

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**Original Application No.21/381/2019, 21/382/2019
& 21/383/2019**

Date of Order: 24.10.2019

Between:

D. Rajeswar Rao, PPO No. 461511800138, Gr.A,
S/o. late D. Pentaiah, Age: 60 yrs, Occ: Retired SO-E,
R/o. 1-1-336/46, Vivek Nagar,
Chikadapally, Hyderabad.

..Applicant in OA 381/2019

T. Srinivasa Rao,
S/o. T.S.R. Murthy, Gr. A,
Age: 60 yrs, PPO No. 451511800453,
Occ: Occ: Retired SO-F,
R/o. Plot No.136, Sreenivasa Nagar,
Kapra, Hyderabad – 500 062, TS.

...Applicant in OA 382/2019

V. Ravinder Reddy, S/o. V. Chinna Reddy, Gr.A,
Age 60 yrs, PPO No. 461511800677,
Occ: Retired SO-E, R/o. Flat No. 101,
Krishnaveni Heights, C-34 & 35,
Rukminipur, ECIL Post,
Hyderabad – 500 062.

... Applicant in OA 383/2019

And

1. The Union of India, Rep. by the Secretary,
Department of Atomic Energy,
Anushakti Bhavan,
CSM Marg, Mumbai – 400 001.
2. The Chief Executive,
Nuclear Fuel Complex,
ECIL PO, Hyderabad – 500 062.

... Respondents

Counsel for the Applicants ... Mr.Anita Swain (In all OAs)

Counsel for the Respondents ... Mr.V. Vinod Kumar, Sr. CGSC
(in OA No. 381/2019)
Mr. B. Siva Sankar, Addl. CGSC
(in OA No. 382/2019)
Mrs. K. Bharathi, Addl. CGSC
(in OA No. 383/2019)

CORAM:***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)******ORAL ORDER (COMMON)***
{As per B.V. Sudhakar, Member (Admn.)}

2. The OAs are filed against recovery of DA paid on two additional increments granted by the respondents and for re-fixing pension after adding the two additional increments granted. The cause of action and the relief sought being similar from the same respondents a common order is issued.
3. Brief facts are that the applicant in OA/383/2019, OA 382/2019 & 381/2019 retired from the respondents organisation as Scientific Officers E/F on 31.7.2018, 30.6.2018 & 28.2.2018 respectively. Respondents have issued memo dated 3.2.1999 permitting 2 additional increments w.e.f. 1.1.1996 as an incentive to Scientists/Engineers working in the respondents organisation. With the 6th CPC implementation, the 2 additional increments were revised w.e.f. 1.1.2006 and treated as special incentive vide memo dated 20.10.2008. The issue was challenged in OA 393/2013 which was allowed directing respondents to grant 2 additional increments with DA and other consequential benefits. Respondents challenged the same in WP No.15664/2016 and when the WP was dismissed applicants were paid a sum of Rs.40,680 each to the applicants in OA 381& 383 and Rs.56,160 to the applicant in OA 382 respectively towards arrears due and 2 additional increments allowed. Pension was not fixed with the 2 additional increments. However, the cited amounts were recovered in August 2017 without notice and when the applicants

represented on 17.2.2018/3.7.2018, they were informed that the pension with 2 additional increments will be worked out on receiving a reply from DOP& PW. Aggrieved, OA has been filed.

4. The contentions of the applicants are that the recovery has been effected without notice and that too, when they were due to retire within a year. Such recovery is against the law laid down by the Hon'ble Supreme Court in Rafiq Masih case. Recovery without notice was held to be illegal by the Hon'High Court of Madras in V.Karpagam vs. The State of Tamil Nadu dated 14.7.2016. Not reckoning the 2 additional increments for fixing pension is violative of the orders of the Tribunal in OA 393/2013 as well as legal principle laid down in D.S.Nakara vs. Union of India in fixing pension.

