

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 39 of 2018

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Rabindra Kumar Parida, aged about 61 yrs, S/o late Iswar Chandra Parida, At-Mutunia, PO – Bhandisahi, PS – Kakatpur, Dist. – Puri.

.....Applicant

VERSUS

1. Union of India, represented through its Director General of Post Offices, New Delhi.
2. Senior Superintendent of Post Offices, Bhubaneswar Division, Bhubaneswar, Dist. – Khurda.
3. Sr. Postmaster, Bhubaneswar, GPO, Bhubaneswar, Dist. – Khurda.
4. Sub-Postmaster, Sainik School, Bhubaneswar, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.M.K.Khuntia, counsel

For the respondents: Mr.G.R.Verma, counsel

Heard & reserved on : 22.4.2019

Order on : 1.5.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA has been filed seeking the following reliefs:-

- "(i) To quash the order dtd 24.3.2017 under Annexure A/2.
- (ii) To direct the respondents to refund the amount of Rs.1,79,592/- recovered from the applicant vide Annexure A/2.
- (iii) And pass such other order/orders as may be deemed fit and proper for the interest of justice."

2. The applicant was appointed as a postman since 11.2.1983. He was then promoted to the post of Postal Assistant on 26.7.1988 and as Postmaster in 2007. The applicant, after his retirement on 28.2.2017, was informed vide the impugned order dated 24.3.2017 (Annexure-A/2) that an amount of Rs. 179592/- is recoverable from the applicant on account of government dues and the applicant was directed to deposit the same. The applicant deposited the said amount and then his pension and retirement benefits were released. Then he submitted a representation dated 3.3.2017 (Annexure-A/3) for refunding the same amount.

3. Following grounds have been advanced for the OA:-

- (i) No recovery should have been ordered without following the procedure under the CCS (CCA) Rules, 1965.

(ii) The recovery of the amount from the applicant is not in accordance with the DOPT O.M. dated 2.3.2016 (Annexure-A/4).

(iii) No reason for recovery of the amount in question has been communicated and no opportunity of being heard was given to the applicant. Hence, there is violation of the principles of natural justice.

4. The respondents have filed the Counter opposing the OA. It is stated in the Counter that the applicant was wrongly given the MACP benefit w.e.f 1.9.2008. It was revealed subsequently that the applicant was due for availing third MACP benefit w.e.f. 24.2.2013 i.e. after completion of 30 years or 10 years from the last promotion or upgradation which happened on 8.8.2004 when he was given the benefit of TBOP. The MACP benefit given to the applicant was irregular and the excess amount of Rs. 179592/- was recovered as per the DG Posts order dated 18.10.2010 on MACP (Annexure-R/4). It is also stated that no proceeding under the CCS (CCA) Rules, 1965 is required to be initiated since the excess amount paid to the applicant was recovered and it was not a penalty imposed on the applicant.

5. The applicant has filed the Rejoinder stating that he was eligible for second MACP benefit after 10 years from the date of promotion as Posta Assistant on 26.7.1998, i.e. from 26.7.1998. Then third MACP benefit should be permissible w.e.f. 1.9.2008 which was correctly allowed by the respondents. It is also stated that even if it was wrongly given to the applicant, the excess amount cannot be recovered in view of the judgment of Hon'ble Apex Court in the case of State of Punjab & other vs. Rafiq Masih (White Washer) & others, reported in (2015) 4 SCC 334, the amount of excess payment should not have been recovered from the applicant.

6. Learned counsel for the applicant and the respondents were heard by me. They reiterated their respective stands in the pleadings. In the OA no dispute about the date from which the applicant is eligible for third MACP benefit has been raised. Although the point was raised in the Rejoinder, the OA was not amended to include any prayer regarding the date from which the applicant would be eligible for third MACP benefit. Hence, the only point to be decided in this OA is whether the applicant is whether the applicant will be entitled for exemption from recovery of the excess amount paid to him on account of wrong sanction of the MACP benefit.

7. The applicant relies upon the DOPT O.M. dated 2.3.2016 which is issued after the judgment in the case of Rafiq Masih (supra) to aver that no recovery of excess amount was permissible. Another ground is that the principles of natural justice has been violated in this case since no opportunity of hearing was given to the applicant and from the pleadings on record, this allegation of the applicant is correct. In fact, the impugned order dated 24.3.2017 (Annexure-A/2) has communicated the decision of the respondents to effect the

recovery of excess payment from the applicant, without giving any reason for such excess payment or recovery. The order dated 24.3.2017 passed by the respondent No. 3 stated as under:-

"Sub : Recovery of outstanding dues of Rs.179592/- in respect of Sri R.K.Parida, retired on 28.2.2017 as ex-SPM from Bapujee Nagar.

A schedule of DCRG payment of Rs.787644/- in respect of Sri Rabindra Kumar parida, ex- SPM of Bapujee Nagar SO is enclosed herewith for crediting the above amount in his SB A/c No. 2648197999 showing as payment of DCRG,. It is also requested to withdraw a sum of RS.179592/- (Rupees One lakh seventy nine thousand five hundred and ninety two only) and deposit under UCR in MPCM counter towards recovery of outstanding Govt. dues against said ex-official.

Please send the UCR receipt to this office for record."

8. The impugned order dated 24.3.2017 to a retired employee giving no reason for recovery of Rs. 179592/- from the DCRG payment of Rs. 787644/- without giving any opportunity of hearing or any reason for such recovery clearly violated the principles of natural justice. The reason for recovery was revealed by the respondents only in the Counter to the OA filed by the applicant. It is a matter of concern to see how a senior officer like the respondent No.3 can take coercive action against a retired employee like recovery of excess payment, without giving an opportunity of hearing and without communicating any reason for such recovery. However, since the reason has now been communicated in the Counter and the applicant has submitted the Rejoinder, it is accepted that the applicant's reply on the issue has been taken on record. The averment in the Rejoinder regarding applicant's eligibility for MACP for not affecting the recovery cannot be adjudicated in this OA, since the eligibility of MACP has not been included in the prayer made in the OA.

9. Regarding the averment of the applicant that as per the Rafiq Masih judgment and DOPT O.M. dated 2.3.2016 (A/4), the excess amount cannot be recovered, it is seen that the aforesaid DOPT circular states as under:-

"4. The Hon'ble Supreme Court while observing that 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 has summarized 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.

(iv) 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.

5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries / Departments are advised to deal with the issue of wrongful / excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014."

10. From the above circular of the DOPT, it is clear that the order for not taking up of the recovery will be passed in case of hardship. In para 13 of the Counter, the applicant has been blamed for the excess payment due to wrong payment of MACP benefit from the date he was not eligible. These averments to justify the recovery through a non-speaking and illegal order dated 24.3.2017 is not at all acceptable. It is stated in para 8 of the Counter that the recovery has been effected as per the circular dated 18.10.2010 (Annexure-R/4) of the DG, Posts. It is not explained why the overpayment was not detected within a reasonable time after receipt of the circular dated 18.10.2010 and it could be detected only after the retirement of the applicant. Had the respondents been alert, the excess payment on account of the MACP could have been detected prior to the retirement of the applicant. There is no explanation in the respondents' pleadings about delay in detecting the excess payment made to the applicant. It is clear that some authorities have failed in their duty in timely detection and recovery of the excess payment made to the applicant in this case.

11. In view of the circumstances as discussed above, I am unable to accept the contentions of the respondents to justify the recovery made from the applicant by forcing him to deposit the amount before releasing his retirement dues and am of the view that action to recover the excess payment by issuing a non-speaking order dated 24.3.2017 (Annexure-A/3) is illegal and hence, it is not sustainable in the eye of law. Hence, following the judgment of Hon'ble Supreme Court in the case of Rafiq Masih (supra), the OA is allowed and the respondents are directed to refund the amount of Rs. 179592/- recovered from the retirement benefit of the applicant to the applicant within four months from the date of receipt of a copy of this order. But since the overpayment has been made to the applicant due to fault of the respondents and the supervisory authorities of the applicant have failed to ensure recovery of the excess amount

from the applicant following due process of law, the respondent no.1 may consider to fix responsibility on the concerned officials who are responsible for failure to act in this case in accordance with the DOPT O.M. dated 2.3.2016 (Annexure-A/4) and take appropriate action under law to recover the loss to Government on this issue from these officials to be found responsible.

12. The OA is allowed to the extent mentioned above. No costs.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath