

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

- (1) ORIGINAL APPLICATION NO.203/00886/2018**
- (2) ORIGINAL APPLICATION NO.203/00887/2018**
- (3) ORIGINAL APPLICATION NO.203/00888/2018**
- (4) ORIGINAL APPLICATION NO.203/00889/2018**
- (5) ORIGINAL APPLICATION NO.203/00890/2018**
- (6) ORIGINAL APPLICATION NO.203/00891/2018**
- (7) ORIGINAL APPLICATION NO.203/00892/2018**
- (8) ORIGINAL APPLICATION NO.203/00893/2018**
- (9) ORIGINAL APPLICATION NO.203/00894/2018**
- (10) ORIGINAL APPLICATION NO.203/00895/2018**
- (11) ORIGINAL APPLICATION NO.203/00896/2018**
- (12) ORIGINAL APPLICATION NO.203/00897/2018**

Bilaspur, this Friday, the 20th day of September, 2019

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Milap Ram Chandra, S/o Late Shri Mayaram, aged about 56 years, R/o Ruchika Vihar, Ward No.14, Sirgitti, Near Sharda Mandir, Tahsil Bilaspur, Police Station Sirgitti, District Bilaspur (C.G.)-495001

- APPLICANT IN OA No.203/00886/2018

Naresh Chandra Nayak, S/o Bharathi Nayak, aged about 55 years, R/o MTPL Junction, Chamaria Guda, Tahsil and District Nawrangpur-674059 (Odisha)

- APPLICANT IN OA No.203/00887/2018

Prabhat Ranjan Dutta, S/o Late Shri Nalini Mohan Dutt, aged about 54, resident of village Samina, Post Kopisingha, District-Sundargarh (Odisha)-770001

- APPLICANT IN OA No.203/00888/2018

Inuganti Venkata Narasimha Murthy, S/o Late Sri I.Raja Rao, aged about 54 years, R/o D.No.23-19-54, Srinivas Apartment, Flat No.S/1, Lalithanagar, Haripuram, Tahsil Rajahmundry, Police Station Rajahmundry, District East Godavari (A.P.)

- APPLICANT IN OA No.203/00889/2018

K.S.Chatterjee, S/o Late Shri S.P.Chatterjee, aged about 56 years, R/o Bainkunthpur, Ward No.16, Near Jagannath Mandir Tahsil and Police Station Raigarh, District Raigarh (C.G.)-496001

- APPLICANT IN OA No.203/00890/2018

Ramesh Chandra Prusty, S/o Late Shri Bhabagrahi Prusty, aged about 56 years, R/o Basic Seed Multiplication and Training Centre (BSMTC), Central Silk Board, Government of India, Kashipur, Near Petrol Pump, Police Station Keonjhar, District Keonjhar (Odisha)-758001

- APPLICANT IN OA No.203/00891/2018

Manoj Kumar Senapati, S/o Kate Pitamber Senapati, aged about 60 years, Post-Dehurda, Behind Electric Office, Tahsil and Police Station Bhograi, District Balasore (Odisha)-756001

- APPLICANT IN OA No.203/00892/2018

Rachakonda Gnaneshwar, S/o Late R.Venkaiah, aged about 56 years, R/o Plot No.179, Christian Colony, Hastinapuram South, District Hyderabad (Telangana)-500003

- APPLICANT IN OA No.203/00893/2018

A.K.Das, S/o Late Shri N.Ch.Das, aged about 57 years, Resident of MIG 2/11, Housing Board Colony, Dharampur, Jagdalpur, Tahsil Jagdalpur District-Bastar(C.G.)-494001

- APPLICANT IN OA No.203/00894/2018

Arup Kumar Goswami, S/o Sisir Kumar Goswami, aged about 60, Resident of Kundu Bungalow, beside Electric Office, Tahsil and Police Station Madhupur, District Deoghar (Jharkhand) Pin-814112

