

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

ORIGINAL APPLICATION NO. 2290/2016

Dated this the 12th day of October, 2018.

CORAM:-HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

Dr. Anjan Kumar Chatterjee
"Uttarayan", 8C, Tilak Nagpur,
Nagpur- 440 010.

...Applicant.

(In person)

Versus

1. The Secretary,
Ministry of Mines, Shastri Bhavan,
Dr. Rajendra Prasad Marg,
New Delhi- 110 001.
2. The Director General,
Geological Survey of India,
27, JLN Road, Kolkata- 700 016.
3. The Additional Director General & HoD,
Geological Survey of India,
Central Region, Seminary Hills,
Nagpur- 440 006.

...Respondents.

(By Advocate Shri R G Agarwal).

Reserved on :- 26.09.2018.

Pronounced on:- 12.10.2018.

O R D E R

This application has been filed on 30.11.2016 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"a) Quash and set aside the impugned orders of the Respondents 1, 2 & 3. (Annexures A-1, A-2 & A-3).

b) Refund of the illegally deducted amount of Transport Allowance in the NFU arrears rightfully drawn by the applicant amounting to Rs. 1,77,868/-.

c) Pay interest @ 12.5% per annum on the amount of Rs. 1,77,868/- w.e.f. 01.12.2015, which he could have used in a meaningful manner and could have used in keeping his family more healthy and happy.

d) Compensation of Rs. 25,000/- for mental agony, mental torture, physical harassment and the cost of litigation to the applicant who is a senior citizen."

2. The applicant was serving as Director (Geology), Group 'A' Cadre of the Central Geological Service with pay scale in PB-IV and Grade Pay of Rs. 8700/- when, after consideration of the recommendations of the Sixth Pay Commission and after according status of an Organised Service, orders were issued by the respondents in Office Order No.

3582/A-19011/NFU/2014/19A dt. 23.06.2014
granting Non-Functional Upgradation (NFU) IN
the same Pay Band but with Grade Pay of
Rs.10,000/- w.e.f. 01.04.2011. This position
continued till 28.07.2013 when he was
regularly promoted as Deputy Director
General (Geology) in the same pay scale and
grade pay and thereafter, he was again
regularly promoted as Additional Director
General in the HAG Scale in the same office.
The orders granting NFU were based on the
orders of the DoPT in OM No.
AB.14017/64/2008-Estt. (RR) dt. 24.04.2009 for
grant of NFU to officers of the Organised
Group-A Services in PB-III & PB-IV wherein
Annexure-1 contained terms and conditions
which mentioned, interalia, the following
specific terms:

x

x

2. The up-gradation granted under
these orders will be a purely non-
functional up-gradation, personal
to the officer and it would not
bestow any right to the officer to
claim promotion or deputation
benefits based on non-functional
up-gradation in such a manner.

X

x

8. As and when the normal vacancies in the grade arise, the officer will be considered for regular promotions as per the normal DPC guidelines, based on the provisions of the recruitment rules. UPSC will be consulted wherever the rules provide for the same. However at the time of promotion, the pay in the grade will not be fixed again for officers who have been granted up-gradation under these orders.

X

x

10. Non-functional up-gradation to the next higher grade pay granted under the scheme is a fall back option only, to be applied in cases where officers of a particular Service have not been granted promotion to a particular grade in normal course according to the due procedure.

3. Thereafter, it appears that Transport Allowance at the higher rate of Rs. 7000 + DA applicable to officers in the grade drawing PB-IV with Grade Pay of Rs. 10000/-, was granted and disbursed to the applicant among others in his category in that Department. No specific order of the Department sanctioning this amount has been enclosed in support of the drawal of Transport Allowance at these rates but the applicant has referred to the OM No. 21(2)/2008-E-II(B) dt. 29.08.2008 of the Ministry of Finance,

Department of Expenditure, granting transport allowance to Central Government employees which states at Para 3 as below:

3. Officers drawing grade pay of Rs. 10000 & Rs. 12000 and those in the HAG+ Scale, who are entitled to the use of official car in terms of O.M. No. 20(5)-E-II(A)/93 dated 28.01.1994 shall be given the option to avail themselves of the existing facility or to draw the Transport Allowance at the rate of Rs. 7000/- p.m. Plus dearness allowance thereon.

