

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 292 of 2014
OA No. 928 of 2013

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

OA No. 292 of 2014 - Harish Chandra Das, aged about 33 years,
 S/o Late Mahendranath Das.

Radhanath Barik, aged about 61 years, S/o
 Late Krushna Mohan Barik (since retired), was
 working as Technical Officer – B (TO-B) in
 Defence Research & Development Organisation,
 Proof & Experimental Establishment, Chandipur
 – 756025, Dist. – Balasore.

OA No. 928 of 2013 - Purnendu Sekhar Senapati, aged about 54
 years, S/o Late Bhudhar Chandra Senapati, AT
 – Suelpur, PO – Motiganj, Dist. – Balasore.

.....Applicants.

VERSUS

OA No. 292 of 2014

1. Union of India, represented through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Department of Defence Research & Development, Ministry of Defence, represented through its Secretary cum director General, DRDO & Scientific Advisor to Raksha Mantry, DRDO Bhawan, Rajaji Marg, New Delhi – 110105.
3. Director, Centre for Personnel Talent Management (CEPTAM), DRDO, Ministry of Defence, Metcalfe House, New Delhi – 110054.
4. Director, Directorate of Human Resource & Development, DRDO, DRDO Bhawan, Rajaji Marg, New Delhi – 110105.
5. Director, Proof & Experimental Establishment, Ministry of Defence, Chandipur – 756205, Dist. – Balasore.

OA No. 928 of 2013

1. Union of India, represented through the Secretary, Ministry of Defence, South Block, New Delhi – 110011.
2. Department of Defence Research & Development, Ministry of Defence, represented through its Secretary cum director General, DRDO & Scientific Advisor to Raksha Mantry, DRDO Bhawan, Rajaji Marg, New Delhi – 110105.
3. Director, Centre for Personnel Talent Management (CEPTAM), DRDO, Ministry of Defence, Metcalfe House, New Delhi – 110054.
4. Director, Directorate of Human Resource & Development, DRDO, DRDO Bhawan, Rajaji Marg, New Delhi – 110105.
5. Director, Integrated Test Range, Ministry of Defence, Chandipur – 756025, Dist. – Balasore.

6. Director, Proof & Experimental Establishment, Ministry of Defence, Chandipur – 756205, Dist. – Balasore.

.....Respondents.

For the applicant : Mr.B.P.Satpathy, counsel

For the respondents: Mr.G.R.Verma, counsel (OA 928/2013)
Mr.L.Jena, counsel (OA 292/2014)

Heard & reserved on : 30.1.2019 Order on : 15.2.2019

ORDER

Per Mr. Gokul Chandra Pati, Member (A)

In both the OAs issues and reliefs prayed for are similar. Hence on request of learned counsels of both the parties, the OAs were heard together. This common order is for both the OAs with the OA No. 928/2013 being taken as the lead case.

2. At the time of hearing of the OAs on 30.1.2019, learned counsel for the applicant did not press for any other reliefs claimed in the OA, except the relief relating to the recovery of excess payment made to the applicant due to higher Grade Pay of Rs. 4800/-, which was granted by the authorities by mistake on the part of the respondents. After it was detected, the order dated 10.5.2013 (Annexure A/7) was passed by the respondents, by which, the Grade Pay of Rs.4800/- allowed to the applicant w.e.f. 1.1.2006 was reduced to Rs.4600/- in consultation with the Ministry of Finance. It is mentioned in the said order that the instructions for recovery of the excess payment to the employees will be issued separately.

3. Learned counsel for the applicant relies on the judgment of Hon'ble Apex Court in the case of **State of Punjab and Ors. Vs Rafiq Masih (White Washer) in Civil Appeal No. 11527 of 2014, reported in 2015 AIR SCW 501** and the order dated 27.1.2015 of Hyderabad Bench of this Tribunal, while considering an identical dispute. The facts and circumstances leading to the dispute have been discussed in the order dated 27.1.2015 as under:-

"3. It is submitted that after the acceptance of the 6th CPC recommendations by the Government of India on 29.8.2008, the 1st respondent by an order No. DHRD/16342/6th CPC/DRTC/C/05(iv)/1633/D(R&D)/2009 dated 5.6.2009 had conveyed the sanction of the President of India to place Technical Officer 'A'(TO 'A') and Technical Officer (TO) in DRDO, following implementation of the recommendations of the 6th CPC and the Government Notification issued thereafter as under :

Name of the post	Present Pay Scale (pre-revised0 (in Rs.)	Revised to Pay Band (in Rs.)	Grade Pay (in Rs.)
1	2	3	4
Technical Officer 'A'	7450-11500	9300-34800 (Pay Band 2)	4800
Technical Officer	7450-11500	9300-34800 (Pay Band 2)	4800

And accordingly the revision of pay scales came into effect from 1.1.2006.

