

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**JABALPUR**

**Original Application No.203/00065/2017**

Jabalpur, this Thursday, the 31<sup>st</sup> day of January, 2019

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER  
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

V.M.M. Patnaik,  
S/o Late V.S.S. Patnaik  
Aged about 61 years  
R/o R-1/4 Divyanagari  
Godhani Railway  
Godhani (PO)  
Nagpur Nagpur  
Dist. Maharashtra State PIN 440001

(By Advocate –Ms. Veena Nair)

## V e r s u s

1. Union of India, Through General Manager  
SEC Railways, Bilaspur Bilaspur Dist.  
CG State PIN 495004

2. The Chief Personal Officer, SEC Railways  
Personnel Department Bilaspur CG State PIN 495004

3. Dy. Chief Personnel Officer (RR)  
Headquarters Personnel Deptt.  
1<sup>st</sup> Floor GM's Office  
SEC Railway Bilaspur Bilaspur Dist.  
CG State PIN 495004

## - Respondents

**(By Advocate –Shri R.N. Pusty)**  
*(Date of reserving the order: 25.09.2018)*

## **O R D E R**

### **By Ramesh Singh Thakur, JM:-**

In this Original Applicant the applicant is challenging the order dated 29.09.2016 (Annexure A/1) whereby the respondents have refused to cancel the order withdrawing the stepping up of pay granted to the applicant making it at par with the pay of his juniors who were granted more pay than the applicant was granted and to sanction settlement of dues like pension, DCRG etc. after the applicant has retired from service on attaining the age of superannuation.

2. The applicant has sought for the following reliefs:-

*“8.1 This Hon’ble Tribunal be pleased to accept this application.*

*8.2 That this Hon’ble Tribunal be pleased to call for the entire records of the case from the possession and custody of the respondents.*

*8.3 That the Hon’ble Tribunal be pleased to set aside the impugned orders dated 29.09.2016 (A/1) issued by the respondents as they are contrary to law, arbitrary and illegal.*

*8.4 That this Hon'ble Tribunal be pleased to direct the respondents to re-calculate the pension, gratuity and other dues payable to the applicant on his retirement on the basis of last pay drawn by him without any reduction or recovery on the ground of alleged excess payment and pay the same including arrears with interest @ 18% p.a. from the date it has become due till the date of actual payment.*

*8.5 That this Hon'ble Tribunal be pleased to grant cost and expenses of this application.*

*8.6 That this Hon'ble Tribunal be pleased to grant any other relief as it may deem fit and proper in the interest of justice.”*

3. The facts of the case are that the applicant had earlier filed an Original Application bearing No.203/00701/2016 before this Tribunal, challenging the order dated 13.02.2015 and 13.04.2015 during the pendency of his representation before the respondents, the said O.A. was withdrawn at the motion stage itself and the Tribunal has granted liberty to the applicant to file a fresh comprehensive representation and directed the respondents to consider the same. A copy of the order dated 14.07.2016 is annexed as Annexure A/2.

**4.** The applicant while working as Chief Loco Inspector in the pay scale of Rs.9300-34800 with Grade Pay of Rs.4600 in SEC Railways Nagpur, was promoted to the post of ADEE in the pay band of Rs.9300-34800 with grade pay of Rs.4800/- vide order dated 22.04.2009. A copy of promotion order dated 22.04.2009 is annexed as Annexure A/3. While working in the post of Chief Loco Inspector his pay as it was lower than the pay of his juniors, was stepped up from Rs.17440 to Rs.22470 with grade pay of Rs.4600/- making it at par with his juniors' pay, by order dated 22.12.2009. The applicant's pay after such stepping up was fixed at Rs.21910/- with grade pay of Rs.4600/- w.e.f. 06.02.2006. A copy of the said order is annexed as Annexure A/4.

**5.** After 9 years of the grant of stepping up of pay, the respondents, issued an order in February, 2015, alleging that the applicant was wrongly granted stepping up of pay and directed recovery of the alleged excess payment made to him. A copy of the said order dated 13.02.2015 is

annexed as Annexure A/5. The applicant has never had misrepresented the facts to the respondents and he was under the bonafide belief that the stepping up of his pay to make it at par with his juniors who were drawing more pay was rightly granted after examining with reference to the applicable rules and regulations by the respondents and enhanced payment. The respondents thereafter again issued order dated 13.04.2015 stating that the issue of recovery of overpayment from the concerned officials may be kept in abeyance for the present and payments may be withheld from the DCRG of retired/retiring officials. A copy of the said order is annexed as Annexure A/6.

