

4b

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR**

ORIGINAL APPLICATION No.2119/2015

Dated this Tuesday, the 24th of September, 2019

CORAM : DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)

Smt. Helen Elphic Joseph, aged about 62 years, retired as Sr. Steno in the office of AQAW (A), Ambajhari, R/o 7/6/7, Vasant Vihar, Khadgaon Road, Wadi, Nagpur 440 023. **- Applicant**
(By Advocate Shri B.Lahiri)

VERSUS

1. Union of India, through, The Secretary, Ministry of Defence, South Block, New Delhi 110 011.
2. The Director General, Directorate of General of Aeronautic Quality Assurance, 'H' Block, New Delhi 110 011.
3. The Principal CDA (Pensions), Civil Draupadi Ghat, Allahabad 211 014.
4. The Director, A.Q.A.W (A), Ambajhari, Nagpur 440 021. **- Respondents**

(By Advocate Shri R.G.Agrawal)

Order reserved on 22.08.2019

Order pronounced on 24.09.2019

ORDER

Smt. Helen E. Joseph, retired Senior Stenographer from office of Aeronautical Quality Assurance Wing (A), Ambajhari, Nagpur filed this OA on 28.04.2015. She has sought quashing and setting aside of corrigendum issued on 30.01.2015 to her pension payment order (Annex A-1) by respondent No.3 i.e. Principal Controller of Defence Accounts (Pensions), Civil Draupadighat, Allahabad (Prayagraj) proposing recovery of Rs.31,408/-

and the impugned communication dated 14.02.2015 issued by respondent No.4 i.e. Director, AQAW(A) Ambajhari, Nagpur directing her to deposit Rs.11,838/- which had been paid to her in excess. She also seeks declaration that the pension authorized by the PPO dated 14.02.2012 (Annex A-7) cannot be revised to her disadvantage, and the impugned recovery is impermissible in law in terms of paragraph No.12(i to v) of the Apex Court decision in **State of Punjab and Others Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334 decided on 18.12.2014** as well as grant of cost of these proceedings.

2. Summarized facts :-

2(a). The applicant has stated that while working as Senior Stenographer with the office of AQAW (A) Ambajhari, Nagpur, she retired from service on 30.06.2012. On completion of 20 and 30 years of service she had been granted 2nd and 3rd MACP from 01.09.2008 in Pay Band II (Rs.9,300-34,800/-) and Grade Pay of Rs.4,600/- and Rs.4,800/- (copies of the respective pay fixation orders dated

30.04.2010 and 28.05.2010 are at Annex A-4 and A-5).

2(b). On her retirement, in accordance with the PPO dated 14.02.2012 (Annex A-7) she was sanctioned pension of Rs.7,492/- per month after commutation (Annex A-6 & A-7), and she claims to have been drawing monthly pension accordingly. Later on, she came to know about an order of refixation of her pay, so obtained a copy of the order dated 26.06.2014 under Right to Information Act (Annex A-8) and learnt that the Department had prepared her new and drawn statement on the basis of wrong fixation of her pay.

2(c). Hence she represented on 11.12.2014, 19.12.2014 and 13.02.2015 to the respondents for correction to the erroneous pay fixation. In spite of those representations, the respondent No.4 has issued the impugned order dated 14.02.2015 (Annex A-3) asking her to deposit Rs.11,838/- being the amount of excess payment. Then the respondent No.4 forwarded a copy of the corrigendum to her PPO issued on 30.01.2015 (Annex A-1) by refixing her monthly

pension after commutation as Rs.7,191/- and capitalized value of pension as Rs.4,71,385/- instead of earlier fixed amount of Rs.4,84,561/-. Accordingly, Rs.18,232/- as difference in amount of gratuity and Rs.13,176/- as difference in value of commuted pension, totaling to amount of Rs.31,408/- were to be recovered from her pensionary benefits. The impugned recovery has been made without giving any prior notice or pre-decisional hearing to the applicant and the impugned communication is without any discernible sense or logic. Therefore, the OA was filed.