4. That some of the applicants herein between 1.1.2006 to 31.8.2012 appeared before the Central Assessment Board for promotion to the post of TO 'A'/TO and promoted to the Grade Pay of Rs.4800 in PB-2 after going through the strenuous exercise of assessment and the promotions were made effective from 1.9.2006, 1.9.2007, 1.9.2008, 1.9.2009, 1.9.2010, 1.9.2011 and 1.9.2012 and their pay has been fixed as per revised pay rules and drawn the benefits of increments, DA, HRA, TA and other allowances etc. from the date of promotion. Some of the applicants herein were placed in the Grade Pay of Rs.4800/- w.e.f. 1.1.2006 and continued in that Grade Pay till they were promoted as Technical Officer-B subsequently. That the 1st respondent vide his impugned order dated 10.5.2013 communicated to the 2nd respondent that consequent to the Ministry of Finance/Department of Expenditure advise recorded in their HO No. 7.10/12/2009-IC dated 11.7.2012 conveyed the sanction of President of India for withdrawal of pay scale of PB-2 (Rs.9300-34800)/Grade pay Rs.4800/- two posts of Technical Officer 'A' & Technical Officer in DRDO and place these posts in Pay Band 2 (Rs.9300-34800)/Grade pay Rs.4600/- i.e. the 6th CPC replacement scale of their pre-revised pay scale of Rs.7450-11500/- with effect from 1st January, 2006. That the 2nd respondent vide another proceeding dated 13.5.2013 addressed to the Directors of the various Labs/Estts which includes R-3, R-4 & R-5 stating that after the reduction of the Grade Pay of TO 'A'/TO from Rs.4800 to Rs.4600 w.e.f. 1.1.2006 and to be refixed in Rs.4600 grade pay in PB-2 and further stated that the modalities for effecting withdrawal including the recovery etc. will be issued very shortly with due approval of the competent authority. That the 2nd respondent vide his proceedings dated 30.5.2013 issued impugned orders that the applicants herein who have been promoted as TO 'A'/TO in between 1.1.2006 and the date of issuance of the impugned order that the grade pay of Rs.4800/- granted vide 1st respondent order dated 5.6.2009 and notified by the 2nd respondent on 8.6.2009 shall be reduced to Rs.4600/- by way of withdrawal and all over payments shall be recovered.

Xxx

xxx

xxx

xxx

12. We have carefully gone through the judgment of the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court summarised certain situations wherein recoveries by the employers would be impermissible in law and the same is squarely applicable to the present case on hand to the extent of recoveries. The main prayer of the applicants with regard to reduction in pay band and grade pay was already decided by the Cat Principal Bench and following the decisions of the Principal Bench we have no alternative except to dismiss the claim of the applicants in respect of the reduction in pay band and grade pay. In so far as the recovery is concerned by following the dictum of the Hon'ble Supreme court of India, in the case referred above, the impugned orders to the extent of recovery is concerned, are quashed and set aside. We direct the respondents to refund the amount, if already recovered, after the date of judgment of the Hon'ble Supreme Court i.e. 18.12.2014."

4. Learned counsel for the respondents submitted that the order dated 27.1.2015 of CAT, Hyderabad Bench as cited by the applicant's counsel is under challenge in the Hon'ble High Court of Andhra Pradesh and hence, no decision should be taken following the said judgment. It is also stated that the present case does not fall under the principles laid down in the judgment in

Rafiq Masih case. Learned counsel for the respondents also cited the judgment dated 7.6.2015 of Ernakulam Bench of Tribunal in OA No. 274/2015 (N. Surendranadhan & others vs. Union of India & others) and the judgment dated 4.7.2016 of Madras Bench of Tribunal in OA No. 1087/2015 (Ch.P. Varadan & others vs. Union of India & others), in which similar claims of the employees were rejected by the Tribunal.

