

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/01228/2018****Dated day of September, 2019****PRESENT****Hon'ble Mr. T. Jacob, Member(A)**

M.Rajamanickam,
S/o. Marappa Rajan,
Aged 64 years,
Plot No. 77, 5th street,
Modern City,
Pattabiram,
Chennai 600 072.

....Applicant

By Advocate M/s S. Ramaswamyrajarajan

Vs

1. Union of India rep. by
The Director,
Government of India, Ministry of Defence,
Defence Research & Development Organisation,
Combat Vehicles Research & Development Establishment,
Avadi, Chennai – 600 054.Respondents

By Advocate Mr. J. Vasu

ORDER**(Pronounced by Hon'ble Mr. T. Jacob, Member(A))**

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"I. To quash the impugned order No.CVRDE/F(O)/4800-4600/MR/TOA/08/2018, dated 21.08.2018 passed by the respondent.

II. To direct the respondent to grant the revised pension of the applicant as per the 7th CPC..."

2. The brief facts of the case as stated by the applicant are as follows:

The applicant joined service as Machinemate in the CVRDE, Avadi, Chennai on 10.05.1977 and subsequently appointed as Machinist Grade-I under Direct Recruitment Quota in the year 1978 and got promotion to various levels during his service. While working as Technical Officer 'A' in the pay scale of Rs.9300-34800 with Grade Pay of Rs.4800/- he retired from service on 30.06.2012 on attaining the age of superannuation. But, suddenly after 6 years of his retirement i.e on 21.08.2018 , the respondent had passed the impugned order stating that the Grade Pay of Technical Officer and Technical Officer 'A' has been revised from Rs.4800 to Rs.4600 and thus there is an excess payment made to the applicant with effect from 01.01.2016 and directed therein to remit an amount of Rs.17,298/- towards the excess payment and only after remittance of the said amount, his case for revision of 7th CPC pension will be processed by the office. Aggrieved by the above, the applicant has

filed this OA seeking the above reliefs on the following grounds:-

- i. There is no fault or mistake or misrepresentation from the side of the applicant in the alleged excess payment of Grade Pay.
- ii. Respondent had passed the impugned order to recover the amount without any notice to that effect and without giving any opportunity to the applicant to establish his defence.
- iii. The alleged excess payment was made due to the revision of Grade Pay of Technical Officer, Technical Officer 'A' from Rs.4800 to 4600 with effect from 01.01.2016 is applicable in the case of applicant as he had retired from service long back in the year 2012 itself.
- iv. The impugned order of recovery neither contain any detailed information about the alleged excess payment nor the applicant was provided with the documents referred in the impugned order to understand the nature of recovery. Thus the impugned order passed by the respondent is a non speaking order.
- v. As per the Law laid down in the case of State of Punjab and others Vs. Rafiq Masih (White Washer) etc., no recovery should be made from the retired employees. In the present case the order of recovery was issued after 6 years of the retirement of the applicant. Thus the impugned order passed by the respondent is liable to be set aside as the same is against the Law on the subject matter.
- vi. The respondent's action in stipulating the condition in the impugned order of recovery stating that only after remittance of Government dues, the

case for revision of 7th CPC pension can be processed by this office, is arbitrary and illegal.

3. In support of his case, the applicant has relied upon the decision of the Ernakulam Bench of this Tribunal in the case of G. Vivekanandan vs. Union of India and others reported in 2018 (2) AISLJ 378.

4. The respondent has filed a detailed reply statement stating that the posts of TO'A'/TO (in the pre-revised scale of Rs.7450-11500) and its feeder post STA'C'/TA'C' (in the pre-revised scale of Rs.6500-10500) respectively were granted common pay structure of Rs.9300-34800 (PB-2) with Grade Pay of Rs.4600/- after 6th CPC vide GDS (RP) Rules, 2008. To maintain the cadre hierarchy and avoid promotion within the same Grade Pay, the department granted higher Grade Pay of Rs.4800/- to the post of TO'A'/TO w.e.f. 01.01.2006 vide letter No.DHRD/16342/6th CPC/DRTC/C/P/05(iv)/1633/D(R&D)/ 2009 dated 05.06.2009 with the approval of MoD (Ministry of Defence) which was required as per Government of India (Transaction of Business) Rules. Later, the higher Grade Pay of Rs.4800/- had to be withdrawn after the same was pointed out by the Ministry of Finance/Department of Expenditure's advice in UO No.7.10/12/2009-IC dated 11.07.2012. Since a court case was also pending on the issue, orders for rectification were not issued immediately. A case with CAT (PB) has also been disposed of with a direction to take action as per the decision of Ministry of Finance under the Transaction of Business Rules with direction to recover the excess payment in twelve instalments. Accordingly, the orders for cancellation of higher Grade Pay was issued on 10.05 2013 vide letter No.

