

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/00189/2019

DATED THIS THE 26th DAY OF NOVEMBER, 2019

**HON'BLE DR.K.B.SURESH
HON'BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

R. Srinivasa Murthy,
S/o B. Ramakrishnaiah,
Aged about 60 years,
Residing at No. 33, 1st Main Road,
Behind Nalanda Theatre,
Chamarajapet,
Bengaluru -560 018.

...Applicant

(By Advocate Shri N. Obalappa)

Vs.

1. Union of India,
Represented by its Secretary,
Ministry of Information and Broadcasting,
'A' Wing, Shastry Bhavan,
New Delhi-110 001.

2. The Chief Executive Officer,
Prasar Bharati,
Doordarshan Bhavan,
"C" Tower, Mandi House,
New Delhi-110 001.

3. The Director General,
All India Radio, Akashvani Bhavan,
Parliament Street,
New Delhi-110 001.

4.The Dy. Director General€/ HOD,
All India Radio, AIR Complex,
Raj Bhavan Road,
Bangalore-560 001.

5.The Pay & accounts Officer,
All India Radio, Kamarajar Salai,
Mylapore, Chennai-600 004.

...Respondents

(By Standing Counsel Shri S. Sugumaran for Respondents)

ORDER (ORAL)**HON'BLE DR.K.B.SURESH ...MEMBER(J)**

Heard. The matter is covered by our order at Annexure A-10 and Annexure A-11, which we quote:

Annexure A-10

“CENTRAL ADMINISTRATIVE TRIBUNAL**BANGALORE BENCH : BANGALORE****ORIGINAL APPLICATION No. 170/00407/2017****TODAY, THIS THE 17th DAY OF SEPTEMBER, 2018****HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER****HON'BLE SHRI DINESH SHARMA, ADMINISTRATIVE MEMBER**

B.M. Jadi
Programme Executive (Retd),
House No. 31,
Veerabhareshwara Krupa, Part – 1
Basava Nagara, Haliyal Road,
Dharwad, Karnataka – 580 003

... *Applicant.*

(By Advocate Shri N. Obalappa)

Vs.

1. The Union of India,
Represented by its Secretary,
Ministry of Information and Broadcasting
‘A’ Wing, Shastry Bhavan,
New Delhi – 110 001 & 4 ors.

... *Respondents.*

(By Advocate Shri Vishnu Bhat, Senior Panel Counsel)

ORDER**Hon'ble Shri Dinesh Sharma, Administrative Member**

The case of the applicant, in brief, is as follows:

The applicant joined as Field Reporter / Family Welfare at All India Radio, Dharwad, with effect from 14.08.1986 in the pay scale of Rs.1400-2600 (4th CPC pay scale w.e.f. 1.1.1986) and the said pay scale was revised to Rs. 5000-8000 by 5th CPC with effect from 1.1.1996. Again the applicant got

regular promotion to the post of Programme Executive with effect from 15.1.1999 in the pay scale of Rs. 6500-10500. The 1st respondent upgraded the said pay scale to Rs. 6500-12000 and to 7500-12000. The 5th respondent has declined to count the upgraded pay scale of Rs. 6500-200-10500 as one upgradation resulting into non-consideration of his 1st MACP and suggested recovery of DCRG amount of Rs. 9,99,975/-. The applicant continued in the same grade for more than 10 years and is entitled for 3rd MACP with effect from 1.1.2009. The 5th respondent while processing the pension papers of the applicant found the pay fixation given to him as incorrect and recovered a sum of Rs. 11,48,855/- and his pay and grade pay of Rs. 5400/- has also been reduced to Rs. 4800/-. The applicant submitted a representation to refund the recovered amount and refix his pay, but no reply has been received from the respondents since 30.09.2016. The applicant has cited *State of Punjab and Others etc. vs. Rafiq Masih* (hereinafter referred to as the White Washer case) to support his claim about non-recoverability of sums, even if wrongly paid, after an inordinate delay of time.

2. Though the respondents have not materially differed with the facts mentioned by the applicant, they have justified the actions taken by the 4th and 5th respondents (Head Office and Pay and Accounts Officer of All India Radio, respectively) to recover the sum which, according to them, were wrongly paid to the applicant. They have quoted the decision of the Hon'ble Supreme Court in Civil Appeal No, 3500 of 2006 (*High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh*) in which the Apex court had distinguished the facts of that case from the White Washer case and allowed recovery of wrongly paid excess amount.

3. After going through the pleadings and hearing both the sides, the main issue to be decided in this case is whether the decision in White Washer case applies to the facts of this case. What is sought to be recovered in this case is admittedly to have been paid since 1996. The applicant has already retired. We quote here the relevant portion from the White Washer case (conditions where recovery 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.”

It is very clear that conditions No. 2 and 3 and, to some extent, 5 apply to the facts of this case.

4. Regarding the case cited by the respondents (High Court of Punjab & Haryana vs. Jagdev Singh, Annexure R/2), the facts in that case are vastly different from the facts of this case. There the recovery was for a revision done in 2004 of pay scales given following a notification of 2001 and there was also an express undertaking given by the applicant therein to recover the amount.

5. The O.A is, therefore, allowed. The impugned orders at Annexures A-9, A-10, A-11, A-12 and A-16 are quashed. The respondents are directed to the issue revised orders granting him pay, pension, DCRG etc. without "correcting" what they have described as errors in Annexure A-9, within 2 months from the date of receipt of a copy of this order.