5. We have considered the submissions as well as the pleadings on and perused the judgments cited by learned counsels. **The short point to be decided in this case is whether the issue of recovery from the applicant as per the order dated 10.5.2013 (Annexure A/7) is permissible in view of the law laid down by the Hon'ble Apex Court in the case of Rafiq Masih (supra).**

6. While recovery of the excess payment made by Government to the employees are required to be refunded, this general principle is subject to some exceptions as laid down by Hon'ble Apex Court in the case of Rafiq Masih, in which it was held as under:-

"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.

.....

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. Learned counsel for the respondents cited two judgments of the Tribunal as stated in para 4 supra, in which the relief of non-recovery prayed in the OAs were dismissed by the Tribunal. It is seen from the copy of the order filed by the learned counsel that the Tribunal has recorded a clear finding that the applicants did not fall within the conditions specified in the Rafiq Masih judgment and accordingly, that OAs were dismissed.

8. Learned counsel for the respondents in OA No. 928/2013 has also filed the written note of submission, enclosing therewith copy of the undertakings dated 15.9.2014 filed by some of the applicants stating that for provisional fixation of their grade pay at Rs.5400/- they had undertaken to refund the excess amount if detected/noticed subsequently till finalisation of Court case. The undertakings do not relate to fixation of grade pay at Rs.4800/- w.e.f. 1.1.2006. It is further mentioned in the written note that the grade pay was fixed at Rs.4800/- vide order dated 5.6.2009 (Annexure A/3) and by order dated 10.5.2013 (Annexure A/7) the grade pay was reduced to Rs.4600/-. Hence it was argued that the applicants are not covered by the conditions laid down in Rafiq Masih judgment.

9. In the present OA, it is undisputed that the applicants were allowed the benefit of the Grade Pay of Rs. 4800/- w.e.f. 1.1.2006, which turned out to be a wrong decision. On detection of the mistake, the respondents have reduced the Grade Pay from Rs. 4800/- to Rs. 4600/- vide order dated 10.5.2013. The order of recovery was not issued, or if issued, it was not included in the pleadings of both the parties. Hence, the applicants have enjoyed the benefit of Grade Pay of Rs. 4800/- for more than 5 years, for which, their case will be covered by the ratio of the judgment in Rafiq Masih case vide para 12(iii) of the judgment (quoted in para 6 of this order), as the applicants have enjoyed the benefit of higher grade pay for more than 5 years. We are unable to agree with the argument in the written note that the case of the applicants is not covered under the judgment in Rafiq Masih case. There is nothing on record to show that the applicants were responsible for the excess payment towards higher Grade Pay w.e.f. 1.1.2006; or the respondents have taken any undertaking from the applicants while wrongly granting the higher grade pay of Rs.4800/- for refunding the excess amount. Hence, the case of the applicants is squarely covered under the ratio of the Rafiq Masih judgment and is distinguishable from the cases cited by the respondents as discussed at para 7 supra.

10. Hence, following the judgment dated 27.1.2015 of Hyderabad Bench of the Tribunal, we hold that the applicants' case in the OA No. 928/2013 is squarely covered by the paragraph 12(iii) of the judgment in the case of Rafiq Masih (supra) and the applicants are entitled for protection from any recovery of excess amount paid to the applicants towards payment of higher Grade Pay of Rs.4800/- per month w.e.f. 1.1.2006. However, in case any of the applicants had given an undertaking to the respondents to the effect that in case their placement in the grade pay of Rs.4800/- w.e.f. 1.1.2006 vide order dated 5.6.2009 would be found to be defective, then they will be liable to refund the excess amount if any paid to them, then for such applicants, who had furnished the undertaking in 2009, this direction for not recovering the excess amount, paid as above will not be applicable.

11. In the OA No. 292/2014, there were 13 applicants initially. After deleting of all applicants from the OA, one applicant i.e. Radhanath Barik remains the only applicant in the OA. In this OA, the applicant had admittedly retired from service since 28.2.2013. Therefore, the order dated 10.5.2013 was issued after the retirement of the applicant. In the case of the applicant, the condition (ii) and (iii) of paragraph 12 of the judgment in the case of Rafiq Masih (supra) are fulfilled. Hence, the direction at para 10 for OA No. 928/2013 will also be applicable for the applicant in OA No. 292/2014.

12. In the circumstances as discussed above, both the OAs are allowed in part in terms of direction in paragraphs 10 and 11 supra and if any of the applicants had received Grade Pay higher than Rs. 4600/- after 10.5.2013, then the excess amount so paid, can be recovered from the concerned applicants by following due procedure as per law. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath