

**Central Administrative Tribunal
Madras Bench**

MA/310/00840/2016 (in)(&) OA/310/01045/2016

Dated 20th December Two Thousand Eighteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

Shri S.Athi
UDC, India's Public Service Broadcaster,
High Power Transmitter,
All India Radio, Avadi,
L-80, T.N.Housing Board,
Sevvapet, Thiruvallur Dist-602025. .. Applicant
By Advocate **M/s.Paul & Paul**

Vs.

1. Union of India, rep by
Secretary,
M/o 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 Deputy Director General(E),
Prasar Bharati,
India's Public Service Broadcaster,
High Power Transmitter,
All India Radio, Avadi,
Chennai-62.
 4. Pay & Accounts Officer,
All India Radio,
Mylapore, Chennai 600004. .. Respondent
- By Advovacte **Mr.C.Kulandaivel**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“for quashing of the order F.No.Misc.1/330/2012-PPC dated 31.12.2015 and order No.AVD.10(3)2016/S 5 dated 31.3.2016 of the 2nd respondent and 3rd respondent respectively as illegal and void; and

for a consequential direction to the respondents to restore the pay of the applicant as originally fixed by the 2nd respondent;

for such further or other relief or reliefs as this Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

2. The applicant is an Upper Division Clerk(UDC) in the office of the 3rd respondent Doordarshan, Chennai. He is due to retire on 30.6.16. After the VIth Central Pay Commission (CPC) due to upgradation of scale, his pay was fixed in the scale of Rs.9300-34800 with Grade Pay(GP) of Rs.4200/- w.e.f. 11.7.08. He was drawing a pay of Rs.15,860/- with GP of Rs.4200/- when the impugned order dated 31.3.16 was passed. The 3rd respondent had directed the 4th respondent to re-fix the pay of the applicant in the pre-revised pay of Rs.5500-9000 w.e.f. 01.1.06. As far as the applicant was concerned his pay was fixed at Rs.17,940/- instead of Rs.20060/-. The respondent had unilaterally re-fixed the pay w.e.f. 11.7.08 till 01.7.15. The 4th respondent had done this without any notice to the applicant. The applicant is drawing reduced pay from May 2016. The applicant will suffer great loss if the 4th respondent seeks to recover Rs.3 lakhs from the retirement benefit. According to the

applicant, his pay scale was fixed by the respondents rightly. But the respondents had reduced his pay without giving notice to him. The action of the respondents is arbitrary, unjust, illegal and violative of principles of natural justice.

3. The respondents filed reply admitting the pay fixation done etc. but would contend that there had crept in some error in the pay fixation. As per Prasar Bharati (Broadcasting Corporation of India) Act, 1990, all officers and employees recruited for purpose of Akashwani or Doordarshan before 05.10.2007 will be considered as on deputation and they are considered as employees of Central Government. The VIth Pay Commission Recommendations were implemented from 01.1.06. The pay of Head Clerk, Assistants, and Stenographers were fixed at Rs.6500-10500 applying the principles of Rule 7 of Ministry of Finance Notification dated 29.8.08. Bunching was also allowed to them on the revised upgraded scale and a new fixation in scale Rs.9300-34800 (PB@) was done. Thereafter, it was discovered that error occurred in the bunching and the pay fixation done to Head Clerk, Assistants, Stenographers Grade II and it was decided to recover the excess payments.

4. **At the time of hearing, the counsel for the applicant submitted to us that he is confining his claim restricting to the recovery of amount alone.** The counsel for the applicant mainly relies on the Hon'ble Apex Court judgment in *State of Punjab v. Rafiq Masih reported in (2015) 4 SCC 334, Ramalingam v. Union of India & Others (OA 1813/16) of this Bench, L.Umamageswaran v. Union of India and Others (OA 81/16) of Chennai Bench.* On the other hand the counsel for the respondent had submitted that the applicant had given an undertaking to the effect

that if any excess payment is made, applicant is ready to refund the amount so received. He also relied upon the judgment of the Hon'ble Supreme Court in *High Court of Punjab & Haryana & Others v. Jagdevsing reported in CDJ 2016 SC 635* where it was held that where the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to be made in excess would be required to be refunded, he is bound to pay it back.

5. We have carefully gone through the pleadings and heard the counsels appearing on both sides. The applicant was appointed in the Doordarsan on 11.7.84 and thereafter he was promoted as UDC on 20.5.14. He had retired from service on 30.6.16. Owing to the mistake committed in bunching, the pay fixation was done mistakenly and the applicant has drawn excess pay and according to the respondents an amount of Rs.3,34,159 is now detained and kept separately from gratuity for recovery of the excess amount. The Hon'ble Supreme Court in Rafiq Masih's case (referred supra) had held that as follows:-

“12. It is not possible to postulate all situations or 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 employees, 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.”

6. The above decision clearly prohibits recovery from the retired employees, or the employees who are due to retire within 1 year of the order of recovery. Annexure R1 clearly shows that the order to recover the amount was issued on 05.1.2016 ie. about 5 months before the retirement of the applicant. The Department of Personnel & Training had issued OM F.No.18/03/2015-Estt.(Pay-I) dated 02.3.16 implementing the direction in the Rafiq Masih's case. This Tribunal in *A.S.Rajagopal (U.D.C. Retired, Doordarsan Kendra) v. Union of India OA 1119/15* had directed the respondents to release the amounts deducted from DCRG to the applicant in that case following Rafiq Masih case. The alleged undertaking produced in support of the case of the respondents seems to be obtained after his retirement on 16.9.16 and it cannot be considered as an undertaking obtained when the VIth Pay Commission was implemented after fixation of pay at the 1st instance. So, we find that the decision of the Apex Court in *High Court of Punjab & Haryana & Others v. Jagdevsing reported*

in CDJ 2016 SC 635 is not applicable to this case. There is no case for the respondents that they had given notice to the applicant when the pay was refixed reducing the amount. Further the applicant being a member of Group C is entitled to get the benefit mentioned in clause(1) of Rafiq Masih's case.

7. From the above discussion, it can be seen that **the applicant is entitled to get the benefit of Rafiq Masih's case. The order of recovery was issued when the applicant was about to retire within 6 months.**

8. **Hence, the respondents are ordered to refund Rs.3,34,159/- withheld from the gratuity amount due to the applicant.**

9. **The OA is disposed of accordingly. Consequently, MA 840/2016 also stands disposed of. No costs.**

(T.Jacob)
Member(A)

20.12.2018

(P.Madhavan)
Member(J)

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