2(d). After admitting the OA on 01.05.2015, stay was granted to recovery from her pension of the excess amount paid to her earlier. Thereafter, interim relief was continued till the OA was decided on 23.09.2016, when it was allowed, the revised PPO dated 30.01.2015 issued by the respondent No.3 and the order of recovery of Rs.31,408/- were quashed and it was ordered that the applicant would continue

to get pension as per the PPO dated 14.02.2012.

2(e). Challenge to that order in Writ Petition No.3620 of 2017 was decided on 17.09.2018 setting it aside and restoring the matter back to permit the parties to amend their pleadings to place necessary details on record and to pass suitable orders after hearing them. Subsequently, the respondents filed their amended reply on 19.12.2018 with MA No.2003/2019. The applicant also filed reply to it. Then the learned counsels for the parties were finally heard on 19.08.2019 and 22.08.2019, and original copy of the applicant's undertaking was produced by the respondents on 23.08.2019. After verifying it and retaining its photocopy, it was returned to the respondents on the same day.

3. Contentions of the parties :-

In the OA and during arguments of the applicant's counsel on 22.08.2019, the applicant has contended that -

3(a). the impugned action of the respondents to reduce her pension for recovery of heavy amount is illegal, unfair and unsustainable in law;

3(b). as per well settled law, for any action which results in civil consequences, giving of notice and opportunity of pre-decisional hearing is mandatory. But the impugned action having civil consequence causing hardship to her has been taken by the respondents without notice and hearing. Therefore, it is not only illegal and arbitrary but is also contrary to the principles of natural justice;

3(c). detection of excess payment made to her earlier is a hasty action taken by the respondent No.4 without any sound reasoning. The applicant's pension papers were finalized after strict scrutiny of her payment details made at different stages by the Competent Authority in terms of Rule 59 of CCS (Pension) Rules. But after a period of more than three years, the respondents cannot declare the payment made to her as wrong without considering the statutory rules;

3(d). as per the rules 8, 9 and 70 of CCS (Pension) Rules, pension once authorized after final assessment cannot be revised to disadvantage of the Government servant. Thus the action of the respondents in reducing her pension is illegal, unfair and unsustainable in law. Therefore, the OA should be allowed;

3(e). in the facts and circumstances of the case, the respondents are barred by law of estoppel as per Section 115 of Evidence Act, 1872. The salary was paid by the respondents from time to time not because of any misrepresentation by the applicant but as per the pay scales fixed by the respondents and therefore, the applicant cannot be held responsible for any mistake made in payment of salary to her. As per the Apex Court decision in case of **State of Punjab and Others Vs. Rafiq Masih** (supra) dated 18.12.2014, recovery made by the employers in a situation like hers is not permissible in law; and

3(f). as per decision of Madras High Court dated 20.06.2018 in case of **Ms. Rukmani Ramanujam Vs. The Secretary to the Government**

of India, DOPT, New Delhi and others, in Writ Petition No.41076/2016 and Writ Misc. Petitions No.35064 & 35065/2016 after considering the above Apex Court decision, the impugned order of recovery was quashed and the amount already recovered was ordered to be reimbursed. Similarly by the Apex Court decision dated 04.02.2019 in SLP No.24111 of 2017 (Madhu Soodan Pasi & others Vs. Union of India and others**), the recovery ordered was set aside. Hence the OA be allowed.**

In reply and amended reply and during arguments of their counsel on 22.08.2019, the respondents have contended that -

3(g).after completion of 20 and 30 years of regular service as per DOPT OM dated 19.05.2009, the applicant was granted 2nd and 3rd MACP benefits in Pay Band 2 (Rs.9,300-34,800/-) with Grade Pay of Rs.4,600/- and Rs.4,800/- respectively with effect from 01.09.2008. Her pay was to be fixed at Rs.20,060/- (pay in Pay Band of Rs.15,860/- with Grade Pay of Rs.4,200/-). However, it was erroneously fixed as Rs.20,670/- as on

01.07.2009. Since the applicant was to retire on 30.06.2012, her pension papers were prepared by the office of Senior Scientific Officer S-1, AQAW, Ambajhari, Nagpur and forwarded to office of Principal Chief Controller of Defence Accounts (Pensions), Allahabad for issuing PPO (Annex R-4). Accordingly, the PPO dated 14.02.2012 was issued;

3(h). on 19.11.2013, the applicant submitted an application to the respondent No.4 to grant her 2nd financial upgradation under ACP as per the DOPT OM dated 09.08.1999. Accordingly her service details were forwarded through Commanding Officer, AQAW (A), Khamaria to Headquarters, Director General, AQAW, New Delhi. The latter approved the grant of 2nd financial upgradation to her under ACP (due to merger of post) from 01.06.2006 in PB 2 with Grade Pay of Rs.4,600/- after completion of 24 years of service by the applicant (Annex R-5). Based on it, the proposal for refixation of her pay was forwarded to the respondent No.4 (Accounts Office) and after due verification

revised pension papers of the applicant prepared by the respondent No.4 were sent to the Principal Controller of Defence Accounts (Pensions) i.e. the respondent No.3, who issued the corrigendum to her PPO on 30.01.2015. The respondent No.4 accordingly issued the letter dated 14.02.2015 to the applicant for initiation of recovery;

3(i). from the above facts, it is clear that the refixation of the applicant's pay was done based on her own application for grant of 2nd upgradation under ACP Scheme from 01.01.2006. However, when her pay fixation was reviewed, error committed earlier while granting 2nd MACP from 01.09.2008 came to light requiring refixation of her pension which resulted in some reduction and recovery of excess payment of pay and allowances made to her from 01.09.2008 to 30.06.2012;

3(j). the applicant had complete knowledge about recovery of the excess payment made to her for which she is not entitled and therefore, the action initiated in this regard was not a surprise to her;

3(k).based on the above submissions of the applicant and the respondents and arguments of their counsels on 21.09.2016, the order dated 23.09.2016 was issued by this Tribunal allowing the OA, the revised PPO dated 30.01.2015 issued by the respondent No.3 and the order of proposed recovery of Rs.31,408/- were quashed and the applicant was allowed to continue receiving of her pension as per the PPO dated 14.02.2012;

3(l).that order of the Tribunal was challenged by the respondents in OA before Nagpur Bench of the Bombay High Court in Writ Petition No.3620 of 2017, which was decided on 17.09.2018 quashing and setting aside the order of the Tribunal dated 23.09.2016 and remanding the matter back. The main contentions raised by the Writ Petitioners (respondents to the OA) were that corrections can be done in pay fixation while granting MACP benefits and undertaking submitted by the applicant in the OA was not considered in view of Apex Court decision in case of **High Court of Punjab and Haryana and others Vs. Jagdev**

Singh, reported in 2016 STPL 7638 SC decided on 29.07.2016.

The High Court order (paragraph No.5) mentioned that attention of this Tribunal was not invited to the aspect of undertaking submitted by the applicant to the OA as that undertaking was not produced before the Tribunal but scrutiny of which is essential. The High Court order also noted that the above Apex Court decision could not be looked into by the Tribunal. Therefore, while setting aside the order of the Tribunal dated 23.09.2016, the matter was restored back directing that the parties be permitted to amend their pleadings for bringing on record the necessarily details and to pass suitable orders after hearing the parties;

3(m). thereafter, the respondents through MA No.2003/2019 (filed on 13.12.2018) submitted their amended reply. In response to this MA, the applicant contended that wild allegation was being made by the respondents on the basis of fake and manufactured document Annexed as R-10. There is doubt about genuineness of

that document. It is an afterthought exercise to defeat legitimate claim of the applicant and it has been brought on record for the first time. Had the undertaking dated 25.09.2008 been on record with the respondents, they should have filed it along with their earlier reply. Therefore, the Apex Court decision in case of **Jagdev Singh** is not applicable to the present case. The salary was paid to the applicant not because of any misrepresentation by her but as per the conscious decision of the respondents and therefore, the amount paid to her (group C employee) as part of salary cannot be recovered from pension, not permissible as per the Apex Court decision in the case of **Rafiq Masih**.