DHRD/16342/6th CPC/DRTC/C/P/05(iv)/1112/D(R&D)/2013 and were circulated to all the labs on 13.05.2013 vide letter No.DHRD/16342/6th CPC/DRTC/C/P/05(iv). Orders for consequential review of promotion and recovery were issued vide letter No.DHRD/16342/6th CPC/DRTC/C/P/05(iv) dated 30.05.2013. Accordingly, the recovery has been/is being carried out from the serving and retired employees. As per the aforesaid authority, the revision of Grade Pay from Rs.4800/- to Rs.4600/- is effective from 01.01.2006. The applicant has mentioned in Para 2 under facts of the case that the Grade Pay has been revised from Rs. 4800/- to Rs.4600/- with effect from 01.01.2016. It is understood from the letter No. CVRDE/F(O)/4800-4600/MR/TOA/08/2018 dated 21.08.2018 that the date of effect of the revision of Grade Pay had been erroneously mentioned as 01.01.2016 instead of 01.01.2006. The same has been corrected and the amendment letter has also been forwarded to the applicant vide letter No.CVRDE/F(O)/4800-4600/MR/TOA/08/2018 dated 30.10.2018. That apart, the applicant has also given an undertaking dated 10.09.2009 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 would be refunded by him to the Government either by adjustment against future payments due to him or otherwise.

5. The respondent has relied upon the the following decisions:-

- (i) Judgement of the Hon'ble Supreme Court in the case of High Court of Punjab and Haryana and others versus Jagdev Singh (C.A.No.3500/2006 dated 29.07.2016 ;

(ii) Judgement of the Hon'ble High Court of Madras in the case of S. Thangaraj (died) T. Suganthi versus The Senior Regional Manager, Tamil Nadu Civil Supplies Corporation Ltd., Madurai Region, Madurai in WP (MD) No.3666 of 2011 dated 02.03.2018;

(iii) Decision of the C.A.T., Principal Bench, New Delhi in the case of Alok Saxena versus Union of India and others through the Secretary, GOI, M/o Power, New Delhi and another in OA.3791/2015 dated 16.11.2018.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

7. The applicant is a retired Government servant. He retired from service on 30.06.2012 while working as Technical Officer 'A' on attaining the age of superannuation. While so, the respondent after six years of retirement of the applicant on 21.08.2018, on coming to know that an error had occurred while fixing the Grade Pay in respect of Technical Officer and Technical Officer 'A' had issued an impugned order dated 21.08.2018 directing the applicant to remit an amount of Rs.17,298/- towards the excess payment made to him from. 01.01.2006 consequent upon revision of Grade Pay from Rs.4800 to 4600 and only after remittance of the said amount, his case for revision of 7th CPC would be processed.

8. It is the case of the applicant that the respondent has passed the impugned order to recover the excess payment without any notice to that effect and without giving an opportunity to establish his defence which is highly illegal and it violates the principles of natural justice. The respondent would submit that the situation had

arisen only after detection of the error in fixation of Grade Pay of Rs.,4800/- instead of 4600/- in respect of Technical Officer and Technical Officer 'A' and hence the respondent has issued the impugned order proposing to recover the excess amount from the pension of the applicant. Whatsoever, it is clear that the respondent has proposed to initiate recovery proceedings without issue of show cause notice. or affording an opportunity of personal hearing to the applicant in violation of principles of natural justice and highly arbitrary also. The applicant would further submit that there is no mistake or misrepresentation on his part in the alleged excess payment of Grade Pay. He has relied upon the case of State of Punjab and others vs. Rafiq Masih (White Washer) etc. to say that no recovery should be made from the pension of the retired employees. It is clear that the recovery proceedings were initiated even without giving notice to the applicant who is affected by the action of the respondent. This clearly violated the principles of natural justice and it is highly arbitrary also. It is trite law that whenever an action of the Government, there is a civil consequence, the person affected should be put to notice first and it is only then after considering the representation of the person, if any, action shall be taken. This is not an empty formality but fulfils the obligation of the Respondents inasmuch as the Principles of natural justice are given due regard and respect. Thus, this court is of the considered view that the respondent ought to have, before making such reduction in pay, issued a notice to the applicant and afforded an opportunity of personal hearing. In such view of the matter, I feel it appropriate to issue direction to the respondent to give an opportunity to the applicant to express his views on such re-fixation of pay. From the

above facts revealed in this application, I find that the order of recovery dated 21.08.2018 is liable to be quashed.

9. Accordingly, the impugned recovery order dated 21.08.2018 is hereby quashed. The respondent shall afford due opportunity to the applicant in connection with the proposed recovery of alleged excess amount and while so doing, they shall also annex a copy of the undertaking of 2009 stated to have been given by the applicant, as he is entitled to verify the same before responding to the notice. The respondent shall also afford an opportunity of personal hearing to him to express his views by issue of notice to him. It is thereafter that, a judicious decision, keeping in view the fact that the applicant is a senior citizen and had superannuated as early as 30-06-2012, shall be taken and the same communicated by a reasoned and speaking order. It is further directed that no recovery shall be made from the applicant in the meantime.

10. With the above direction, the OA is disposed of. No costs.

(T.Jacob)
Member(A)

09-2019

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