- APPLICANT IN OA No.203/00895/2018

Pradeep Kumar Khosla, S/o Santisilo Khosla, aged about 57 years, R/o Christian Street, Tahsil and Police Station Jeypore, District Jeypore (Odisha)-764001 -

- APPLICANT IN OA No.203/00896/2018

Fakir Hansdah, S/o Late Kanhoo Ram Hansdah, aged about 58 years, R/o 25-E Gaitadih, Bank Colony, Gaitahdih, Post Karandih Jamshedpur, Tashil Jamshedpur, Police Station Sundarnagar, District East Singhbhum (Jharkhand)-831001-
APPLICANT IN OA No.203/00897/2018
(By Advocate –Rohit Sharma)

Versus

1. Union of India through the Secretary, Ministry of Textiles, Udyog Bhawan, New Delhi-110 001.

2. Central Silk Board, Through the Member Secretary, CSB Complex, B.T.M. Layout, Madivala, Bangalore-560068 Karnataka.

3. Basic Tasar Silkworm Seed Organisation, Central Silk Board, Through the Director (Ministry of Textiles, Government of India) Pendari-via-P.O. Bharni, District Bilaspur (C.G.)-495001.

- Common Respondents in all the 12 Cases
(By Advocate – Shri Vivek Verma)

COMMON ORDER

By Navin Tandon, AM.-

The applicants are aggrieved by identical orders of recovery passed by the respondents in the years 2016 & 2018, on account of wrong fixation of pay, which was done in between 2001 and 2005.

2. At the out set, learned counsel of both the parties have submitted that the facts involved & relief sought for in all these 12 cases are identical. Hence, these are being disposed of by this common order.

3. For the sake of convenience, the facts stated below are taken from Milap Ram Chandra (Original Application No.203/00886/2018).

4. The brief facts of case are that the while the applicant was working as Upper Division Clerk in the pay scale of Rs.4000-100-6000, he was granted higher pay scale of Rs.5000-8000 with effect from 03.08.2003 vide order dated 04.08.2003 (Annexure A/5) when his junior was granted

financial upgradation under the Assured Career Progression Scheme (for brevity 'ACP').

4.1 The above grant of higher pay scale to the applicant was objected by the Internal Audit Wing of Ministry of Textiles and AG Audit during audit of Accounts of the Central Silk Board by stating that the upgradation allowed to the seniors is not in conformity with the instructions contained in the DoPT Office Memorandum No.35034/1/97-Estt(D) dated 09.08.1999. Therefore, the Ministry of Textiles ordered that the higher pay scales erroneously granted to the seniors who were actually not eligible for the financial upgradation as per the ACP scheme should be withdrawn and their pay refixed as per their entitlement and the excess payment made recovered.

4.2 In view of above directions, respondent No.2 passed the impugned order dated 16.05.2016 (Annexure A-2) by withdrawing the higher pay scale granted to the applicant and ordered to make recovery. By subsequent order dated 10.05.2018 (Annexure A-1), respondent No.3 ordered to effect recovery from the arrears on account of implementation of the 7th Central Pay Commission recommendations and in case the recoverable amount is more than the 7th CPC arrears, the same shall be recovered from their salary in monthly instalments.

5. The applicant has prayed for the following relief in this Original Application:

“(8.1) That this Hon’ble tribunal may kindly be pleased to set aside the impugned order dated 10.05.2018 (Annexure A/1) and order dated 16.05.2016 (Annexure A-2) passed by respondent no.3 and further be pleased to restrain the respondents from making any recovery from the applicant, in the interest of justice.

(8.2) That, this Hon’ble Tribunal may kindly be pleased to allow the Original Application in the interest of justice.

(8.3) Any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the costs of the application may be given”.

6. During the course of arguments, learned counsel for the applicants has submitted that Original Application No.170/00768-810/2018 (**Sri M.K.Srinivas & others Vs. The Director National Silkworm Seed Organization & others**) filed by similarly placed persons has been disposed of by Bangalore Bench of this Tribunal vide order dated 02.04.2019 by holding that there can be a future modification of pay scale and pension, but what has been granted to them already can not be taken away from them and cannot be recovered at all.

6.1 The learned counsel for the applicants further placed reliance on another decision of Ranchi Circuit Bench of this Tribunal in five other similar matters decided by a common order dated 21.08.2019 (leading case – **Md.Shamim Vs. Union of India and others**, OA 051/00232/2019) wherein the Tribunal disposed of those Original Applications in

line with the decision in the case of **M.K.Srinivas** (supra), by further directing that if any amount is recovered or adjusted, the same shall be refunded.

7. Learned counsel for the respondents relied upon an order of Principal Bench of this Tribunal in the matters of **Rajinder Kumar Batra Vs. Secretary, Department of Health and Family Welfare & others**, 2018(1) SLJ(CAT) 252 wherein it has been held that employees can not be allowed to take benefit of an erroneous, though inadvertent, action of the respondents.

8. We may reproduce the contents of the orders passed by Bangalore Bench of the Tribunal in the matters of **M.K.Srinivas** (supra) as under:-

*“Heard. The matter is in a very small compass. The issue is between the promotees and direct recruitees. Promotees on the way had acquired more than the requisite number of minimum career enhancement as dictated by the Hon’ble Apex Court. Then they came into a particular pay scale. To this pay scale direct recruitees were also appointed and then in course of time, after 10 years they got their 1st MACP because they had not been given a promotion. Therefore, some of them had outpaced the promotees in the scale of pay as they were direct recruitees who were on equivalent pay scale but now granted addition of ACP or MACP as the case may be. Therefore, on the basis of the representation the department held that the promotees were also eligible for the same benefit. It appears to us that may be the Member Secretary was little but more liberal than warranted but **applicant and others had been enjoying the benefit of more than 5 years and most of them are on the verge of their retirement now. They will come under the protective umbrella of the Whitewasher judgment of the Hon’ble Apex Court. There can be a future modification of pay scale and***

the pension. But what has been granted to them already cannot be taken away from them and cannot be recovered at all.

Therefore, we will now declare that there cannot be any recovery but the revised pay scale if it had been made after giving an opportunity will rule the field. If they have not been heard, the respondents will issue them individual notices, hear them on this matter and fix their pay scale in accordance with law. OA is disposed of as above. No order as to costs”.

(emphasis supplied by us)

9. On perusal of the above order we find that the Bangalore Bench of the Tribunal by applying the ratio of the decision of the Hon’ble Supreme Court in the matters of **State of Punjab & ors.Vs. Rafiq Masih (White washer)** (2015) 4 SCC 334 has held that since the applicants in the said case were enjoying the benefit of more than 5 years and most of them were on the verge of their retirement now, what has been granted to them already cannot be taken away from them and cannot be recovered at all.

10. In the matters of **Rafiq Masih** (supra) their lordships have held 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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. In the instant cases we find that all the applicants were granted the higher pay scale during the years in between 2001 and 2005 and more than 10 years had already elapsed when the orders of recovery were issued. We also find that some of the applicants are also at the verge of retirement. Therefore, we are in full agreement with the decision of our co-ordinate Bench in the matters of **M.K.Srinivas** (supra) and these Original Applications are also liable to be disposed of in the same terms.

12. As regards the reliance placed by the learned counsel for the respondents on the decision of **Rajinder Kumar Batra** (supra), we find that in the said matter the pay of the applicant was fixed in the year 2011 and the order of recovery was issued in 2014 i.e. the order of recovery was passed within a period of less than five years, therefore, the said decision is not applicable here, as in the present cases orders of recovery were passed after more than a decade.

13. Accordingly, all these Original Applications are disposed of with a direction that there can be a future modification of pay scale and the pension. But what has been granted to the applicants already cannot be taken away from them and cannot be recovered at all. Any amount recovered be refunded to the applicants within 90 (ninety) days from the date of receipt of a copy of this order. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

rkv