02.2010 and finally Fitter (HS-I) on 01.10.2014. She is a Group 'C' employee.

2(b). Based on the promotion orders and grant of financial upgradation under MACP, her pay came to be refixed and the last order of such fixation was issued on 10.06.2016. This order mentions grant of HS-II to her from 12.02.2010 and financial upgradation under MACP-III from 29.05.2014. By this order all earlier pay fixation orders with effect from 12.02.2010 were superceded.

2(c). Then by communication of 28.07.2016 the Assistant Accounts Officer communicated to the Officer-in-charge for recovery of Rs.65,133/- from salary of Smt.Pushpa N. Thakre. Based on that, the Section Head, Labour Bureau communicated to her the order of Competent Authority i.e. Sr. General

Manager dated 17.08.2016 for recovery of excess payment of Rs.65,133/- in 10 instalments from her monthly salary from August, 2016. This order of recovery of earlier overpayment is under challenge in this O.A.

3. Contention of the parties:

The applicant's advocate has submitted that -

3(a). before issuing the order of recovery dated 17.08.2016, no prior notice or show cause was issued to her and, therefore, this recovery order is illegal. After interim relief on this recovery was granted in this O.A. on 27.10.2016, the recovery has been stopped;

3(b). as per para 4 (i) of the DOPT OM dated 02.03.2016 issued on the basis of the Supreme Court decision in case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer)**, etc in Civil Appeal No.11527/2014, the applicant being a Class-III employee her case is justified for not making recovery of past overpayment;

3(c). the recovery order is for excess payment made from 2002 and, therefore, in view of the above Supreme Court decision and the DOPT OM, it is not permissible and hence this order should be quashed and set aside by allowing the O.A.; and

3(d). against the order of recovery, the

applicant has already represented to the General Manager, Ordnance Factory, Ambajhari on 16.09.2016 not to make the recovery in view of the Supreme Court decision in Rafiq Masih dated 18.12.2014 but the respondents have not acceded to her request for not effecting the recovery.

The respondents' advocate has submitted that -

3(e). the applicant is a person skilled in Information Technology, is a Group 'C' employee drawing monthly salary of more than Rs.50,000/-, no hardship has been caused by the recovery of Rs.6,513/- per month from her monthly salary which is for the excess payment made to her earlier;

3(f). the Supreme Court decision relied on by the applicant in Rafiq Masih case is applicable only in cases when hardship is caused by the recovery but in this case there is no hardship caused to the applicant by the small amount of recovery per month;

3(g). the wrong pay fixation of her took place inadvertently. This was subsequently traced / detected by the office of the Controller of Finance and Accounts, Ordnance Factory, Ambajhari and communicated vide letter dated 28.07.2016. The applicant was intimated about it before initiation of the recovery vide letter dated 17.08.2016, which

was issued on the basis of revised pay fixation order dated 10.06.2016;

3(h). in order to comply with the order of the Controller of Finance and Accounts, the Competent Authority has considered the applicant's case in terms of amount of monthly salary drawn and her ability to pay the instalments and thereafter the recovery has been ordered in 10 easy instalments of Rs.6,513/- per month;

3(i). for May, June and July, 2016, the applicant received salary of Rs.53,914/-, Rs.50,520/- and Rs.54,077/- respectively and in comparison to the total monthly salary, the amount of recovery in easy monthly instalments is of only Rs.6,513/-, hence it does not cause hardship to her;

3(j). the case of excess payment was detected in July, 2010 but the applicant has attempted to misled the Tribunal by mentioning a gap of more than 10 years in detection of the excess payment;

3(k). the DOPT OM dated 02.03.2016 has specifically mentioned that the approval of Department of Expenditure as per DOPT OM dated 06.02.2014 is necessary in cases when there is adequate justification for waiving the recovery. However, in this case the respondents have judiciously considered all the facts and

circumstances of the case and thereafter in absence of justification for waiver the recovery has been ordered. Therefore, this should be upheld and the OA should be dismissed.

4. Analysis and conclusion:

4 (a) . I have considered the submissions of the applicant in the O.A. memo, reply of the respondents dated 08.05.2017, contentions of the parties made during the arguments and perused the case laws and DOPT OM cited herein above. Based on the examination of these, the position emerges as follows:-

As the details enclosed with the recovery order dated 17.08.2016 reveal (page 10 in O.A.) the amount due and amount drawn per month by the applicant from February, 2010 onwards have been worked out. The overpayment to the applicant took place due to error while refixing her pay following grant of promotion i.e. HS-II from 12.02.2010 and grant of MACP-III from 29.09.2014. The revised order of refixation of pay of the applicant on promotion and with MACP was issued by the Sr.General Manager on 10.06.2016. Working out of the excess payment made to the applicant was done on 21.07.2016. But in view of the provisions of Para 4(iii) of DOPT OM dated 02.03.2016 and the view

taken in Para 12 (iii) of the Apex Court decision in State of Punjab & Ors. Vs. Rafiq Masih, recovery from the employees would be impermissible in law when the excess payment has been made for a period in excess of five years before the order of recovery is issued. Thus the excess payment made to the applicant more than 5 years prior to 17.08.2016 i.e. upto July, 2011 would not be permissible and justified. Hence only the amount of excess payment made to the applicant from August, 2011 onwards can be recovered by the respondents. In view of this, the recovery order dated 17.08.2016 requires modification to this extent.

5. Decision

The O.A. is partly allowed and the respondents are directed to re-work out the amount of recovery of excess payment made to the applicant by ignoring the excess payment made to her upto July, 2011. Thus only the amount of the excess payment made to the applicant from August, 2011 onwards be recovered. No order as to costs.

(Dr.Bhagwan Sahai)
Member (A) .

H.