**6.** The applicant retired from the post of ADEE on attaining the age of superannuation on and from 30.04.2015 after rendering his service for more than 40 years. The respondents issued provisional Pension Order granting monthly pension of Rs.14970/- and gratuity of Rs.10,00,000/- calculated on the basis of the reduced pay and direct the Bank not to release payment of DCRG. No

payment has been released to the applicant towards gratuity. A copy of Pension Payment Order dated 30.04.2015 is annexed as Annexure A/7.

7. The grievance of the applicant is that there was no notice issued to the applicant nor was any opportunity of hearing afforded to the applicant before reducing his pay from Rs.31900 to 24540/-. The applicant made representations orally and in writing to the respondents but no action was taken on the said representations. Resultantly, the applicant had earlier filed O.A. which was withdrawn with liberty to make a fresh representation to the respondents. A copy of representation dated 16.08.2016 is annexed as Annexure A/8.

8. The applicant has submitted in the pleadings that the case of the applicant is fully covered by the Judgment of co-ordinate bench of Ernakulam of his Tribunal in O.A. No.1002/2010 and also before the Madras Bench in O.A. No.455/2012. A copy of order dated 04.10.2011 and

07.08.2012 is annexed as Annexure A/9. Further the case of the applicant is that though the respondent department has filed Writ Petition No.3528 and 3529/2013 before the Hon'ble High Court of Madras but these petitions were dismissed. A copy of order dated 19.02.2013 is annexed at Annexure A/10. Further the respondent-department had approached the Hon'ble Supreme Court by filing SLPs No.4568-4569/2014 but the said SLP has been dismissed by the Hon'ble Apex Court vide order dated 23.02.2016 annexed at Annexure A/11. The respondents have further filed a review petition which was also dismissed on 23.08.2016. A copy of said order dated 23.08.2016 is annexed at Annexure A/12. Resultantly, the Railway Board has issued instructions dated 21.09.2016, a copy of which is annexed as Annexure A/13. The Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi had issued office memorandum dated 02.03.2016 to regulate recovery of over payment from the employees where the employees

were not guilty of furnishing any incorrect information/misrepresentation or where it has been made by the mistake of the employer, on the basis of the decision rendered by Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih. A copy of the said office memorandum is annexed as Annexure A/14.

**9.** The respondents have filed their reply to the O.A. It is submitted by the replying respondents that the principle of stepping up of pay is contained in Rule 1316 of Indian Railway Establishment Code, Vol.II and Board's letter dated 07.12.1994 (RBE No.108/94) which is annexed as Annexure R/1, which also contains conditions which have to be followed while ordering stepping up of pay. Two of the conditions are as under:-

(a) Both the junior and senior employees should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;

(b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

**10.** It has been further submitted by the replying respondents that the instructions for stepping up of pay of Loco Inspectors appointed prior to 01.01.2006 with reference to their juniors appointed after 01.01.2006, on fulfilling certain conditions were issued vide Board's letter dated 24.07.2009 (Annexure R/2). So terms of these instructions the benefit of stepping up of pay is not permissible without fulfilling the condition of Rule 3(a) mentioned therein which states as under "Both the junior and the senior Railway servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre and other conditions enumerated in Note 10 below Rule 7 of RS (RP) Rules, 2008 should be fulfilled. Therefore the stepping up of pay of a senior employee at par with his junior is permissible only on fulfilling of said conditions. The conditions were not being fulfilled in the case of the applicant and others,

hence their request for cancellation of order of withdrawal of stepping up of pay granted wrongly to them cannot be accepted. All the settlement dues like pension, DCRG commutation of pension etc have been released in favour of the applicant on his superannuation as per his entitlement. It has been submitted by the replying respondents that though the Hon'ble Apex has dismissed the review petition filed against the dismissal of SLP No.33654/2014 in the matter of Union of India vs. K.S. Rajendra and others on 23.08.2016. Accordingly, the rules governing the stepping up of pay have not been struck down by the Court. It has been specifically mentioned by the replying respondents that the rules regarding stepping up of pay issued by the Ministry of Finance, Do&T and Railway Ministry have been upheld by Hon'ble Supreme Court of India in the matter of Union of India vs. O.P. Saxena. Accordingly, the action taken in case of the applicant by withdrawing the benefit of stepping up of pay due to his non fulfillment of basic principle was correct

