

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/000399/2018

DATED THIS THE 18TH DAY OF JANUARY, 2019

**HON'BLE DR.K.B.SURESH
HON'BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

A. Francis Royan,
Age: 61 years,
S/o Anthu Dass,
Retired as LDC,
All India Radio,
Rajbhavan Road,
Bangalore – 560 001
Residing at: No. 405, Nava Athithi
Grand No. 19, Hora Mavu Main Road,
Behind SBI, Bangalore – 560 043.

(By Advocate Shri P. Kamalesan)

Vs.

1. Union of India,
Represented by Secretary,
Ministry of Information
'A' Wing, Sastry Bhavan,
New Delhi – 110001

2. Director,
S-11 Section, All India Radio,
Akashvani Bhavan,
New Delhi – 110 001

3. Deputy Director General (E)
All India Radio,
Raj Bhavan Road,
Bangalore – 560 001

4. Deputy Director (P)
Prasar Bharathi Secretariat,
2nd Floor, PTI Building,
Sansad Marg, New Delhi – 110 001.

5. Pay & Accounts Officer,
All India Radio,
Ministry of I & B,
Mylapore,
Chennai – 60004.

...Respondents

(By Standing Counsel Shri S. Sugumaran for Respondents)

ORDER (ORAL)

HON'BLE DR.K.B.SURESH

...MEMBER(J)

Heard. The applicant is an LDC, whose pay was fixed wrongly by some one and had been informed that he had drawn excess pay, which is now sought to be recovered from him. On a same and similar matter as both agree, by the Ernakulam Bench in OA.No.299/2018 dated 30.07.2018, except the portion of notice, we quote from it:

“10. The applicant in this case is a retired employee now. The order of recovery is dated 23.2.2018 when she was slated to retire on 31.3.2018. The fixation, deemed erroneous, which the respondents have set out to correct, is dated as 17.12.2012 (Annexure A-1) and the recovery is declared in February, 2018. Thus two counts, viz, recovery from an employee due to retire within one year and recovery from an employee where excess payment has been made for a period in excess of five years before the order of recovery is issued, are both involved in this case. Thus it comes clearly within the ambit of the Rafiq Masih judgment. Learned counsel for the respondents emphasized the judgment of the Hon'ble Supreme Court in High Court of Punjab and Harayana & Ors. v. Jagdev Singh AIR 2016 SC 3523 to justify recovery. Jagdev Singh's judgment (Supra) has qualified the Rafiq Masih judgment by including the proviso which reads as follows:

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.

11. Learned counsel for the respondents while admitting that no undertaking per se had been extracted from the applicant in this case, drew our attention to the last line of the fixation document of Annexure A-1 which reads :

“ The fixation is subject to Audit observations, overpayments found if any will be recovered in lump sum from his salary/dues without any notice to him.”

12. It was maintained by the learned counsel that this proviso to the fixation order is tantamount to the applicant having been placed on notice. This Tribunal does not see this as a valid argument for the action initiated by the respondents. A standard clause introduced at the bottom of the fixation order does not amount to a notice.

2. In this case, the respondents would say that unlike in the other case, the one which is referred, a notice was issued and the applicant was heard on the matter. But then, that is not the soul and spirit of the Hon'ble Apex Court order. The applicant is admittedly a low level employee. Assuming that he got a salary of Rs.10/- per month. Then he will live on it. But if he had got a salary of RS.9/-, he would have adjusted his life accordingly and after 10 years if he were to be told that you have drawn one rupee more, look we are going to take from you Rs.100/-, will it not amount to burden on him and it will be an unjust burden. That is the dictum of White Washer's Judgment. It is squarely applicable in this case. Therefore, this recovery will not lie going by the Hon'ble Apex Court rulings and the recovery is hereby quashed.

3. OA allowed. No costs. The amount deposited will be released to the applicant.

(C.V. SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

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Annexures referred to by the Applicant in OA No.170/39918

1. Annexure A1 : Copy of Prasar Bharati Director General, AIR letter dated 3.10.12.
2. Annexure A2 : Copy of Prasar Bharathi, AIR letter dated 1.1.2013.
3. Annexure A3 : Copy of Prasar Bharathi, Secretariate, New Delhi letter dated 18.6.2015.
4. Annexure A4 : Copy of Prasar Bharathi, New Delhi letter dated 11.8.2015.
5. Annexure A5 : Copy of Prasar Bharathi, AIR, Bangalore letter dated 23.2.2016.
6. Annexure A6 : Copy of Prasar Bharathi, DG AIR, New Delhi letter dated 09.6.2016.
7. Annexure A7 : Copy of Prasar Bharathi, AIR, Bangalore letter dated 05.8.2016.
8. Annexure A8 :Copy of Representation of applicant dated 27.4.2017, 19.6.2017, 28.7.2017, 14.8.17 & 31.8.17.
9. Annexure A9 :Copy of Prasar Bharathi, AIR, Bangalore letter dated 10.7.2017 and 10.8.2017.
10. Annexure A10 :Copy of GOI, M/o Personnel, Public Grievances and Pensions DOPT dated 2.3.2016.
11. Annexure A11 :Copy of Prasar Bharathi, New Delhi letter dated 1.5.2017.
12. Annexure A12 :Copy of PAO, AIR, Madras letter dated 21.8.2017.
13. Annexure A13 :Copy of Hon'ble Apex Court order dated 1.8.2014 in Civil Appeal No.7113/2014.

Annexures referred to by the respondents in the Reply

1. Annexure R1: Dept. of Expenditure I.D. Note dated 12.8.2014.
2. Annexure R2 :Min. of I&B clarification dated 20.8.2014.
3. Annexure R3 :Revised instructions of PB Secretariat dated 31.12.2015.
4. Annexure R4 :DG, AIR instructions dated 05.1.2016.
5. Annexure R5 :DG, AIR Circular dated 16.05.2017.
6. Annexure R6 :6th CPC pay fixation statement dated 08.9.2008.
7. Annexure R7 :Hon'ble Supreme Court Judgment dated 29.7.2016.
8. Annexure R8 :Pay fixation statement dated 01.1.2013.