In their amended reply, the respondents have submitted that -

3(n). before the OA was decided by the Tribunal on 23.09.2016, the respondents could not bring on record the undertaking submitted by the applicant on 25.09.2008 before accepting the benefit of 2nd and 3rd MACP with effect from

01.09.2008. Hence in view of the High Court order dated 17.09.2018, amended reply has been submitted. The applicant retired from service on 30.06.2012. When the applicant was granted 2nd and 3rd MACP benefit from 01.09.2008 in Pay Band 2 (Rs.9,300-34,800/- with Grade Pay of Rs.4,600/- and Rs.4,800/-), at that time on 25.09.2009 she had submitted an undertaking that she would be liable to refund any excess payment made to her as a result of incorrect fixation of pay or any excess payment detected in light of discrepancies noticed subsequently. A copy of that undertaking is annexed at R-10 (page 87).

In view of that undertaking, therefore, the applicant cannot make a grievance about the fresh PPO issued to her on 30.01.2015 by which her pension was refixed and she was directed to deposit the excess amount paid to her;

3(o).earlier the respondents could not bring to the notice of the Tribunal the Apex Court decision in the case of **High Court of Punjab and Harayana Vs. Jagdev Singh** decided on

29.07.2016 but it was brought to the notice of the High Court in the Writ Petition based on which the High Court decision has given liberty to place that judgment before this Tribunal. Hence its copy is at Annex R-11. Therefore, the Tribunal should consider that Apex Court decision and the applicant's undertaking dated 25.09.2008 based on which the applicant is not entitled to claim any relief and there is no case whatsoever in the OA;

3(p). as per the MACP Scheme issued with DOPT OM dated 19.05.2009, the applicant's pay was to be fixed at Rs.20,060/- (pay of Rs.15,860/- in the pay band with Grade Pay of Rs.4,200/- as on 01.07.2008). However, her pay was erroneously fixed as Rs.20670/- with increment from 01.07.2009 (as per Annex R-2 and R-3). Based on the representation of the applicant on 19.11.2013 for grant of 2nd financial upgradation under ACP from 01.01.2006 as per the DOPT OM dated 09.08.1999 in place of grant of MACP 2 from 01.09.2008, her case was processed and submitted to the Headquarters,

Director General AQAW, New Delhi and 2nd ACP was granted as per letter of Director General of AQA, New Delhi dated 31.03.2014 with effect from 01.01.2006 in Pay Band 2 with Grade Pay of Rs.4,600/-;

3(q).thereafter proposal for refixation of her pay was submitted to the respondent No.3, Principal Controller of Defence Accounts (Pensions), based on which the corrigendum issued to the PPO was forwarded to the applicant on 11.03.2015 (Annex A-2) and the respondent No.4 initiated the recovery. From these facts, it is clear that the refixation of her pay was done on the basis of her own application submitted for grant of 2nd ACP from 01.01.2006. While doing this the error committed during the grant of 2nd and 3rd MACP from 01.09.2008 came to light necessitating the revision of her pension and recovery of the excess amount of pay and allowances paid to her from 01.09.2008 to 30.06.2012. Therefore, there being no illegality in the above action of the respondents, the OA be dismissed.

4. Analysis and conclusions :-

I have perused the case record, i.e. the OA along its Annexes, reply to the OA, High Court order dated 17.09.2018, the amended reply filed by the respondents, the applicant's response to it and considered the caselaws relied upon by the learned counsels for the parties as well as their arguments heard on 22.08.2019. Based on their careful consideration and analysis of facts and position under the law, I conclude as follows :-

4(a). The applicant retired from the post of Senior Stenographer on 30.06.2012 and based on last ten months' average pay drawn, her PPO was issued on 14.02.2012.