and legal. It has been submitted by the replying respondents that the then Chief Personnel Officer had taken decision in the year 2009 allowing stepping up of pay in such cases where the Senior Loco Inspectors who were promoted (prior to or after 01.01.2016) while working as Loco Pilot (Goods) vis-à-vis their juniors who were promoted as Loco Inspector (prior to or after 01.01.2006) while working as Sr. Loco Pilot (Goods) or in the higher grades of Passenger/Sr. Passenger/Mail/Express Drivers and vice versa. However, audit raised objection in Nagpur Division against granting such stepping up of pay where feeder grades were different. The matter was reviewed in consultation with FA & CAO and decided to withdraw stepping up of pay to Loco Inspectors in such cases where feeder grades were different and recovery of overpayment was advised. The affected Loco Inspectors including the applicant submitted representation dated 02.03.2016 interalia requesting for stoppage of recovery and allowing stepping up of pay as per earlier decision. So

the applicant was aware that his pay had to be re-fixed and reduced due to withdrawal of stepping up benefit. Considering requests from various quarters a decision was taken in consultation with FA & CAO for stoppage of recovery of serving officials for a time being. However, the applicant had retired from Railway service, his pay had been re-fixed withdrawing the benefit of stepping up of pay. Consequently his last pay was reduced and provisional pension was sanctioned withholding the amount of DCRG to adjust the overpayment calculated to Rs.11,67,721/- In the meanwhile the matter of stepping up of pay to Loco Inspectors was under examination of Railway Board and various SLPs were also pending in the matter. Keeping in view the likely delay in decision from Board, Nagpur Division was advised to release his DCRG finally after recovering the overpayment due. It was further advised that arrears may be made subsequently if any such guidelines are issued by Board. Thus, it was acted upon correctly. Moreover, the applicant was well

aware of the dispute and being public money / tax payers' money, administration was bound to give priority to public interest. The representation dated 16.08.2016 of the applicant has been disposed of vide office letter dated 27/29.09.2016 through a reasoned and speaking order issued by Chief Personnel Officer. It has been specifically submitted by the replying respondents, that the reference of the applicant regarding the judgment of Hon'ble Supreme Court has dismissed the review petition filed against the dismissal of SLP No.33654/2014 in the matter for Union of India vs. K.S. Rajendra and others on 23.08.2016. The advice was sought by Railway Board. It has been specifically submitted by the replying respondents that the dismissal of the review petition no further legal recourse is available. The rules governing the stepping up of pay have not been struck down by the court, so Board decided to implement the directions of the court ad personam in the case of Shri K.S. Rajendra and others. Board also advised zonal railways to continue to contest

the other cases pending before various courts of law on the subject of stepping up of pay of Loco Inspectors, and defending to the extent of rules on the subject issued by the Ministry of Finance, DoP&T and Railway Ministry, which have also been upheld by Hon'ble Supreme Court in the matter of Union of India vs. O.P. Saxena. The said O.M. dated 02.03.2016 of DoP&T has been issued by Railway Board vide its letter dated 22.06.2016 (RBE No.72/2016) (Establishment Rule No.90/2016). So the basic principles for granting benefit of stepping up of pay as enumerated/prescribed in Annexure R/1. It has been submitted by the replying respondents that the applicant does not fulfill the condition for granting of stepping up of pay which was granted to the applicant and was promoted to Loco Inspector from the post of Loco Pilot (M) in scale of Rs.6000-9800/- w.e.f.06.12.2006, whereas the applicant and others were promoted to the post of Loco Inspector from the post of Goods Driver/Sr. Goods Driver in scale of Rs.5000-8000/5500-9000. Due to the objection

raised by the audit in Nagpur Division for such stepping up of pay where feeder grades were different, the matter was reviewed in consultation with FA & CAO and decided to withdraw stepping up of pay to Loco Inspectors in such cases where feeder grades were different and recovery of overpayment was advised.