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

(DR. K.B. SURESH)
JUDICIAL MEMBER"

Annexure A-11

**"CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/000399/2018

DATED THIS THE 18TH DAY OF JANUARY, 2019

**HON'BLE DR.K.B.SURESH
HON'BLE SHRI C.V. SANKAR**

**...MEMBER(J)
...MEMBER(A)**

A. Francis Royan,

...Applicant

Vs.

*1. Union of India,
Represented by Secretary,
Ministry of Information
'A' Wing, Sastry Bhavan,
New Delhi – 110001 & 4 ors.*

...Respondents

ORDER (ORAL)

HON'BLE DR.K.B.SURESH ...MEMBER(J)

Heard. The applicant is an LDC, whose pay was fixed wrongly by some one and had been informed that he had drawn excess pay, which is now sought to be recovered from him. On a same and similar matter as both agree, by the

Ernakulam Bench in OA.No.299/2018 dated 30.07.2018, except the portion of notice, we quote from it:

“10. The applicant in this case is a retired employee now. The order of recovery is dated 23.2.2018 when she was slated to retire on 31.3.2018. The fixation, deemed erroneous, which the respondents have set out to correct, is dated as 17.12.2012 (Annexure A-1) and the recovery is declared in February, 2018. Thus two counts, viz, recovery from an employee due to retire within one year and recovery from an employee where excess payment has been made for a period in excess of five years before the order of recovery is issued, are both involved in this case. Thus it comes clearly within the ambit of the Rafiq Masih judgment. Learned counsel for the respondents emphasized the judgment of the Hon’ble Supreme Court in High Court of Punjab and Harayana & Ors. v. Jagdev Singh AIR 2016 SC 3523 to justify recovery. Jagdev Singh’s judgment (Supra) has qualified the Rafiq Masih judgment by including the proviso which reads as follows:

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.

11. Learned counsel for the respondents while admitting that no undertaking per se had been extracted from the applicant in this case, drew our attention to the last line of the fixation document of Annexure A-1 which reads :

“ The fixation is subject to Audit observations, overpayments found if any will be recovered in lump sum from his salary/dues without any notice to him.”

12. It was maintained by the learned counsel that this proviso to the fixation order is tantamount to the applicant having been placed on notice. This Tribunal does not see this as a valid argument for the action initiated by the respondents. A standard clause introduced at the bottom of the fixation order does not amount to a notice.

2. In this case, the respondents would say that unlike in the other case, the one which is referred, a notice was issued and the applicant was heard on the matter. But then, that is not the soul and spirit of the Hon’ble Apex Court order. The applicant is admittedly a low level employee. Assuming that he got a salary of Rs.10/- per month. Then he will live on it. But if he had got a salary of RS.9/-, he would have adjusted his life accordingly and after 10 years if he were to be told that you have drawn one rupee more, look we are

going to take from you Rs.100/-, will it not amount to burden on him and it will be an unjust burden. That is the dictum of White Washer's Judgment. It is squarely applicable in this case. Therefore, this recovery will not lie going by the Hon'ble Apex Court rulings and the recovery is hereby quashed.

3. *OA allowed. No costs. The amount deposited will be released to the applicant.*

-Sd/-
(C.V. SANKAR)
MEMBER(A)

-Sd/-
(DR.K.B.SURESH)
MEMBER(J)"

But Shri S. Sugumaran, learned counsel for the respondents submits that even though by mistake some amount has been granted to the applicant, it has been corrected in 2015. It may be so, but still it is covered by White Washer's Judgment of the Hon'ble Apex Court. OA. Therefore allowed. Requisition for recovery is hereby quashed. If any amount has been recovered, it shall be returned to the applicant within 2 weeks without interest, thereafter at the rate of 15% as stipulated by the Hon'ble High Court of Karnataka.

OA allowed. No order as to costs.

(C.V. SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

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Annexures referred in O.A. No. 170/00189/2019

Annexure-A1: Copy of order dated 31.12.2009 and pay fixation order dated 11.01.2010.

Annexure-A2: Copy of order dated 10.01.2012 and pay fixed vide order dated 17.1.2010.

Annexure-A3: Copy of order dated 28.09.2015.

Annexure A-4: Copy of order dated 08.10.2015 and pay fixed vide order dated 26.10.2010.

Annexure A-5: Copy of Representation dated 12.11.2015.

Annexure A-6: Copy of Memorandum dated 06.5.2016.

Annexure-A7: Copy of order dated 14.12.2018.

Annexure-A8: Copy of Apex Court order dated 18.12.2014.

Annexure-A9: Copy of CAT order dated 13.04.2016 in OA.No.296/2015.

Annexures referred to by the Respondents in the Short Reply

Annexure R-1: Interim order dated 21.2.2019

Annexure R-2: Receipt of CAT Notice on 5.3.2019.

Annexure R-3: Lr to PAO dated 18.01.2019.

Annexure R-4: Bill dated 18.01.2019 for provisional DCRG.

Annexure R-5: Recovery remitted to salary head of A/c.

Annexures referred to by the Respondents in the Reply

Annexure R-1: DOPT ID Note dated 10.9.2013

Annexure R-2: DG AIR letter dated 08.04.2016

Annexure R-3: Vide SC Order dated 29.07.2016

Annexure R-4: Memorandum dated 06.11.2015

Annexures referred to by the Applicant in the Rejoinder

Annexure-A10: Copy of CAT order dated 17.09.2018 in OA.No.407/20175

Annexure-A11: Copy of CAT order dated 18.01.2019 in OA.No.399/2018.

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