4. Later on examination in the Ministry of Mines, the Department issued instructions in their letter (Annexure A-1) No. 27/24/2015-M.II. dt. 27.08.2015 addressed to the Director General, GSI, Kolkata that transport allowance in the higher pay scale should be only allowed only on actual promotion and not on grant of NFU. The Director General forwarded these instructions to enforce compliance and for recovery of the allowances wrongly paid in his letter No. G-14011/1/Circular/AC-I/2015 dt. 01.10.2015. These instructions were then conveyed to the applicant by the GSI Accounts Section in letter No. 363/A-19011/1082/Misc/A-1/2015 dt.

04.11.2015 to repay transport allowance wrongly drawn for the period from 01.04.2011 to 28.07.2013 amounting to Rs. 1,77,868/-.

5. The applicant has objected to the recovery of the amount from his terminal benefits on the grounds that he was due his TA on account of his upgradation and that this amount was sought to be recovered at the time of his retirement which was in conflict with the directions of the Hon'ble Apex Court in **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) [(2015) 4 SCC 334] in C.A. No. 11527 of 2014 decided on 18.12.2014.**

6. The applicant has contended the delay in grant of upgradation from 2011 to the date when orders were issued in 2014 and has also contested the interpretation of the rules. He has questioned the fixing of transport allowance of Rs. 3200/- plus DA for his scale especially after upgradation to the grade pay of Rs. 10000/-. He has also referred to the orders of the Hon'ble Apex Court **in the case of Shyam Babu Verma Vs. Union of India [1994 SCR(1) 700] decided on 08.02.1994** supporting

his claim that the respondents were barred from deducting these dues from his DCRG in the manner that they did at the time of his retirement. The respondents have reiterated the position of the rules and have referred to the decision of this Tribunal **in the Principal Bench in OA No. 4062/2013 decided on 13.05.2014** which considered an identical set of claims and held that the applicants were not entitled to draw transport allowance at Rs. 7000/- + DA and these orders have been upheld by Hon'ble High Court of Delhi. They have also referred to the orders of this Tribunal in the Bangalore Bench of this Tribunal in OA No. 170/00838/2017 dt. 18.04.2017 wherein the application of Shri R N Patra former DDG, GSI belonging to the same organisation to refund recovery of excess transport allowance was dismissed. They have reiterated the instructions of the Government in this matter which were in force even prior to the grant of NFU to the applicant. With regard to the recoveries and the applicant's reference to guidelines set by the Hon'ble

Apex Court, they have stated that the Government has given instructions that recovery should be made in all cases barring exceptions of extreme hardship and no waiver of recovery may be allowed without approval of the Department of Expenditure. They have stated that the applicant does not fall in any of these categories.

7. In his rejoinder, the applicant has expressed grievances on the delay in granting him NFU. He has questioned the interpretations of the respondents which, according to him, are contrary to the recommendations of the Sixth Pay Commission. He has also referred to the judgment of the Hon'ble Apex Court in ***Syed Abdul Quadir & Ors. Vs. State of Bihar & Ors. [(2009) 3 SCC 475]*** where it was ruled "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." He also

claims that recoveries were not made from all the officers to whom transport allowance were paid and it had been done only in some cases.

8. The respondents in their sur-rejoinder have reiterated the position of rules and have stated that they have issued directions to all the departments for carrying out recoveries including the respondent's office. They have affirmed the correctness of their instructions and it is strictly with reference to the recommendations of the Sixth Pay Commission by which grant of NFU and declaration of organised service was granted to the applicants and his service cadre.

9. During the hearing, the applicant reiterated the arguments and affirmed that there was bias in the recovery because out of 116 officers who were granted NFU and 82 who were given transport allowance, recovery had been made only for 30 Officers. The learned counsel for respondents has also reiterated submissions made in the pleadings and has stated that recovery has been ordered from

all officers without bias and this was not a valid argument. Further, the applicant was among the seniormost officers of the GSI at the time of retirement and therefore, it was incumbent on him to refund the excess amounts drawn.