**11.** The applicant has filed the rejoinder to the reply filed by the respondents. The applicant has reiterated its earlier stand made in the O.A. It has been submitted by the applicant that his case is fully supported by the decision of the co-ordinate bench of Ernakulam Bench in O.A. No.1002/2010 and Madras Bench of this Tribunal in O.A. No.455/2012 which is also affirmed by the Hon'ble High Court of Madras. The order of the Hon'ble High Court was challenged in SLP filed by the respondent-department and the said SLP was dismissed vide order dated 23.02.2016. The applicant has specifically submitted in the rejoinder that there is difference between his case and the case of employee in O.A. No.1002/2010 decided

by the Ernakulam Bench and also the Madras Bench of this Tribunal. The applicant has specifically submitted that the recovery done by the respondent-department without any notice or hearing regarding grant of wrong stepping up of pay is illegal and unlawful. The applicant and other employees similarly situated were promoted to the next higher post which was identical. The applicant submits that the recovery of any amount by way of wrong fixation of pay is not permissible from employees, who are either on the verge of retirement or who had actually retired from service as per the decision of Hon'ble Supreme Court in the case of State of Punjab vs. Rafiq Masih, reported in 2015(4) SCC 334.

**12.** We have heard the learned counsel for both the parties and have also gone through the documents attached with the pleadings.

**13.** From the pleadings it is clear that the applicant was earlier working as Chief Loco Inspector in the pay scale of

Rs.9300-34800 with Grade Pay of Rs.4600 and thereafter the applicant was promoted to the post of ADEE in the pay band of Rs.9300-34800 with grade pay of Rs.4800/- vide order dated 22.04.2009. It is clear from the pleadings that the applicant while working in the post of Chief Loco Inspector, his pay was lower than the pay of his juniors, and the respondent department has given stepping up of pay to the applicant from Rs.17440 to Rs.22470 with grade pay of Rs.4600/- making it at par with his juniors' pay, by order dated 22.12.2009. The applicant's pay after such stepping up was fixed at Rs.21910/- with grade pay of Rs.4600/- w.e.f. 06.02.2006. It is also clear from the pleadings that after 9 years of the grant of stepping up of pay, the respondents had issued an order on 13.02.2015 (Annexure A/5), alleging that the applicant was wrongly granted stepping up of pay and directed recovery of the alleged excess payment made to him. The contention of the applicant is that he had never misrepresented the facts to the respondents and he was under the bonafide belief

that the stepping up of his pay to make it at par with his juniors who were drawing more pay was rightly granted after examining with reference to the applicable rules and regulations by the respondents and enhanced payment. It has been further alleged by the applicant that the order dated 13.04.2015 (Annexure A/6) issue of recovery of overpayment from the concerned officials was kept in abeyance. But the respondent-department had directed to withhold the excess payment from DCRG of retired/retiring officials.

**14.** The applicant has contended that he was retired from the post of ADEE on attaining the age of superannuation on 30.04.2015 and at the fag end of his service, the recovery order was passed regarding the excess payment due to stepping up of pay at par with juniors, without giving any show cause notice and opportunity to defend his case. So, as per provisional Pension Order granted monthly pension of Rs.14970/- and gratuity of Rs.10,00,000/- calculated on the basis of the reduced pay

and as directed the Bank not to release payment of DCRG. It is also contended that no opportunity of hearing before reducing his pay from Rs.31900 to Rs.24540 has been given and the representation had not been decided.

**15.** The main contention of the applicant is that the case of the applicant is fully covered by the Judgment of co-ordinate bench of Ernakulam of this Tribunal in O.A. No.1002/2010 and also the Madras Bench in O.A. No.455/2012. A copy of order dated 04.10.2011 and 07.08.2012 is annexed as Annexure A/9. It has been further contended by the applicant that the order passed by Madras Bench of this Tribunal was challenged before the Hon'ble High Court of Madras in Writ Petition No.3528 and 3529/2013 and the same petitions were dismissed vide order dated 19.02.2013 (Annexure A/10). Further, the respondent-department had approached the Hon'ble Supreme Court by filing SLPs No.4568-4569/2014 but the said SLP has been dismissed by the Hon'ble Apex Court vide order dated 23.02.2016 (Annexure A/11). Thereafter,

the respondents have further filed a review petition which was also dismissed vide order dated 23.08.2016 (Annexure A/12). Resultantly, the Railway Board has issued instructions dated 21.09.2016 (Annexure A/13) and the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi had issued office memorandum dated 02.03.2016 to regulate recovery of over payment from the employees where the employees were not guilty of furnishing any incorrect information/misrepresentation or where it has been made by the mistake of the employer, on the basis of the decision rendered by Hon'ble Supreme Court in State of Punjab and others vs. Rafiq Masih (White Washer) and others (2015) 4 SCC 334.

