

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00410/2018

Wednesday, this the 4th of September, 2019.

CORAM:

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

A.G. Mohanan, 66 years,
S/o. A.N. Gopalan (late),
Mailman (Retd.),
Meppally House, Sajeev Road,
Palluruthy, Cochin – 682 006.

- Applicant

[By Advocate : Mr. C.S.G. Nair]

Versus

1. Director of Accounts (Postal),
Kerala Circle, Trivandrum – 695 001.
 2. Superintendent,
Railway Mail Service, E.K. Division,
Cochin – 682 011.
 3. Head Record Officer,
RMS EK Division,
Kochi – 682 011.
 4. Postmaster,
Head Post Office,
Kochi – 682 001.
 5. Union of India,
Represented by its Secretary,
Department of Pension & Pensioners' Welfare,
South Block, New Delhi – 110 001.
- Respondents

[By Advocate : Mr. T.C. Krishna, Senior PCGC]

The application having been heard on 04.09.2019, the Tribunal
on the same day delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member

The applicant filed this O.A seeking the following reliefs:-

- “(i) To call for the records leading up to the issue of Annexure A6, A7, A8 and A11 and quash the same.*
- (ii) To declare that reduction of pension after the lapse of more than two years of its authorisation, is illegal.*
- (iii) To declare that the applicant is entitled for a monthly pension of Rs. 6,820/- as authorized in Annexure A-4.*
- (iv) To direct the respondents to refund an amount already recovered from the applicant towards the alleged excess payment after his retirement on 31.10.2011.”*

2. The applicant joined in service as Mailman and retired from service on superannuation on 31.10.2011 from the Postal Department after rendering 39 years and 3 months of service. Applicant had received a copy of Intimation of Revised Gratuity vide respondents' letter dated 27.06.2017 and an additional amount of Rs. 19,025/- was sanctioned over and above the amount of Rs. 3,36,567/-. The Revised Commuted Value Payment (CVP) was also issued to the applicant on 27.06.2017. As per Annexure A-5 letter dated 21.03.2018, applicant was entitled for only Rs. 2,60,373/- towards CVP. But, an amount of Rs. 7,866/- was paid in excess. Intimation of Revised Gratuity dated 13.03.2018 was issued by the 1st respondent vide Annexure A-6. Similarly, the revised Gratuity and excess was issued by the 1st respondent vide Annexure A-6. Learned counsel for the applicant submits that the respondents did not intimate the applicant as to how the alleged excess payment was worked out. Recovery is being made from the pension of the applicant on the ground of alleged excess payment. The Hon'ble Supreme Court in *State of Punjab & Others v. Rafiq*

Masih (White Washer) in Civil Appeal No. 11527/2014 held that recovery from retired employees would be impermissible in law. Hence, the applicant approached this Tribunal for redressal of his grievances.

3. Notices were issued and Mr. T.C. Krishna, learned Senior PCGC appeared for the respondents and reply statement was filed.

4. Learned counsel for the respondents submitted that fixation has been done after considering the revision of pension with effect from 01.01.2006. Detailed chart is given at para 5 of the reply, which is quoted below:

@2000 Grade pay as on 01.01.2006						
	Basic pay	3% increment		Grade pay	Total Basic+GP	Remarks
01.01.2006	8100		8100	2000	10100	
01.01.2006	8410	310	8410	2000	10410	
01.07.2007	8730	320	8730	2000	10730	
01.07.2008	9060	330	9060	2000	11060	
01.09.2008	9400	340	9400	2400	11800	MACP III
01.07.2009	9760	360	9760	2400	12160	
01.07.2010	10130	370	10130	2400	12530	
01.07.2011	10510	380	10510	2400	12910	

He also submitted that the applicant has no case as the respondents have done correctly the fixation of pay in accordance with Government of India guidelines. Para 2 (a) of OM No. 1-20/2008-PCC dated 04.11.2013 reads as follows:-

'Pay will be fixed in such cases as on 01.01.2006 strictly in accordance with provisions of CCS (RP) Rules, 2008 and officials due for financial upgradation during the period from 01.01.2006 to 31.08.2008 will be allowed the notified pay bands with grade pays/corresponding pay bands with grade pays with reference to the pre-revised pay scales or the pay bands with next higher grade pays as the case may be. With the introduction of MACP Scheme effective from 01.09.2008, their admissibility of financial

upgradation may be reviewed on 01.09.2008 with reference to promotion/finanacial upgradation earned applying provisions of para 5 of Annexure -1 to MACPS. Thereafter, the provisions of the MACPS as mentioned in Annexure 1 to MACPS will come into play.'

5. Learned counsel for the respondents further submitted that as such, the pay of the applicant for the period from 01.01.2006 to 01.07.2011 was refixed @ Rs. 1800/- Grade Pay on 01.01.2006 and by granting MACP III with Grade Pay of Rs. 2400/- on the date of implementation of MACP Scheme. Pay fixation calculation is shown above. In the reply statement, it was submitted by the respondents that the last basic pay of the applicant was increased to Rs. 13,630/- from 12,910/- and the pension of the applicant was also increased comparatively from Rs. 6455/- to Rs. 6820/-. The applicant was also paid the difference in the commuted value of pension amount of Rs. 14356/- with reference to his increased pension amount.

6. On recalculation of pension as stated in para 7 of the O.A, last basic pay of the applicant was decreased to 13,240/- from 13,630/-. So, there was a comparative decrease in his pension from Rs. 6,820/- to Rs. 6,620/- with instruction to recover Rs. 18,746/- paid to the applicant towards excess pay and allowances and Rs. 7,866/-. The excess amount however, respondents have already recovered Rs. 10,921/- out of Rs. 26,612/-. The applicant has challenged the recovery of the balance amount. The respondents' counsel also submits that the applicant has agreed to pay the amount in 8 installments.

7. Though the applicant has questioned the fixation of his pension by respondent but the same has not substantiated. Thus, this Tribunal holds that fixation of pay of the applicant is correct. But the learned counsel for the applicant Mr. C.S.G. Nair submitted that now after lapse of so many years, the respondents cannot allowed to be recovered the said amount. In support of his contention, he has relied upon Apex Court decision in ***State of Punjab & Others v. Rafiq Masih (White Washer) in Civil Appeal No. 11527/2014*** the recovery from retired employees based upon the Rafiq Masih, the Department has issued O.M dated 18.03.2015. Thus, recovery is illegal.

8. The learned counsel for the applicant has drawn my attention to para 4, page 19 of the O.A, which is quoted below:-

“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 recover, 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.

(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 for outweigh the equitable balance of the employer's right to recover.”

9. After considering the entire facts and circumstances of the case

in view of Apex Court decision in Rafiq Masih case followed by DoPT Circular, this Tribunal is of the view that no recovery can be made from the pension of the applicant. Hence, Annexure A-6 order of recovery is set aside. It is also declared that the refixation of pension is done by the respondent under the relevant rule correctly. The O.A is disposed of. There shall be no order as to costs.

(Dated, 4th September, 2019.)

(ASHISH KALIA)
JUDICIAL MEMBER

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Applicant's Annexures

- Annexure A-1 - True copy of the PPO No. Postal/2011/KE/20649/pen 9
- Annexure A-2 - True copy of the Revised Gratuity No. POSTAL/1826/2011/KE/20649/DCRG/R/2/pen 4 dt: 27.6.2017 issued by the 1st respondent.
- Annexure A-3 - True copy of Revised Commuted Value Payment (CVP) Authority issued on 27.6.2017 by the 1st respondent.
- Annexure A-4 - True copy of the Corrigendum PPO No. 1819/20649/I/pen 4 dt: 27.6.2017 issued by the 1st respondent.
- Annexure A-5 - True copy of the Revised Commuted Value Payment (CVP) Authority issued on 21.03.2018 by the 1st respondent.
- Annexure A-6 - True copy of the Intimation of Revised Gratuity No. 6794/POSTAL/2011/KE/20649/DCRG/R/3/pen 4 dt: 13.3.2018 issued by the 1st respondent.
- Annexure A-7 - True copy of the Corrigendum Pension Payment Order No. 6790/POSTAL/2011/KE/20649/RP-718/pen 4 dt: 21.3.2018.
- Annexure A-8 - True copy of the Memo No. AN-2/Postal/17-18 dt: 26.3.2018 issued by the 4th respondent.
- Annexure A-9 - True copy of the Memo No. PEN/778 dt: 4.4.2018 issued by the 2nd respondent.
- Annexure A-10 - True copy of the Memo No. PEN/778 dt: 4.4.2018
- Annexure A-11 - True copy of the Memo No. A1/Misc-con. dt: 6.4.2018 issued by the 3rd respondent.
- Annexure A-12 - True copy of the O.M No. F. No. 18/03/2015-Estt. (Pay-I) dt: 2.3.2016 issued by the DOPT.

Annexures of Respondents

- Annexure R-1 - True copy of the OM No. 1-20/2008-PCC (Pt) dated 18.07.2011
- Annexure R-2 - True copy of OM No. 1-20/2008-PCC dated 04.11.2013
- Annexure R-3 - True copy of relevant page showing Standard Pay Scales in Swamy's -CCS (Revised Pay) Rules, 2008
- Annexure R-4 - True copy of the undertaking dated 10.04.2018 submitted by the applicant
