

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 4622/2018

MA No. 2480/2019

Order Reserved on: 23.09.2019
Order Pronounced on: 26.09.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Subhash Chandra,
S/o Lt. Sh. Babulal,
R/o Flat No.303m EIL Apartment,
Pocket 6, Plot No.13, Sector 1-A,
Dewarka Opp. Nasirpur Sabji Mandi,
New Delhi-110045
Aged about 59 years,
(Group C) (Head Clerk) - Applicant

(By Advocate: Mr. Jatin for Mr. Ajesh Luthra)

VERSUS

1. Prasar Bharti Corporation,
Through Director General,
All India Radio, Sansad Marg,
Akashwani Bhawan,
New Delhi-110 001
2. Deputy Director (Administration)
All India Radio, Broad Casting House,
Sansad Marg, New Delhi-110001
3. Executive Engineer (E)-1,
Civil Construction Wing,
All India Radio,
Pocket C, Room No.849,
8th Floor, CGO Complex,
Soochna Bhawan, New Delhi - Respondents

(By Advocate: Mr. SM Arif)

ORDER

The applicant has filed this OA, seeking the following reliefs;-

- “a) Quash and set aside the impugned order dated 10.12.2018.
- b) Accord all consequential benefits.
- c) Award costs of the proceedings; and
- d) Pass any other order/direction which this Hon’ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.”

2. The applicant of this OA is mainly aggrieved by the impugned order dated 10.12.2018 of the respondents whereby the amount of Rs.3,34,808/- was ordered to be recovered from the retirement gratuity of the applicant in pursuance of re-fixation of pay on the recommendations of 6th CPC w.e.f. 01.01.2006 in respect of him. He has pleaded that consequent to grant of 2nd ACP benefit w.e.f. 02.09.2007, the respondents, as per their own wisdom and without any influence from the applicant, issued pay fixation order dated 12.11.2012 fixing his pay. He has alleged that subsequently, his pay was revised downwards vide pay fixation order dated 20.03.2012 and consequently, the impugned order recovering the excess amount of Rs.3,34,808 from the applicant was issued without issuing any show cause notice to him. The

applicant has challenged the said impugned order on the grounds that the applicant is a Group 'C' employee and any recovery would cause of hardship to him, as he had already utilized the excess amount received by him for the treatment of his wife who is suffering from lung cancer in the Action Cancer Hospital, Paschim Vihar, New Delhi. He has submitted that his case is thus squarely covered by the decision of the Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer)** –CA No. 11527 of 2014. Feeling aggrieved by the aforesaid impugned order, the applicant has filed the present OA.

3. The respondents, while contesting the OA, have filed their CA in which they have submitted that the impugned order dated 10.12.2018 was issued in terms of the conditions mentioned in the orders dated 12.11.2012 and 20.03.2017 wherein it was clearly mentioned that the said fixation is subject to audit and any overpayment made, if any, in the form of arrears or otherwise will be recovered from the applicant in lump-sum without notice. They have further contended that at the time of pay fixation, on 09.08.2016, an undertaking was also given by the applicant that in the event of his pay having been fixed in a manner contrary to the provisions

contained in the rules, as detected subsequently, any excess payment so made shall be refunded by the government Servant to the Government either by adjustment against future payment due to him or otherwise. They have thus prayed for dismissal of the OA.

4. After hearing both the parties and perusing the pleadings available on record, it is noticed that in the order dated 12.11.2012 whereby the pay of the applicant was fixed as Rs.18,900/-, it was clearly mentioned that the said fixation is subject to post Audit and in the light of Audit observations the overpayments made if any either in the form of arrears otherwise shall be recovered from the amount due to person concerned without notice. We have further examined the order dated 20.03.2017 whereby his pay was re-fixed w.e.f. 01.01.2006 and find that in the said order, it was categorically mentioned as under:-

“The above Pay fixation is in accordance with Hon’ble CAT, PB, Delhi order dated 21.01.2016 in OA NO.261/2016 wherein there is stay on recovery whereas no stay on fixation w.e.f. 01.01.2006 issued vide DG: AIR, S-II, Section No.C-180913/06/2016.II/1136 dated 16.05.2016.

The above fixation is subject to audit and any over payment made, if any, either in the form

of arrears or otherwise will be recovered from him in lumpsum without notice.”

5. We also find on record an undertaking furnished by the applicant on 09.08.2016 in respect of his pay fixation and which reads as under:-

“UNDERTAKING

I hereby undertake that in the event of my pay having been fixed in a manner contrary to the provisions contained in these Rules, as detected subsequently, any excess payment so made shall be refunded by me to the Government, either by adjustment against future payments due to me or otherwise.”

6. It is also noticed that in an identical case of **High Court of Punjab & Haryana & Ors. v. Jagdev Singh** (Civil Appeal No.3500/2006), the Hon’ble Supreme Court, while examining the case of **Rafiq Masih** (supra), had observed as under:-

“8. The order of the High Court has been challenged in these proceedings. From the record of the proceedings, it is evident that when the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit which has been filed by the Respondent in these proceedings, this position has been specifically [1]admitted. Subsequently, when the rules were revised and notified on 7 May 2003 it was found that a payment in excess had been made to the Respondent. On 18 February 2004, the excess payment was sought to be recovered in terms of the undertaking.

9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In *State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc.*¹, this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.”

11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

It is clear from the aforesaid order that principles enunciated in the case of Rafiq Masih (supra) cannot apply to a situation where an undertaking has already been furnished by the applicant.

7. For the aforesaid reasons, we do not find any merit in this OA and the same is dismissed accordingly. Pending MA No. 2480/2019 also stands disposed off. No order as to costs.

(Nita Chowdhury)
Member (A)

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