10. The instructions of Government in relation to grant of NFU and the subsequent instructions issued five years later granting NFU to officers of the GSI are amply clear. These persons who were granted NFU while remaining in the same rank did not get any of the promotional benefits other than the higher grade pay. The record of the office of respondents, as customary for all Central Government Offices, shows that the Head of Office delegates powers of drawing bills, signing them, issuing cheques, etc., to a Drawing and Disbursing Officer (DDO) of the rank of Administrative Officer. The Head of Office for Nagpur was the Deputy Director General from September 2011 onwards except during 23.12.2013 to 31.01.2014 and 09.06.2015 to 31.08.2017 when an Addl. DG was

HoD. All the incumbents (in the relevant period) notably received the same benefit as the applicant in terms of the higher Transport Allowance and were granted NFU at the same time in 2011 as the applicant (S.No. 34) with some senior to him in the list at S.No. 23 & 29 annexed as Annexure A-8 and one junior (S.No. 67) who was DDG from 03.04.2015. A peculiar absence in this application is the lack of any enclosures on how this allowance came to be sanctioned to him in the first place but it is apparent that all the officers under NFU benefited from wrong bills drawn up by their delegatee junior officer, delegated powers as DDO. Therefore, the claim that the DDO made claims without reference to the rules in this regard appears extremely unlikely and the HoD who delegates his powers cannot absolve himself of his responsibilities for correct vouching by reading the rules. Although the Accounts and Treasury are clearly culpable, the benefiting officers of comparatively high or highest rank have to bear the responsibility and

consequent culpability for drawing such huge amounts without proper clarification from the Ministry despite evident clarity in instructions. The claim that the applicant and fellow officers made no misrepresentation while making the claims is then weak on facts and not credible. This also applies to S.No. 1 in Annexure A-8, Shri R N Patra who lost his case to stall recovery before the Bangalore Bench and the Hon'ble High Court of Bangalore. There is also no dispute when the instructions are examined that the applicant was not eligible for the sums that he had drawn in addition to his legitimate transport allowance and pay. The applicant cannot question the executive instructions issued by Government in consultation with the required departments that granted certain benefits by way of NFU while restraining the grant of certain other benefits that were held to be available only for persons who had actually been promoted. The applicant cannot claim that upon getting NFU, he should get all the other promotional benefits. In that case,

the entire set of instructions and guidelines would collapse and the grant of NFU would then amount to a simple grant of promotion which was not the objective since the grant of NFU is only a mechanism to prevent stagnation and keep high levels of motivation in the event that promotional avenues are not available to officers in the feeder category.

In any event, the applicant has not challenged the order granting NFU which includes these instructions.

11. On the aspect of recovery, the dates on which payment was made and recovery ordered are critical. In the present case, payments were made from the period 01.04.2011 to 28.07.2013 when they were drawn by the applicant after the receipt of orders of NFU dt. 23.06.2014. Recoveries were ordered under instructions of the Ministry of Mines in orders dt. 27.08.2015 which is just after one year following the drawal of amounts by the applicant. Thereafter, the entire amount was adjusted against the DCRG, payable to the applicant upon his retirement on 30.11.2015.

In the context of the guidelines issued by the Hon'ble Apex Court in the case of **Masih (supra)**, applicant was a very senior Group A Officer and the only applicable case could be where the recovery orders were made within one year of his retirement. However, the drawal of the amount itself was made just a little over one year prior to the orders and the circumstances of the culpability of the applicant with regard to the claims made by his DDO for drawal are not without doubt.

12. Learned counsel for the respondents has also referred to a challenge made against the orders of the Tribunal in OA No. 2065/2013 dt. 11.08.2016 in W.P. No. 3945/2017 by the Hon'ble High Court of Bombay which was decided on 12.04.2018 wherein an excess amount was paid as Sixth Pay Commission arrears to an Income Tax Inspector in orders dt. 03.02.2010 and entirely recovered from his retiral benefits on 31.12.2011. The Hon'ble High Court noted that there was no dispute that the petitioner in that case was not entitled to the sum and by reference to

the decision of the Hon'ble Apex Court in

Rafiq Masih(supra) and Sayed Abdul

Qadir(supra) held that the circumstances in

those cases that demonstrated the existence of hardship did not apply in the instant case since just about one year intervened between the wrongful excess payment and the recovery.

The precedent decisions of the Principal Bench, the Bangalore Bench in Patra Case and the Hon'ble High Court of Bombay in the above case are binding on this Tribunal in regard to this matter. It is apparent that the applicant cannot justify or demonstrate any hardship nor does the period between payment and orders of recovery permit invoking Iqbal Masih supra. It is also apparent that the applicant was not entitled for such an allowance nor could the DDO of his office have drawn this amount without obtaining proper sanctions from the appropriate authority in consultation with the Ministry of Expenditure for deviations from instructions. From each of these aspects, the applicant's case suffers from the lack

of merits and denies any application of the principles laid out by the Hon'ble Apex Court in aforesaid judgments.

13. In the circumstances, the application is dismissed as entirely lacking merits. No costs.

(R. Vijaykumar)
Member (A)

Ram.