

**CENTRAL ADMINISTRATIVE TRIBUNALA
CUTTACK BENCH**

OA No. 660 of 2012

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Kunja Bihari Behera, aged 61 years, S/o Late Balunki Behera, Retd. P.A., Puri HO, At Jagannath Colony, Post : Puri-2, District – Puri, Odisha – 752002.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary cum Director General of Posts, Dak Bhawan, Sansad Marg, New Delhi – 110116.
2. Chief Post Master General, Odisha Circle, At/PO- Bhubaneswar, Dist:- Khurda, 751001.
3. Director of Accounts (Postal), Mahanadi Vihar, PO – Naya Bazar, Dist:- Cuttack, Odisha – 753004.
4. Sr. Superintendent of Post Office, Puri Division, At/PO/Dist : Puri, 752001.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.D.K.Mallick, counsel

Heard & reserved on : 24.1.2019 Order on : 30.1.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the Original Application (in short OA) under Section 19 of the Administrative Tribunals Act, 1985 with the prayer for the following reliefs:-

“In view of the facts stated above, it is humbly prayed that the Hon'ble Tribunal may graciously be pleased to direct the respondents to refund the amount deducted from the DCRG/retiral dues of applicant with 18% interest and restore the pay and pension @ Rs.16750/- and @ Rs.8375/- and pay the arrear salary, arrear pension and all retiral dues at enhanced rate with 18% interest on the benefits from the date of its due.

And quash Annexure A/3.”

2. The facts, in brief, are that the applicant while working under the respondents, was sanctioned 2nd MACP benefit after completion of 20 years of service. This was not allowed to the applicant at the time of retirement on the

ground that since he was promoted under TBOP w.e.f. 14.9.2005, raising his grade pay from Rs. 2800/- to Rs. 4200/-, he cannot be further granted 2nd MACP w.e.f. 15.8.2009. Hence, his pay was reduced after disallowing the MACP benefit and the pension was fixed accordingly at the reduced rate. It is the case of the applicant that the reduction of pay was done just before his retirement without any opportunity of hearing to the applicant and as per the judgment of Hon'ble Apex Court in the case of State of Punjab and others vs. Rafiq Masih (White Washer) etc. in the Civil Appeal No. 11527 of 2014, the recovery of excess amount paid to the applicant from the DCRG is incorrect.

3. The respondents, in the counter, have stated that the applicant was initially appointed in the Department as a postman w.e.f. 3.6.1985 and was promoted to Postal Assistant on 28.8.1989. Then he got the benefit of the Time Bound One Promotion (in short TBOP) on 14.9.2005 on completion of 16 years of service as Postal Assistant. Thereafter, he was wrongly granted 3rd MACP benefit w.e.f. 15.8.2009 raising his grade pay to Rs. 4200/- and at the time of his retirement on 31.10.2010, it was found that the applicant, having not completed 30 years of service, was not entitled for 3rd MACP which was wrongly allowed to him. The Senior Accounts Officer, vide his letter dated 18.10.2010 (Annexure-R/1), advised for cancelling the MACP benefit and for recovery of the excess amount paid to the applicant. As he did not complete 30 years of total service or 10 years of service from the date of TBOP, he will not be entitled for 3rd MACP benefit which was withdrawn as it was wrongly sanctioned by the respondents. As per the direction of the Tribunal in OA No. 729/2011 filed by the applicant in the first round of litigation, the respondents have considered the representation of the applicant and rejected the same by passing the speaking order dated 19.1.2012 (Annexure-A/3) explaining the reasons for the decision.

4. We have heard learned counsels for both the parties and perused the pleadings on record. The questions to be decided in the case are (i) Whether the applicant is entitled for 3rd MACP and (ii) If the answer to (i) is no, then can the excess amount paid to the applicant be recovered from him in view of the law laid down by Hon'ble Apex Court in Rafiq Masih case (supra).

5. Admittedly, the applicant joined the service on 3.6.1985 as Postman and he was promoted to the post of Postal Assistant on 28.5.1989. Then he was allowed the benefit of TBOP on 14.9.2005. Hence, he has already availed one promotion and one financial upgradation benefit by 14.9.2005. For availing 3rd MACP benefit, the applicant has to complete 30 years of service or 10 year service from 14.9.2005, when he got the benefit of TBOP. Since he retired on 31.10.2010 i.e. after total service of 25 year 4 months & 29 days as stated in

the letter dated 18.10.2010 (Annexure-R/1), the applicant will not be eligible for 3rd MACP benefit. The ground that 3rd MACP benefit was withdrawn without any opportunity of hearing, it is seen that his representation was duly considered by the authorities in compliance of the Tribunal's order. Hence, it cannot be said that the applicant did not get any opportunity to represent his case before the authorities. The answer to the question No. (i) of para 4 above, is 'no' and it is against the applicant. Hence, the pension as claimed by the applicant in the OA, is not admissible to him.

6. Since the answer to the question at (i) of para 4 above is 'no', the question at (ii) needs to be considered. Learned counsel for the applicant has cited the judgment in the case of Rafiq Masih (supra) to argue that the respondents cannot recover the excess amount from the applicant who was on the verge of retirement when the decision to recover was taken first and the payment of the excess amount was due to the mistake of the respondents. Learned counsel for the respondents countered the argument. In the case of Rafiq Masih (supra), Hon'ble Apex Court held as under:-

"6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

.....
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.
- (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".

7. In the present OA, the excess payment was due to wrong sanction of 3rd MACP benefit in favour of the applicant due to mistake on the part of the respondents as there is nothing on record to show that for the aforesaid wrong

payment, the applicant was responsible. It is clear that the wrong payment of the benefit of 3rd MACP, was due to the respondents. By the time the excess payment was detected and communicated vide letter dated 18.10.2010 (R/1), the applicant was on the verge of retirement on 31.10.2010. Therefore, the applicant's case is squarely covered under para 12(ii) of the judgment in the case of Rafiq Masih (supra), which is quoted above, for which, the ratio of the judgment in the case of Rafiq Masih would be applicable to the applicant's case.

8. In view of the discussions above, the OA succeeds in part and the respondents are directed to refund to the applicant the amount of Rs. 39,195/- recovered from the applicant towards excess amount paid to him on account of 3rd MACP, within two months from the date of receipt of a certified copy of this order. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath