

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR.**

ORIGINAL APPLICATION NO. 2107/2018

with

ORIGINAL APPLICATION No. 2108/2018

Date Of Decision:- 11th March 2019

CORAM: R. VIJAYKUMAR, MEMBER (A).

Mahesh S/o Govind Gadre,
Aged 52 years, Occu- Service as a Sr. SSA
in Employees Provident Fund Organizations,
R/o- 101, Lotus Enclave-II, Plot No. 11/12,
Santaji Co-op. Society, Near Ajanta Marble,
Manish Nagar, Nagpur- 37.

....Applicant in OA No. 2107/2018.

Shripad S/o Wasudeorao Kelapure,
Aged 56 years, Occu- Service as a Sr. SSA
in Employees Provident Fund Organizations,
R/o- 203, Sai Mukut Apartment, 81/82,
Saket Nagar, Nagpur- 27.

....Applicant in OA No. 2108/2018.

(By Advocate Shri Nabab Khan in both the OAs)

Versus

1. Union of India,
Through Secretary of Ministry of
Labour & Employment,
Shram Shakti Bhawan, Rafi Marg,
New Delhi- 110 001.
2. The Commissioner Central Provident Fund,
Employees Provident Fund Organizations,
Bhavishya Nidhi Bhawan, 14,
Bhikaji Cama Place, New Delhi- 110 066.
3. The Addl. Central Provident
Fund Commissioner, Zonal Office,
Employees Provident Fund Organizations,
Cantonment Board Building,
Golibar Maidan, Pune- 411 001.
4. The Asstt. Provident Fund
Commissioner(HRM-II), Regional Office,

Nagpur, 132-A-Ridge Road, Raghuji Nagar,
Nagpur- 440 009.

... Respondents.

(Respondents by Advocate Ms. U R Tanna)

Reserved On : 15.02.2019.

Pronounced on: 11.03.2019

ORDER

These two applications have been filed on 04.06.2018 under section 19 of the Administrative Tribunals Act, 1985 seeking the following identical reliefs:

"a) Quash the impugned order bearing Office Note No. NG/NAG/PF/RO/HRM-II/2017-18/121,122 dt. 20.03.2018, (Annexure A-1) of the respondent No.4 whereby Respondents are recovering amount of alleged excess payment paid to the Applicant, being arbitrary, mala fide, discriminatory and illegal.

b) Allow the cost of this application to the Applicant.

c) Pass such other orders or reliefs as deemed fit and proper in the facts and circumstances of the case in the favour of the Applicant and against the Respondents."

2. The applicants retired from the Indian Air Force on 28.02.2003 and 31.10.2000 respectively as Sergeants in Group 'Y' and on being nominated for the post of Social Security Assistant (SSA) in Employees'

Provident Fund Organization (EPFO), respondent Nos. 2-4, they joined on 21.08.2006 and 08.05.2006 and their pay scale was upgraded to PB-II with GP of Rs. 4200 on completion of four years of service in common orders dt. 18.04.2011 (Annexure A-4) w.e.f. 21.08.2010/08.05.2010. They applied for re-fixation of their pay in a letter dt. 16.01.2014 and the respondents in common Office Order No. NG/NAG/HRM-II/11 dt. 19.03.2014, refixed their pay as requested, taking into consideration the Military Special Pay (MSP) of Rs. 2000/- and paid them arrears from 2006 as computed. This order specified at Para 25 that the above pay fixation was subject to audit and excess payment if any, shall be recovered. Thereafter, based on Head Office instructions dt. 26.07.2017, that non-commissioned officers retiring below the age of 55 years and appointed on re-employment basis in civilian posts will not be eligible for protection of pay in accordance with the instructions of DoP&T in OM dt. 05.04.2010, a

re-fixation was done for the applicant. Re-fixation was proposed to the applicants in Office Note No. NG/NAG/PF/RO/HRM-II/2017-18/32 dt. 23.01.2018 and in continuation of Office Order No. NG/NAG/RO/HRM-II/Pay fixation EX-SM/14 dt. 05.12.2017. As a result, the new basic pay of the applicants as on 01.07.2017 was fixed at Rs. 43,600/-. Further, since the pay had been refixed and arrears paid from 21.08.2006 in the previous orders of 19.03.2014, all those amounts and subsequent amounts that had been paid until these revision orders were determined as recoverable from the applicant. Therefore, in the Office Note dt. 23.01.2018, notice was given to the applicants of intended recovery of overpaid amount of Rs. 10,76,634/- in 116 installments of Rs. 9281 per month for the first applicant and Rs. 9,57,724/- in 49 installments of Rs. 19,545/- per month for the second applicant. The applicants filed their protests on 24.01.2018 stating that they had already submitted a representation on 18.10.2017 for reconsidering recovery

action and wished to press reference to the DoP&T Circular No. 18/03/2015-Estt.(Pay-I) dt/ 02.03.2016 in support. They have stated that they would be facing financial hardship since they need to pay Housing Loan EMI and for financing shouldering education. This representation was rejected in the impugned orders contained in Office No. NG/NAG/PF/RO/HRM-II/2017-18/121 dt. 20.03.2018 on which the applicant made a further representation on 22.03.2018 reiterating and elaborating their arguments.