**16.** On the other side, the contention of the respondents is that the principle of stepping up of pay is contained in Rule 1316 of Indian Railway Establishment Code, Vol.II and has issued RBE No.108/94 vide Board's letter dated 07.12.1994 (Annexure R/1), which also contains

conditions to be followed while ordering stepping up of pay. The specific stand taken by the respondents are that the case of the applicant is not covered under the said RBE No.108/94. So, the request for cancellation of order of withdrawal of stepping up of pay granted wrongly to them cannot be accepted.

**17.** Regarding the issuance of instructions by DoP&T dated 02.03.2016 (Annexure A/14) has admitted by the respondent-department. Further the case of the respondent-department is that the objection raised by the audit against granting such stepping up of pay where feeder grades were different, has been given wrongly. Resultantly, the department has passed impugned order dated 29.09.2016 (Annexure A/1) by rejecting the representation of the applicant.

**18.** The applicant has relied upon the judgment passed by coordinate Ernakulam Bench of this Tribunal in O.A. No.1002/2010 decided on 04.10.2011. The Tribunal has

decided the issue of Railway Board's circular dated 20.07.2004. The relevant para of judgment is as under:

*11. A look at the rule position at this stage is essential. The following are the rules of the 2007 Pay Rules, relied upon by the applicants:-*

*(b) Note 10 below Rule 7 of the RS(RP) Rules, 2008 read as under:*

*"In cases where a senior Government servant promoted to a higher post before the 1st day of January, 2006 draws less pay in the revised pay structure than his junior who is promoted to the higher post on or after the 1st day of January, 2006, the pay in the pay band of the senior Government servant should be stepped up to an amount equal to the pay in the pay band as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfillment of the following conditions, namely:-*

*(a) both the junior and senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.*

*(b) the pre-revised scale of pay and the revised grade pay of the lower and higher posts in which they are entitled to draw pay should be identical.*

*(c) the senior Government servants at the time of promotion should have been drawing equal or more pay than the junior.*

*(d) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation on such promotion in the revised pay structure. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provision of this Note need not be invoked to step up the pay of the senior officer. "*

*Note 10 of Rule 7 relates to stepping up of pay when junior is promoted to a higher post which the senior is already holding and if there be pay difference and if the conditions to stepping up are fulfilled, then the senior's pay shall be raised to equalize the pay of the junior. Isakki the junior, got his promotion only on 18-01-2008 to the post of Sr. Loco Inspector and his pay had thus been fixed at Rs 24,690/- plus GP of Rs 4600/. At this point of time, the applicant was drawing pay less than the aforesaid Isakki in the same post of Sr. Loco Inspector. The This difference occurs due to reckoning certain portion of running allowance as pay for the purpose of fixation of pay at the time of promotion, when the promotional post does not have the benefit of running allowance. The extent of running allowance is more for any later period compared to earlier periods and thus, 30% thereof would also be more than the corresponding portion in the earlier period. Thus, a person, promoted earlier would have the benefit of lower rate of 30% of running allowance to be reckoned as a part of his pay in the promotional post compared to his junior who secures his promotion at a later point of time. Such a situation arose in the past also and the Railways have removed the anomaly by bring up the pay of the seniors by way of stepping up. In this*

*regard, the following Railway Board Circulars are relevant:-*

*Railway Board circular dated 20.07.2004:*

*"It has been decided that the anomaly be resolved by granting stepping up of pay to the seniors at par with the juniors in terms of Note 9 below Rule 7 of RSRP Rules, 1997."*

*The benefit of stepping up of pay will be subject to the following conditions:*

*(a) The stepping up of pay will be allowed to running staff only appointed as loco supervisors in whose cases 30% of basic pay is taken as pay in the running allowance. The stepping up of pay will not be admissible to non-running staff of Mechanical Deptt. Appointed as Loco running supervisors as in their cases the question of pay element in the running allowance does not arise.*

*(b) If even in the lower post, revised or pre-revised, the junior was drawing more pay than the senior by virtue of advance increments granted to him or otherwise, stepping up will not be permissible. Stepping up will be allowed only once, the pay so fixed after stepping up will remain unchanged.*

*(d) The next increment will be allowed, if due, on completion of the requisite qualifying service with effect from the date of refixation of pay."*

*Railway Board circular dated 20.07.2009:*

*"It has come to the notice of the Board that staff appointed prior to 1.1.2006 as Loco Running Supervisors in the pre-revised pay scales, whose pay has been fixed in the replacement pay structure for*