4(b). Based her request dated 19.11.2013 for grant of 2nd ACP from 01.01.2006 on completion of 24 years of regular service (instead of 2nd MACP granted earlier from 01.09.2008), it was considered and granted leading to refixation of her pay as per the letter dated 13.06.2014. At that time of vetting of her dew and drawn statement by CFA (Factories) from 01.01.2006

to 30.06.2012, it was found that the applicant had been paid an excess amount of Rs.11,838/-.

Further processing of the case culminated in issuing of the corrigendum to PPO on 30.01.2015 by the office of the Principal Controller of Defence Accounts (Pensions), Allahabad, **revising the amount of pay, pension, amount of commuted pension, gratuity, etc resulting in total recovery of Rs.31,408/-.**

This was communicated to her by letter of 14.02.2015 and the amount of recovery of over payment was ordered vide order dated 11.03.2015.

4(c). From the details of the case and analysis of submissions of the parties, the main issue for decision in this OA is whether the respondents are justified to recover Rs.31,408/- from the applicant as per the order dated 11.03.2015 issued by the Director, AQAW (A) Ambajhari, Nagpur. Study of the case record reveals that the applicant had been granted benefit of MACP 2 and MACP 3 financial upgradations with effect from 01.09.2008, her pay had been fixed accordingly and based on

average pay of last months at the time of her retirement on 30.06.2012, she had been issued the Pension Payment Order dated 14.02.2012. As per that PPO, she was sanctioned monthly pension of Rs.12,320/- from 01.07.2012 (Rs.7,392/- after commutation of the pension).

4(d). Based on the applicant's request dated 19.11.2013 for refixation of her pay with grant of benefit of 2nd ACP from 01.01.2006 instead of the earlier grant of 2nd MACP from 01.09.2008, her request was processed by the respondents and the order dated 31.03.2014 was issued. Then refixation of her pay was done from 01.01.2006 vide order dated 26.06.2014, which revealed that because of earlier erroneous refixation of her pay while granting the MACP 2 and 3 from 01.09.2008, revision of her pensionary benefits at the time of her retirement was necessary and the excess amount of pay and allowances paid to her became due for recovery.

4(e). Accordingly, the office of Principal Chief Controller of Defence Accounts (Pensions), Allahabad issued the revised

Pension Payment Order for the applicant on 30.01.2015. Then the Director AQAW (A) Ambazari, Nagpur informed the applicant on 14.02.2015 about refixation of her pay vide order dated 26.06.2014 and she was requested to deposit the excess amount of Rs.11,838/-.

So details of her pensionary benefits were communicated by the office of AQAW (A), Ambajhari, Nagpur to the applicant and to the Chief Manager, Centralized Pension Processing Centre, SBI, CBD Belapur, Navi Mumbai.

These details clearly establish that her last pay of June 2012 worked out to Rs.23,970/- instead of earlier fixed amount of Rs.24,640/-, a reduction of Rs.670/- per month, which led to reduction of Rs.335/- in her monthly pension i.e. 0.027%, which is negligible. The recovery from the applicant got necessitated because of the higher amount of pay and allowances paid to her erroneously from 01.09.2008 till 30.06.2012.

4(f).As submitted by the respondents, recalculation of the drew and drawn payments made to her and the refixation of her pay as

well as pensionary benefits as above were explained to the applicant when she visited the office of the respondent No.4 in December, 2014 i.e. before the order of the recovery was issued on 14.02.2015. Therefore, the applicant cannot contend that she was not put to notice before initiating the recovery resulting from refixation of her pay and allowances by ante-dating of grant of 2nd ACP to her from 01.01.2006 and earlier erroneous pay fixation while granting MACP 2 and MACP 3 from 01.09.2008.

4(g). The contention of the respondents is correct that in view of the undertaking submitted by the applicant on 25.09.2008 before grant of benefit of MACP 2 and 3 from 01.09.2008, she is bound by her own undertaking and to refund the excess amount of pay and allowances paid to her erroneously at that time, which came to be detected later while refixing her pay on the basis of grant of 2nd ACP from 01.01.2006. Therefore, the applicant cannot contest the recovery.

u

4(h). In fact as stipulated under Rule 71 of CCS (Pension) Rules, Government dues relating to over payment of pay and allowances are to be adjusted against payable retirement gratuity. This is what the respondents have done.

