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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00547/2017

Wednesday this the 23rd day of January, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

B.Kasivishwalingam,
Upper Division Clerk (Retd.),
Aged 60 years,
357, 'Karunya' Mukkola,
Kallayam P.O.,
Thiruvananthapuram-695 043.

...Applicant

(By Advocate Mr.P.Santhosh Kumar)

V e r s u s

1. The Union of India,
represented by the Secretary,
Ministry of Information & Broadcasting,
A Wing, Shastri Bhavan,
New Delhi – 110 001.
2. The Director General,
All India Radio,
Akasvani Bhavan,
Parliament Street,
New Delhi – 110 001.
3. The Director General,
Doordarshan,
Doordarshan Bhavan,
Mandi House,
Copernicus Marg,
New Delhi 110 001.
4. The Pay and accounts Officer,
Doordarshan, Doordarshan Kendra,
Swami Sivananda Salai, Chennai-600 005.

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5. The Dy. Director General(E),
Doordarshan Kendra, Kudappanakunnu (P.O.)
Thiruvananthapuram-685 043.Respondents

(By Mr.N.Anil Kumar, SCGSC for Respondents)

This application having been heard on 16th January, 2019 the Tribunal on 23rd January, 2019 delivered the following :

ORDER

OA No.547/2017 is filed by Shri Kasivishwalingam, retired UDC, Doordarshan, Prasar Bharati, against the recovery of Rs.3,42,521/- from the DCRG ordered by the 5th respondent. The reliefs sought in the OA are as follows:

- (i) to set aside Annexure A1 and A2 so far as the recovery of Rs.3,42,521/- from the retiral benefits of the Applicant.
- (ii) declare that the Applicant is entitled for the release of the amount of Rs.3,42,521/- withheld from the retiral benefits of the Applicant.
- (iii) to grant such other reliefs as may be prayed for and the court may deem fit to grant.

2. The applicant who had started his career as LDC in the Ministry of Education, Government of India on 06.01.1983, had joined Doordarshan Kendra, Bangalore in the same capacity in the month of August, 1985 on transfer, by tendering technical resignation from Ministry of Education, New Delhi. He moved to Doordarshan Kendra, Thiruvananthapuram on 15.02.1988. He was promoted as UDC on 02.08.2010. After adoption of VI Pay Commission recommendations his appointment was fixed in the Pay

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Band II of Rs.9300-34,800 in the Grade Pay of Rs.4200/- . The applicant was scheduled to retire from service on 28.02.2017. During the last leg of his service a communication was issued dated 31.12.2015 refixing his pay by withdrawing the benefit granted to him originally as per letter dated 03.01.2012. Accordingly, the 5th respondent acted through a Due Drawn statement indicating Rs.3,42,521/- to be recovered from the pay and Gratuity (DCRG) due to the applicant.

3. The applicant submits that as per VI Pay Commission he was in the pay scale of Rs.4000-6000 and on granting upgradation under ACP after completion of 24 years of service his pay was fixed in the pay scale of Rs.5500-9000 (pre-revised). The VI Pay Commission resulted in a single pay scale of Rs.6500-10500 after merging three scales and in view of this the applicant's pay was fixed in Pay Band-2 in the pay scale Rs.9300-34800 with Grade Pay Rs.4200/-.

4. Close to his retirement the applicant was having the basic pay of Rs.23,060/- with grade pay of Rs.4600. His pension papers were accordingly moved but they were returned by the competent authority stating that the applicant's pay ought to have been refixed taking the minimum of the revised pay scale as the pay of the applicant in the pre-revised pay of Rs.5500-9000 from 01.01.2006 and sought resubmission of the pension papers.

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5. The applicant submits that this refixation indicating a large sum of money having been paid to him from 01.01.2006 to 31.12.2015 in excess of his entitlement, was based on erroneous assumptions. Due to this stand his rightful claims such as DCRG along with other pensionary benefits have not been settled till date and it has been indicated to the applicant by the office of the 5th Respondent that the alleged excess amount to the tune of Rs.3,42,521/- would be deducted from his DCRG.

6. The applicant maintains that this is based on a wrong interpretation of the recommendation of the VI Pay Commission report. Besides there has been no notice issued to the applicant and he was unaware of the circumstances under which the impugned order was issued to him. A copy of refixation statement from 01.01.2006 to 31.12.2015 is produced and marked as Annexure A1 and the order recommending recovery issued by the 5th respondent is at Annexure A2. Being a retired employee the applicant seeks the benefit of the judgment of the Hon'ble Supreme Court in **Rafiq Masih** case and the OM issued by the Government of India in consequence on 02.03.2016 directing that there shall be no recoveries from the employees belonging to Class III and IV service as well as from retired employees. The applicant's case falls squarely within the purview of the said order.

7. The applicant had submitted a representation to the 5th Respondent to drop the proceedings of recovery against him but this has evoked no positive

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reply. He calls to his assistance two orders of the Madras Bench of this Tribunal which adjudicated the same issue and ordered release of full DCRG disallowing recovery from retiral benefits of the applicants therein. They are OA No.1119/2015, OA No.676/2016 and OA No.677/2016, copies of the orders marked as Annexure A6, A7 and A8 respectively.

8. The respondents have filed a reply statement wherein they have defended the re-fixation done. It is maintained that in view of the merger of a few grades, the pay should have been fixed at the minimum of the revised scale. The authorities had neglected to do so by oversight and have now set out to correct the error. It is reiterated that the erroneous re-fixation had been done due to wrong application of the terms of revision of pay by which the applicant had got the benefit of several increments which he was not entitled to. The respondents maintained that by virtue of DOPT OM dated 06.02.2014, based on **Chandi Prasad Uniyal's** case, recovery is permissible. They also seek the support of a decision of Bangalore Bench (Annexure R1) as well as that of the Principal Bench of the Tribunal (Annexure R2).

9. We have heard Shri P.Santhosh Kumar, learned Counsel for the applicant and Shri N.Anil Kumar, learned SCGSC for the respondents. The applicant in the OA is a retired employee whose pensionary benefits particularly in respect of DCRG are held back for the purpose of effecting recovery of a large sum of money. It is stated by the respondents that the

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recovery is insisted upon on account of errors made in fixation of pay of the applicant with effect from 01.01.2006. They set out to correct the same on the eve of his retirement through a refixation order. The reply statement goes on at some length to defend the refixation done as permissible under existing provisions.

10. The applicant, in contrast, submits that the initial fixation had been correct and permissible. More important is the fact that the refixation date back to a period of almost 10 years and has been done with no notice to the affected individual. The seminal judgment in **Rafiq Masih's** case disallows recovery from retired employees and various other categories. The said judgment came after **Chandi Prasad Uniyal's** judgment and holds the field on the subject. The judgment of Bangalore Bench as well as Principal Bench of the Tribunal are not on matters based on the same set of circumstances. This Tribunal itself had adjudicated a case (OA No.299/2018) where under identical circumstances a retired employee had been proceeded against for recovery from his pensionary benefits and had ordered as follows:

“Respondents, presumably out of zeal to save the resources of the public exchequer had initiated recovery but we wish the zeal had been exhibited in the care with which they examined cases while according revision in salary and other emoluments. Having committed a gross error they cannot spring surprises on unwary employees who are on the threshold of superannuation and unilaterally enforce large recoveries. The judgment in Rafiq Masih clearly covers the field in this respect and none of the judicial orders produced by the respondents in any way involve similar circumstances as those in this O.A.

The O.A succeeds. The entire amount recovered from the gratuity due to the applicant is to be refunded to the applicant within 30 days of receipt of a

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copy of this order. There shall be no further recovery from the applicant's pension or other benefits due to her. The O.A stands disposed of. No costs.”

11. Based on the facts above, the OA succeeds and the impugned orders at Annexure A1 and A2 are hereby set aside. There shall be no recovery from the retiral benefits of the applicant. The eligible amount is to be disbursed to the applicant in full within one month from the date of receipt of copy of this order. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00547/2017

1. **Annexure A1** – True copy of the refixation statement of the period from 01.01.2006 to 31.12.2015 issued by the 5th Respondent.
2. **Annexure A2** – True of the Order No.27(2)(1)2017-AI/DKT, dated 09.03.2017 of the 5th Respondent recommending recovery of Rs.3,42,521/-
3. **Annexure A3** – True copy of the representation dated 13.03.2017
4. **Annexure A4** – True copy of the letter dated 14.0-3.2017 to the 4th Respondent by the 5th Respondent.
5. **Annexure A5** – True copy of the representation dated 23.03.2017.
6. **Annexure A6** – True copy of the Order dated 17.08.2015 in O.A.No.1119/2015 filed by one A.S.Rajagopal (UDC retired).
7. **Annexure A7**– True copy of Order dated 12.04.2016 in OA No.676 of 2016 filed by one B.Prabhavathi (UDC retired)
8. **Annexure A8** – True copy of the Order dated 12.04.2016 in OA No.677/2016 filed by one Vijayalakshami Jayaraman (UDC retired).
9. **Annexure R1** – True copy of the Hon'ble CAT, Bangalore Bench order dated 16.06.2017 in OA No.170/00813/2016
10. **Annexure R2** - True copy of the Hon'ble CAT, Principal bench order dated 01.06.2016 in OA No.1854/2014.
11. **Annexure R3** – Copy of Legal Affairs Branch Secretariat, Kolkata's Opinion dated 06.02.2017 obtained by PAO, AIR, Kolkata.
12. **Annexure R4** – True copy of the Prasar Bharati Secretariat communication No.ADG(B&A)PB-7(9)/2012-Fin (Vol.II) dated 10.06.2013.
