

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.
ORIGINAL APPLICATION NO.200/2015**

Date Of Decision:- 28th February, 2019.

CORAM: R. VIJAYKUMAR, MEMBER (A).

R. N. SINGH, MEMBER (J).

Shri. Prakash Govindrao Shinde (T. No.5946)

Age: 57 years,

S/o. Govindrao Shinde

Employed as VMAFV, MCM in the office of

Commandant, 512 Army Base Workshop,

Khdki, Pune 411003.

(R/at: 11A, 3rd floor, 'B' Wing,

Vishal Residency,

Kasarwadi, Pune 411034.

....Applicant

(Applicant by Advocate Ms. Annie Nadar on behalf of Shri. S.P. Saxena)

Versus

1. The Union of India, through

The Secretary

Ministry of Defence,

DHQ. PO South, Block, New Delhi 110011.

2. The Commandant

512 Army Base Workshop, Khadki, Pune 411003.

....Respondents

(Respondents by Advocates Shri. R.R. Shetty and Shri. D.A. Dube)

ORDER (ORAL)

PER:- R VIJAYKUMAR, MEMBER (A).

This application was filed on 19.03.2015 by the applicant under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs:-

"8(a) To allow the application,

(b) To hold and declare that, while the Respondent No.2 is entitled to refix/ cancel the third financial upgradation granted to him, but the Respondent No.2 cannot order recovery of the excess amount of pay and allowances already paid to him for no fault of applicant and as per law,

(c) To quash and set aside the impugned order dt. 28.02.2015 and 28.01.2015, issued by the

Respondent No.2 in so far recovery of excess payment of salary concerned,

(d) To direct the Respondents to refund the amount already recovered from the applicant,

(e) To pass any other order which may be just and equitable in the facts and circumstances of the present case,

(f) To award the cost of application."

2. The applicant was appointed on 17.06.1980 and after being promoted to the post he was promoted as Master Craftsman on 27.11.1991. He was ordered promotion as Chargeman Grade – II on 03.11.2005 and refused promotion and continued to refuse on 06.06.2007 and 18.02.2009. In the year 2010, he was granted third MACP on completion of 30 years of service w.e.f. 17.06.2010. However, the respondents detected their negligence in this regard and passed impugned orders on 28.01.2015 advising him that he had been wrongly paid third MACP and since he had refused promotion in terms of the rules, he was not entitled to third MACP. The recovery has is about Rs.70,000/-.

3. The learned counsel for applicant has argued and stating that the applicant had not made any misrepresentation in this matter which could have led the respondents astray. He was a Group 'C' employee and cannot be held to be aware of the rules in this regard which was the responsibility of the respondents to regulate and implement. Negligence, if any, was the responsibility of the respondent's department. The applicant

subsequently retired in June 2018. The learned counsel for respondents has argued with reference to the decision of the CAT Jabalpur Bench in OA No.65/2012 decided on 13.06.2013 in which the applicant was ordered recovery within six months of grant of such payment. Further, that Bench had not considered the application of the decision of the Hon'ble Apex Court in Rafiq Masih which is subsequent to these orders. The learned counsel for applicant has also referred to the decision of this Bench in OA No.242/2015 decided on 05.09.2018 in which recoveries have been ordered and permitted in view of the fact that the overpayment was detected within two years of disbursement and therefore, the rulings of the Hon'ble Apex Court in Rafiq Masih would not be applicable in this case.

4. The matter has been carefully considered and both the learned counsels for the parties heard.

5. It is apparent that the two cases cited by the learned counsel for respondents differs substantially on the issue of time period between actual grant and disbursement of the amounts and the orders for recovery while in this case, the amount that has been paid to the applicant is sought to be recovered much after the event. Although the amount in question is not large, yet the principle that was laid down by the Hon'ble Apex Court in Rafiq Masih would apply to the cases of Group 'C' employees

for whom such recoveries ordered after the substantial lapse of time. Further, it was enquired if any disciplinary action was taken has been initiated officials responsible and it is learnt that no such proceedings have been contemplated.

6. In the circumstances, it is held that the rulings of the Hon'ble Apex Court in Rafiq Masih would squarely apply to the present case and the impugned orders of the respondents are hereby quashed to the extent of recovery. It is also noted that the learned counsel for applicant has not pressed the aspect of withdrawal of the third MACP in view of the fact that he was not entitled to such benefit.

7. In terms of the above, this OA is allowed without any orders as to costs. The respondents are further directed to refund the amount that may have already been recovered from the applicant within eight weeks of receipt of certified copy of this order.

(R.N. Singh)

Member (J)

srp

(R. Vijaykumar)

Member (A)

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