4(i). The main contention of the applicant against the recovery is reliance on the stipulations in the Pension Rules and the Apex Court decisions in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) etc, and Madhu Soodan Pasi**, and Madras High Court decision dated 20.06.2018 in Writ Petition No.41076 of 2016 and WMP Nos.35064 & 35065 of 2016 in case of **Ms. Rukmani Ramanujam Vs. The Secretary to the Government of India, DOPT, New Delhi and others**. However, above High Court decision was based on different facts, the applicant therein was 94 years old and a family pensioner since 1995 and the undertaking had been given by her late husband in October, 1971. In **Madhu Soodan Pasi and others Vs. Union of India and others**, recovery ordered in 2014 for a payment made during 1986

to 1993 was set aside. However, the facts and circumstances involved in all those cases were different, not identical to the present case.

The Apex Court decision in case of Rafiq Masih is also not applicable to the present case.

4(j). In the context of the present case, it is pertinent to consider the fact of submission of unambiguous undertaking by the applicant on 25.09.2008 before grant of the financial upgradations to her under MACP Scheme from 01.09.2008 and to apply the Apex Court view taken in the case of **High Court of Punjab and Haryana and others Vs. Jagdev Singh** in Civil Appeal No.3500 of 2006 decided on 29.07.2016 as well as **Chandi Prasad Unniyal and others Vs. State of Uttarakhand and others** reported in JT 2012 (7) SC 460 decided on

17.08.2012. In the Jagdev Singh decision,

after referring to the Apex Court decision in case of **State of Punjab and others Vs. Rafiq**

Masih (White Washer), it was held that 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 could be required to be refunded. The officer who furnished an undertaking while opting for revised pay scale is bound by the undertaking and, therefore, the High Court decision setting aside the action of the recovery was set aside.

The facts of that case are identical to those of the present case in which the applicant had submitted a clear undertaking on 25.09.2008 to the effect that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by her to the Government either by adjustment against future payment due to her or otherwise.

4(k). I have verified the original copy of that undertaking produced by the respondents which had been submitted by the applicant on 25.09.2008. Therefore, the applicant is bound by her own undertaking to refund the excess amount detected to have been paid to her by the respondents while refixing her pay at the

time of grant of the financial upgradations under the MACP Scheme.

4(1). The contention of the applicant in reply to the MA No.2003/2019 (with which the respondents have filed the amended reply) that the undertaking claimed by the respondents is an afterthought exercise and it is a fake and manufactured document is totally false. While the applicant has not specifically denied the submission of the undertaking, it is dishonest on her part to claim that the copy of her undertaking brought on record by the respondents from her service record along with their amended reply is a fake and manufactured document. This attempt of the applicant deserves to be deprecated.

4(m). In the context of this case, it is also appropriate to apply the Apex Court view **in Civil Appeal No.5899 of 2012 dated 17.08.2012 i.e. Chandi Prasad Unniyal and others Vs. State of Uttarakhand and others reported in JT 2012 (7) SC 460.** In paragraph No.15 of that decision, it was held that except for few instances pointed out in **Syed Abdul Qadir case**

and **Col. B.J.Akkara (retd.)** case, the excess payment made due to wrong or irregular pay fixation can always be recovered.

4(n). In view of reduction in her pension due to revision of her earlier pay fixation by a negligible fraction (0.027%), in my opinion it does not cause hardship to the applicant.

4(o). Therefore, keeping perspective the facts of the case, particularly the undertaking furnished by the applicant herself on 25.09.2008 and the Apex Court vies in the above two case laws (Jagdev Singh and Chandi Prasad Uniyal), the applicant is bound to refund the excess amount received by her due to earlier erroneous fixation of her pay. Resultantly, I find no merit in this OA and it deserves dismissal.

5. Decision :-

The OA stands dismissed. No costs.

*(Dr. Bhagwan Sahai)
Member (Administrative)*

*kmg**