3. The applicants have argued that the orders are arbitrary and that in a case before the Principal Bench of this Tribunal in OA No. 3453/2017, interim orders have been granted. Further, they relied on the rulings of the Hon'ble Apex Court *in State of Punjab & Others Vs. Rafiq Masih(White Washer) in Civil Appeal No.11527/2014 dated 18.12.2014* which has been communicated in DoP&T dt. 02.03.2016 supra and state that they are Group-C employees and that they were not responsible for the excess payment and any

recovery would cause them considerable hardship.

4. The respondents have stated that the re-fixation done on 19.03.2014 was based on the representation submitted by the applicants dt. 16.01.2014 and the re-fixation specifies that it would be subject to audit and excess payment, if any, shall be recovered. They have stated that the applicants were asked to show-cause and after receiving their replies, they have passed orders. They deny that the recovery of the excess amount would cause any hardship to the applicants and that the error made in the fixation of 19.03.2014 was corrected by them in their orders of 05.12.2017.

5. We have heard the learned counsel for the applicants and learned counsel for the respondents and carefully considered the facts and circumstances, law points and rival contentions in the case.

6. At the outset, it is clear that there is no dispute that the interpretation of the respondents was correct, that re-employed ex-

servicemen who were earlier not commissioned officers are not entitled to protection of pay. Therefore, the issue in the present case is limited to whether recoveries can be made by the respondents of the excess payments that the applicants were not eligible to draw but were made to them purely because of a mistake made by the respondents.

7. In the present case, re-fixation orders of the respondents were made in March 2014 based on the representation of the applicants. Although the applicants may have made a representation, they cannot be held at fault for making such a representation, however misconceived. It was the duty of the respondents to regulate the payments in accordance with the rules. They finally did so after consulting their Head Office and the DoP&T by the year 2017 which is roughly about three years from the initial payment. The initial payment included arrears from 2006 and therefore, amounted to a considerable sum of money. It is also quite evident that the applicants were not entitled to this amount

and the payment was essentially an illegal drawal from the exchequer which is financed by tax payers money. Therefore, as a basic principle, the amount is recoverable in full along with interest. The applicant has urged reference to the rulings of the Hon'ble Apex Court *in Rafiq Masih* as communicated by the DoP&T in its OM dt. 02.03.2016. Since the recovery has been ordered well within period of five years, the only category under which the claim of the present applicant could be considered is that he belongs to a Group-C service. The preamble for these categories was stated by the Hon'ble Apex Court as below:

"4. The Hon'ble Supreme Court while observing that 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 has summarized the following few situations, wherein recoveries by the employers would be impermissible is law."

8. Therefore, the fundamental substratum for consideration of the application of these categories is whether the applicants are in a

situation of hardship. While this is highly relativistic, in the present case, the applicants are not only drawing a sum of Rs. 43,600/- as on 01.07.2017 as basic pay but they are also drawing a Military pension. The recovery of Rs. 9281/- for applicant in OA No. 2107/2018 would comprise less than 20% of his total earnings and considering that the respondents have ordered the recovery without including any aspect of interest confirms their part in the error and a penalty thereof being absorbed by them. In the case of the applicant in OA No. 2108/2018, the proportion sought to be deducted is inexplicably about 40%, which is excessive and quite different from the first applicant and no explanation is forthcoming and would need correction. It is, therefore, apparent that when we view in balance the claim of hardship by the applicants against the imposed on the exchequer, it is necessary to uphold the right of the exchequer to collect the wrongful payment. In case however, the applicants still feel that the

monthly deductions are excessive, as is clearly the case for the applicant in OA No. 2108/2018, it is for them to make out a case before the respondents showing all details of their expenditures in terms of Housing Loan EMI and educational expenses, etc. to justify a deduction that is lower than the one that has been proposed by the respondents and they shall be obliged to consider the request and pass a reasoned and speaking order in four weeks thereafter.

9. In the circumstances, we are not persuaded that the applicants have a genuine case in this matter and accordingly dismiss the OA without any order as to costs.

(R. Vijaykumar)
Member (A)

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