

**Central Administrative Tribunal  
Circuit Bench, Ranchi.**

OA No. 051/00153/2017

Order reserved on: 11.09.2018  
Order pronounced on : 19.12.2018

***Hon'ble Mr. A.K.Patnaik, Member (J)  
Hon'ble Mr. Pradeep Kumar, Member (A)***

Shiv Shankar Laheri  
Son of Late Rameshwar Ram Laheri,  
Resident of Telaiya Station Road,  
P.O. Hisua, P.S. Hisua,  
District-Nawada (Bihar)

... Applicant

(By Advocate: Sh. K.K.Ambastha)

Versus

1. Union of India through Secretary (Post),  
Department of Post, Dak Bhawan,  
Sanshad Marg,  
New Delhi, Pin Code-110001.
2. Chief Post-Master General,  
Jharkhand Circle, Ranchi,  
P.O. Doranda,  
District Ranchi  
Pin Code-834002.
3. Director,  
Postal Service,  
Doranda,  
P.O. Doranda,  
District Ranchi  
Pin Code-834002.
4. Senior Superintendent of Post,  
Dhanbad Division,  
Dhanbad,  
P.O. Dhanbad  
P.S. Dhanbad  
District Dhanbad, Pin Code-826001.

5. Director of Accounts (P),  
Kanke, P.O. Kanke,  
P.S. Kanke,  
District Ranchi, Pin Code-834008.
6. Senior Accounts Officer,  
Office of Director of Accounts (P),  
Kanke, P.O. Kanke,  
P.S. Kanke,  
District Ranchi, Pin Code-834008.
7. Post Master,  
Head Post Office, Bokaro,  
P.O. Bokaro Steel City,  
P.S. Bokaro Steel City,  
District Bokaro, Pin Code-826002.

... Respondents

(By Advocate: Sh. H.K.Mehta)

### **ORDER**

#### **By Hon'ble Mr. Pradeep Kumar, Member (A)**

1. Heard the learned counsel for the applicant and respondents.
2. The applicant was appointed as a Mail Peon (Group -D) and in turn was promoted to the post of Postal Assistant on 10.04.1985. He was granted 3<sup>rd</sup> Modified Assured Career Progression (MACP) benefit w.e.f. 01.09.2008 in Postal Assistant Cadre. He retired on 31.03.2015 as Postal Assistant.
3. The applicant pleads that he has not been paid the part of the gratuity, specifically 13% amount of the gratuity. When he enquired from the office, he was advised by the respondents vide their letter dated 12.04.2016 that the 3<sup>rd</sup> MACP benefit which were granted to him w.e.f 01.09.2008, were wrong and it ought to have been

granted w.e.f. 03.01.2009 only. Accordingly, certain excess payments have taken place and it is to recover these excess amount that the full gratuity has not been paid.

4. The applicant pleads that for the alleged wrong fixation as per 3<sup>rd</sup> MACP, neither had he misrepresented anything, nor was he issued any show cause notice. This fixation was given by the respondents on their own, which is now being said to have been given wrongly. Further, an amount of Rs. 12,213/- has since been recovered also towards this excess and he is being paid provisional pension only whereas he is not at fault at all.

5. The applicant was due one increment also, which has also not been paid and commutation of pension has also not been done. The applicant had made a representation on 05.10.2015, which has also not been replied as yet. Accordingly, the present O.A. has been filed seeking the following reliefs:

“1. For quashing the letter NO. AE/8186/03 dated 12.04.2016 issued by the respondent no. 6

2. The respondents be directed not to give effect of Letter No. AE/8186/03 dated 12.04.2016 issued by the Respondent No. 6.

3. The respondents be directed to refund Rs. 12, 213/- which has been deducted from the pension of the applicant.

4. The respondents be directed to fix the Final pension of the applicant.

5. The respondents be directed to pay the balance amount of Gratuity to the applicant.

6. The respondents be directed to grant benefit of one increment which has been withheld on account of letter no. AE/8186/03 dated 12.04.2016.

7. The respondents be directed to grant benefit of Commutation of Pension to the applicant.

8. Any other relief or reliefs to which the applicant is legally entitled to.”

6. The applicant also pleads that there is a judgment by Hon’ble Apex Court in **State of Punjab and Ors. Vs. Rafiq Masih (White Washer)** etc. (I(2015) SLT 179), wherein the excess recoveries have been debarred from the pensioners, especially those from Group ‘C’ and Group ‘D’. The applicant also brought out that in another judgment in the case of **Most. Sabeyani Lugun Vs. State of Jharkhand**, 2017 (2) JBCJ 324, it was also upheld that the recoveries from the pensioners are not admissible.

7. The respondents, in their counter reply have brought out as under:-

“He has completed his 30 years regular service on 03.01.2009. But at the time of Screening Committee meeting on 16.10.2012 he was awarded 3<sup>rd</sup> MACP w.e.f. 01.09.2008 vide Sr. Supdt of Post Offices, Dhanbad memo no. B-1/MACPs/Dlg/PA/2011 which is totally wrong and objected by Director of Accounts (Postal), Ranchi. He is eligible for 3<sup>rd</sup> MACP w.e.f. 04.01.2009 excluding the non-qualifying service of 1day on 14.09.1984. Now at the time of DPC held on 28.08.2017 his case was put up before him and allowed 3<sup>rd</sup> MACP w.e.f. 04.01.2009 and sent to C.O. Ranchi for approval which is under process.”

Accordingly, the mistake is admitted. It is further pleaded that since the mistake has happened in the fixation and all the employees also sign an undertaking at the time of retirement to the effect that any excess amount can be recovered, the Department is

well within their rights to recover the same. Accordingly, the O.A. needs to be dismissed.

8. The matter was heard at length. What comes out is that the 3<sup>rd</sup> MACP benefit was paid w.e.f 01.09.2008 and it was granted by the respondents on their own without there being any representation or any misrepresentation whatsoever by the applicant. The applicant is a group "D" employee, who had also since retired on 31.03.2015. The excess amount paid is in respect of 3<sup>rd</sup> MACP benefit, which is said to due from 03.01.2009, but which was wrongly paid by the respondents on their own accord from 01.09.2008. Accordingly, the occurrence of this wrong event is also more than 05 years old with respect to the date of retirement. The judgment of Hon'ble Supreme Court in **State of Punjab and Ors. Vs. Rafiq Masih (White Washer)** (supra) has categorically given a guideline that such recoveries from pensioners, specifically from grade "C" & "D" employees, are not permissible. The action of the respondents in trying to recover the said amount is, thus, not acceptable.

In the event, the recovery ordered vide letter dated 12.04.2016 is quashed. The respondents shall grant the one increment which is said to be due and was not contested, and which has not been granted so far and fix the pension accordingly keeping the date of 3<sup>rd</sup> MACP as 01.09.2008. All due balance payments shall be recalculated and released to him within a period of eight weeks from the date of receipt of a copy of this order, along with interest at GPF

rate for the period 01.04.2015 up till the date of issue of these orders. The amount Rs. 12,213/- already recovered, shall also be paid back within this period.

O. A. Stands disposed of. There shall be no order as to cost.

(Pradeep Kumar)  
Member (A)

(A.K. Patnaik)  
Member (J)

“AS”