5. Respondents confirm that, in accordance with the orders of this Tribunal in OA 393/2013, applicants therein were granted DA and House Rent Allowance with retrospective effect on the two additional increments granted w.e.f. 1.1.1996 or from the date of promotion to the grade of Scientific Officer/D and higher grades. Two additional increments were reckoned for working out pension and pensionary benefits. However, while implementing the 7th CPC recommendations, the Central Pension Accounting Office has returned pension papers on grounds that by adding 2 additional increments they were not able to identify the relevant level in the Pay Matrix to fix the pension. Hence, the matter was taken up with DOP&PW, who in turn have taken it up with Dept. of Expenditure and the respondents are pursuing with the later. In the meanwhile, in order not to cause any hardship to the

pensioners, pension without the additional 2 increments has been fixed and released. With the revision of rates on DA w.e.f 1.1.2016 consequent to the implementation of 7th CPC, the DA paid on the 2 additional increments from 1.1.2016 to 30.6.2017 as excess was recovered while the applicants were in service.

6. Heard both the counsel and perused the pleadings.

7. I) There are two issues which have been disputed in the OA. One is in regard to recovery of DA paid on the additional two increments consequent to the implementation of the 7th CPC. Respondents have explained that the recovery was warranted in view of the revision of DA with the implementation of 7th CPC recommendations from 1.1.2016. However, respondents failed to put the applicants on notice before effecting the recovery. Principles of Natural Justice call for such a notice to be issued. Besides, a public order passed with adverse civil consequences by a statutory authority has to pass the test of reasonableness as observed by the Hon'ble Apex Court in Vice Chancellor, Banaras Hindu University Vs. Shrikant, reported in 2006 (11) SCC 42 as under:

“An order issued by a statutory authority inviting civil or evil consequences on the citizen of India, must pass the test of reasonableness.”

Respondents without issuing a notice have disabled the applicants to explain their position on the issue and hence the decision of the respondents fails the test of reasonableness as per the legal principle stipulated by the Hon'ble Apex Court cited supra. Further, action of the

respondents is not in consonance with the law laid down in Rafiq Masih case in State of Punjab & Ors vs Rafiq Masih (White Washer) on 18 December, 2014, Civil Appeal No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012), as under:

"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. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise 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 far outweigh the equitable balance of the employer's right to recover."*

Clause (ii) of the above judgment applies to the applicants. Besides, the applicants did not misrepresent or misguide the respondents to seek the excess payment in question. Respondents need to follow the principles of law before taking a decision which has adverse civil consequences to those it is meant for. Hence the order of recovery is invalid in the eyes of law.

II) Now coming to the question of working out pension by adding two additional increments due to the applicants, respondents have explained that the matter is pending with the Dept. of Expenditure and that they are pursuing the same. Nevertheless, in order to ensure that the applicants are not subjected to any inconvenience, pension has been granted without the additional 2 increments as an interim measure. Respondents have not denied the eligibility of the applicants for the additional increments. In fact, respondents allowed the 2 additional increments and in fixing the pension with the increments referred to, a technical difficulty arose in view of the absence of relevant pay level in the 7th CPC pay matrix. Therefore, blaming the respondents that they did not consider the two additional increments in processing the fixation of pension is unfair. However, Ld Counsel for the applicant has submitted that the matter has been pending since quiet some time and the respondents need to state a definite time frame for resolving the issue. The applicants being retired employees with reduced income on retirement, entertaining such an expectation for an early decision is but natural. Respondents need to expedite a decision in the matter.

III) Therefore, keeping the aforesaid facts in view, respondents are directed to consider as under:

- i) To refund the amount of Rs.40,680 /Rs.56,160 recovered from the respective applicants as prayed for in the concerned OA, within 8 weeks from the date of receipt of this order.

- ii) To refix pension by including the additional two increments as ordered in OA 393/2013, within a period of 6 months from the date of receipt of this order.
- iii) If the pension is fixed after 6 months, then interest @ 8% p.a. has to be paid, on the difference of pension amount to be paid to the applicants for the period, from the date due after lapse of 6 months from date of respective retirement till the date of payment.
- iv) With the above directions, OAs are allowed as specified, with no orders as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 24th day of October, 2019

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