*Loco Running Supervisors under the RS(RP) Rules, 2008, are drawing less pay than their juniors appointed as Loco Running Supervisor after 1.1.2006. The anomaly has arisen due to the fact that the benefit of element of Running allowance granted at the time of promotion of running staff to a stationary post has been granted to the junior in the revised pay structure, whereas, the same benefit granted to the senior is of lesser value as the same has been calculated on pre-revised pay scale.*

*2. It has been decided that the anomaly may be resolved by granting stepping up of pay in pay band to the seniors at par with the juniors in terms of Note 10 below Rule 7 of RS(RP) Rules, 2008.*

*3. The benefit of stepping up of pay in pay band will be subject to the following conditions:*

*(a) Both the junior and the senior Railway servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre and other conditions enumerated in Note 10 below Rule 7 of RS (RP) Rules, 2008 should also be fulfilled.*

*(b) The stepping up of pay will be allowed to running staff only appointed as Loco Supervisors in whose cases 30% of basic pay is taken as pay element in the running allowance. The stepping up of pay will not be admissible to the non- running staff of Mechanical Deptt. appointed as Loco Running Supervisors as in their cases the question of pay element in the running allowance does not arise;*

*(c) If even in the lower post, revised or pre-revised, the junior was drawing more pay than the senior by*

*virtue of advance increments granted to him or otherwise, stepping up will not be permissible;*

*(d) Stepping up will be allowed only once, the pay so fixed after stepping up will remain unchanged;*

*(e) The next increment will be allowed on the following 1st July, if due, on completion of the requisite qualifying service with effect from the date of refixation of pay, as per the provisions of Rule 10 of RS(RP) Rules, 2008."*

**19.** The applicant has further relied upon the judgment passed by co-ordinate Madras Bench of this Tribunal in O.A. No.455/2011 whereby the Tribunal has discussed this issue. The relevant para of this order is as under:-

*"8. The applicability of the provisions containing in Note 10(b) of Rule 7 of the RSRP Rules 2008 was also discussed by the Ernakulam Bench in O.A. No.1002/2010. The Ernakulam Bench, after discussing various other issues has passed the following order:*

*"In view of the above, the OA is allowed to the extent that the pay of the applicants be stepped up at par with that of the junior Bhuvanendra from 18-01- 2008 and the arrears of pay and allowances arising out of such stepping up be made available to the applicants. This benefit is in accordance with the provisions contained in note 10 under Rule 7 of the Pay Rules.*

*Respondents are directed to pass suitable orders stepping up the pay of the applicants and work out the arrears of pay and allowances due to the applicants and pay the same. This drill shall be performed within a period of four months from the date of communication of this order. No costs.*

**20.** It is also very clear from the pleadings that the judgment of coordinate bench of Madras in O.A. No.455/2011 was challenged before the Hon'ble High Court of Madras and the writ petition preferred by the respondents was dismissed vide Annexure A/10. Thereafter the SLP preferred by the respondent-department was also dismissed vide Annexure A/11 and the Review Petition was further dismissed vide Annexure A/12. So, the issue of granting stepping up of pay at par with the juniors has already attained finality.

**21.** In view of the law settled by the co-ordinate Ernakulam bench and Madras Bench of this Tribunal and the matter has gone to the Hon'ble Apex Court where the stand taken by the respondent-department has been turned down. The matter is of the same nature and the judgment of coordinate bench of Ernakulam and Madras is fully applicable in the instant case.

**22.** Regarding the recovery from the applicant the law has already settled in the matter of *Rafiq Masih* (supra).

The relevant guidelines are as under:-

*"18. 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.*

**23.** In view of the law settled by the Hon'ble Apex Court and also in view of the guidelines issued by the DoP&T

dated 02.03.2016 (Annexure A/14), the case of the applicant is fully covered specifically in view of the fact that the recovery has been dealt with granting of stepping up of pay which was granted in 2009 and recovery has been proposed to be made in 2015. Resultantly the impugned order dated 29.09.2016 (Annexure A/1) is illegal and unlawful.

**24.** In view of the above, this Original Application is allowed. Impugned order dated 29.09.2016 (Annexure A/1) is quashed and set aside and the respondents are directed to recalculate the pension, gratuity and other dues payable to the applicant on his retirement on the basis of last pay drawn by him without any reduction or recovery on the ground of alleged excess payment within a period of 90 days after receiving the order of this Tribunal failing which the respondents will also be liable to pay interest at the rate of GPF. No order as to costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

**(Navin Tandon)**  
**Administrative Member**