

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT BENCH, RANCHI
OA/051/01062/18**

Date of order: 20.12.2018

C O R A M

**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. PRADEEP KUMAR, ADMINISTRATIVE MEMBER**

Rafi Ahmad, S/o Late Reyasat Hussain, aged 61 years, resident of Village- Arsandre Bagicha Toal, PO- Boreya, PS- Kanke, District- Ranchi, Jharkhand.

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Applicant.

- By Advocate: - Mr. L.D. Ram

-Versus-

1. Union of India represented through the Director General of Posts-cum-the Secretary, Department of Post, Dak Bhawan, New Delhi, PO & PS- Sansad Marg, District- new Delhi-110001.
2. The Chief Post Master General, Jharkhand Circle, Meghdoot Bhawan, Doranda, PO- Campus, PO & PS- Doranda, District- ranchi-834002.
3. The Director of Postal Services, Office of the CPMG, Jharkhand Circle, PO & PS- Doranda, District- Ranchi, PIN- 834002.
4. The Dy. Director of Postal Assistants, Jharkhand Circle, Kanke, 1st Floor, PO- Building, PO & PS- Kanke, District- Ranchi, PIN- 834008, Jharkhand.
5. The Senior Superintendent of Post, Ranchi Division, Jharkhand Circle, PO- Ranchi GPO, PS- Sadar, District- Ranchi, PIN- 834002, Jharkhand.
6. The Senior Post Master, ranchi PO & PS- Ranchi, Kotwali, District- Ranchi, PIN- 834001.

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Respondents.

By Advocate: - Mrs. Shweta Singh, ASC.

**ORDER
[ORAL]**

Per Mr. J. V. Bhairavia, J.M.:- In the instant OA the applicant is aggrieved by the impugned decision which was delivered on the applicant on 30.11.2018

(Annexure A/6 refers) whereby the respondents have rejected the representation of the applicant by confirming their earlier decision dated 14.12.2017 under which the order under MACP was modified and recovery of overpayment of pay and allowances from the applicant was issued vide the said letter dated 14.12.2017 (Annexure A/6). Against the said impugned decision, the applicant has preferred the present OA.

2. The learned counsel for the applicant submitted that the applicant retired from service as Postman on attaining the age of superannuation on 31.07.2016 and thereafter he had received letter dated 31.07.2018 issued by the respondents whereby it was informed to him that the respondents vide their decision dated 14.12.2017 modified the order of MACP and further it was stated in the said letter that MACP was not due to him on 13.05.2011. In fact, it was due to him on 13.05.2017 and he was not entitled for 3rd MACP benefit which would have become due to him only on 13.05.2017. Since the applicant has already superannuated on 31.07.2016 therefore recovery of Rs. 1, 10, 668/- has been ordered against the applicant. Aggrieved by the said letter dated 31.07.2018, the applicant has approached this Tribunal by way of OA/051/00670/2018 which was disposed of vide order dated 10.08.2018 with the following directions:-

“ (i) The applicant shall submit a comprehensive representation against the recovery ordered vide Annexure A/4 order dated 31.07.2018 to Sr. Superintendent of Post Offices, Ranchi (respondent no. 5) within two weeks from today.

(ii) The respondent no. 5 shall dispose of the representation of the applicant within eight weeks thereafter by a speaking and reasoned order. While doing so, the respondent no. 5 shall keep in mind the ratio laid down by the Apex Court in Rafiq Masih (supra).

(iii) The applicant shall have liberty to take recourse to appropriate remedy, as available to him under law, in case he remains dissatisfied with the order to be passed by respondent no. 5.”

3. It is noticed that in response to the aforesaid order passed by this Tribunal the respondents have considered the case of the applicant and passed a speaking order which was served upon the applicant on 30.11.2018 (Annexure A/6 refers). On examination of the said order, it is noticed that after narrating service record of the applicant and the internal communication of the respondent Department, the respondents, i.e. Senior Superintendent of Post Offices, Ranchi Division has observed as under:-

“ The case of Sri Rafi Ahmad along with other officials was referred to CPMG, Ranchi (Respondent No. 2) vide Sr. Supdt. Ranchi Division Respondent No. 5) letter no. C1-04/2016/MT/RCC dated 27.02.2017 and pointed out the objection raised by DA(P). The CPMG, Ranchi vide letter no. Staff/MACP/ Ranchi/2010 dated 25.04.2017 directed for reversing the MACP memo of the ex. Officials.

The case was scrutinized by Sr. Supdt. of Post Offices (Respondent No. 5) and modified the order under MACP as per relevant Rules and as such recovery of the over payment of pay and allowances from Sri Rafi Ahmad was issued vide memo no. RNC/MACP-PA/2017 dated 14.12.2017.

ORDER

Therefore, I , Sadhan Kumar Sinha, Sr. Supdt. Of Post Office, Ranchi Division, Ranchi do hereby confirmed that this office memo no. RNC/MACP-PA/2017 dated 14.12.2017 is found correct as per departmental rules and regulations.

4. The learned counsel for the applicant submits that this Tribunal had directed the respondents to consider the case of the applicant by keeping in mind the ratio laid down by the Hon'ble Apex court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer)** as reported in AIR 2015 SC 696 more particularly with respect to issue of recovery. This Tribunal also directed to pass a speaking and reasoned order. However, no reason has been stated in the said speaking order except the internal communication and their earlier decision dated 14.12.2017. The respondents have not even discussed about the

applicability of the law laid down by the Hon'ble Apex court as referred hereinabove. The applicant has further submitted that neither he has submitted any undertaking for repayment of any excess amount nor misrepresented during his service before the respondent authorities. As such, there is no material against him on record. These aspects have not been considered by the respondents and an erroneous order has been passed which cannot be said to be a reasoned and speaking order. The applicant retired as a Group 'C' employee and it will be very hard and harsh for him to repay the claimed amount from the year 2011. Therefore, he has submitted that the said impugned order may be quashed and set aside.

5. On the other hand, Mrs. Shweta Singh, learned counsel appears and submits that the respondents have considered the entire service record of the applicant and it was found that though the applicant was not entitled to receive the benefit of 3rd MACP, but inadvertently it was granted to him and therefore vide decision dated 14.12.2017 the said benefit extended to the applicant has been reversed. There is no illegality in passing such order and recovering the excess amount from the applicant. It is further contended that the conclusion arrived at by the respondents is based on the service record of the applicant.

6. Heard the parties and perused the materials on record. It is noticed that undisputedly the applicant was granted benefit of 3rd MACP in the year 2011 by the respondent no. 5. The said decision for extending the benefit of MACP was of respondents only as there is no material on record about any misrepresentation of the applicant or any undertaking with regard to repayment of excess or overpayment granted under the MACP scheme. It is also noticed that vide order dated 10.08.2018 this Tribunal has directed the respondents to consider the case in the light of law laid down by the Hon'ble Apex court in the case of State of Punjab & ors. Vs. Rafiq Masih (supra). In response to the said

direction, the respondents have passed the impugned decision. On examination of the same, we find that there is no reason except the service record of the applicant and their conclusion for modification of the MACP order vide their earlier decision dated 14.12.2017 has only been discussed, but there is no iota of any discussion with respect to law laid down by the Hon'ble Apex Court (supra). Though it was directed to consider the said rulings of the Hon'ble Court while passing the speaking order, but the respondents failed to do so. Not only that, it is also noticed that the respondents have reiterated their stand as stated in the earlier decision dated 14.12.2017.

7. Under the circumstances, we find that the said impugned order cannot be said to be a reasoned and speaking order as the respondents failed to consider the law laid down by the Hon'ble Apex court as referred hereinabove. Thus, we are of the considered opinion that the impugned order suffers from infirmities and deserved to be quashed and set aside. Accordingly, the impugned decision as at annexure A/6 of the OA is quashed and set aside and the respondents are directed to settle the applicant's retiral dues expeditiously within three months from the date of receipt of this order. Accordingly, the OA is allowed on the issue of recovery. However, it does not preclude the respondents for fixation of correct pension of the applicant while deciding settlement of retiral dues. No order as to costs.

[Pradeep Kumar]/M[A]

[Jayesh V. Bhairavia]/M[J]

Srk.