

(2019) 04 CAT CK 0067

In the Central Administrative Tribunal

Case No : Original Application No. 4073 Of 2018

Kamlesh Mittal

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 30-04-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 20(2), 20(2)(b), 21, 21(1), 21(3), 21(1)(a), 21(1)(b)
Central Civil Services (Pension) Rules, 1972 — Rule 70
Indian Railway Establishment Code, — Rule 2544
Karnataka Civil Services (Conduct) Rules, 1966 — Rule 296, 299(1)(b)
Constitution Of India, 1950 — Article 142

Citation : (2019) 04 CAT CK 0067

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : S.N. Kaul, Satish Kumar

Judgement

1. The applicant is a widow, about 70 years of age and was working as Section Officer (SO) under Central Industrial Security Force (CISF), who are respondent no.2. She has superannuated on 31.08.2008 while working in the scale of Rs.6500-10500 as per 5th Central Pay Commission (CPC). The Pension Payment Order (PPO) as per 5th CPC was issued on 22.08.2008 in this scale wherein pension as well as commutation was allowed w.e.f. 01.09.2008.

2. On implementation of 6th CPC a revised PPO was issued on 05.10.2009. This indicated her Pay Band (PB) to be PB-3 and GP Rs.5400/- i.e. Rs.15600-39100 + GP Rs.5400/- and the last pay drawn was shown as Rs.24,400/- and accordingly pension was revised to Rs.12,200/- w.e.f. 01.09.2008.

3. Another PPO has now been issued on 17.01.2018 wherein the pay has been revised to PB-2 + GP Rs.4600/-, i.e. Rs.9300-34800 and GP Rs.4600/- and the last pay drawn has been shown as Rs.23,940/-. Accordingly, revised pension has been shown as Rs.11,970/- effective from 01.09.2008.

Thus, the pension has now been reduced and an order for recovery has also been issued. Applicant made a representation dated 08.10.2018. However, there has been no reply so far. Feeling aggrieved on this reduction in pension and on recovery, the applicant had preferred the instant OA.

4. The applicant relies upon the following judgments:

(a) Chairman, Railway Board and others vs. C.R.Rangadhamaiah and others, (1997) 6 SCC 623

(b) U.P.Raghavendra Acharya and others vs. State of Karnataka and others, (2006) 9 SCC 630

(c) Videsh Sanchar Nigam Ltd. and another vs. Ajit Kumar Kar and others, (2008) 11 SCC 591

(d) State of Punjab and others etc. vs. Rafiq Masih (White Washer) and Ors., [(2015) 4 SCC 334]

5. The applicant also relies upon Rule 70 of CCS (Pension) Rules, which is reproduced below:

"Revision of pension after authorization

(1) Subject to the provisions of Rules 8 and 9 pension once authorized after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently :

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Department of Personnel and Administrative Reforms if the clerical error is detected after a period of two years from the date of authorisation of pension.

2[(1-A) The question whether the revision has become necessary on account of a clerical error or not shall be decided by the administrative Ministry or Department.]

(2) For the purpose of sub-rule (1), the retired Government servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment, shall be adjusted in instalments by short payments of pension in future, in one or more instalments, as the Head of Office may direct."

6. Applicant has also relied upon CCS (Pension) Rules, 2008 wherein it is pleaded that the pension cannot be stopped or reduced and its continuance is based only upon future good conduct.

Applicant pleads that her pension has been reduced after lapse of about 10 years and the same is not permissible. Accordingly, relief has been sought in the form of quashing of the PPO dated 17.01.2018 and to continue pension payment as per PPO of 05.10.2009 and revision of the same as per 7th CPC on the basis of PPO dated 05.10.2009. The refund of the recoveries already made has also been sought along with interest. Interim relief against recoveries was granted on 25.10.2018 which is still in force.

7. Respondents have opposed the OA. It was pleaded that the SOs of CISF where the applicant was working and the SOs in the Ministries under Central Secretariat Service (CSS), were having a historical parity up to 5th CPC.

When the orders for implementation of 6th CPC recommendations were issued on 29.08.2008, all those who were working in the scale of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, were merged and were initially granted the replacement pay scale of PB-2 + GP Rs.4200/-. However, it was also specified that in case this merger was not feasible on functional considerations, the scale Rs.6500-10500, need not be merged and be granted PB-2 + GP Rs.4600. Subsequently, vide Ministry of Finance letter dated 13.11.2009, all those in Rs.6500-10500 were granted the replacement scale of PB-2 + GP Rs.4600/-.

7.1 As against this, in regard to office staff in the Secretariat, i.e. SOs and PSs of CSS, the pay scale was upgraded from Rs.6500-10500 to Rs.7500-12000 for which the replacement scale was PB-2 + GP Rs.4800/- and it was also specified that on completion of 4 years of service, these SOs and PSs will be granted the financial upgradation to PB-3 + GP Rs.5400/-. The relevant note reads as under:

"This scale shall be available only in such of those organizations/services which have had a historical parity with CSS/CSSS. Services like AFHQ/ AFHQSS/ RBSS and Ministerial/Secretarial posts in Ministries/ Departments organizations like MEA, Ministry of Parliamentary Affairs, CVC, UPSC, etc. would therefore be covered."

8. However, despite proviso as mentioned in said notification (para 7.1 supra), the CISF Directorate, keeping in view the historical parity, had granted the same scales as were applicable to CSS (para 7.1 supra), to the SOs of CISF also, both serving and retired, instead of those in para 7.0 supra, and accordingly, their pay was fixed vide CISF letter dated 07.10.2008 and the pension orders for instant applicant was also accordingly revised on 05.10.2009.

Subsequently, the Ministry of Finance vide OM dated 13.11.2009 clarified that those in the scale of Rs.6500-10500 are to be granted the replacement scale of PB-2 + GP Rs.4600/- w.e.f. 01.01.2006 and the upgraded scales of PB-2 + GP Rs.4800/- and PB-3 + GP Rs.5400/- were applicable to SOs working in the Ministry and in the CSS only. Accordingly, the pay fixation in respect of SOs of CISF including the applicant, were subsequently revised on 12.10.2012.

It was thus pleaded that the initial pay fixation given to the applicant on

07.10.2008 was incorrect ab initio and needs to be corrected. Accordingly, pension fixation done on 05.10.2009 was also incorrect and needs correction and this is permitted as per extant rules.

9. What happened in the meanwhile, also needs to be recounted. On reduction/revision of pay fixation to PB-2 + GP Rs.4600/- and non-grant of same scale as that of SOs of CSS, the serving SOs and Private Secretaries (PSs) of CISF felt aggrieved and filed an OA No.419/2011 which was decided vide orders dated 25.01.2011 with directions that a show cause notice be issued and the pay fixation be decided subsequently. The order reads as under:

"3. In our view, principles of natural justice have been violated. For that reason, we dispose of this OA and set aside the impugned order dated 10.1.2011 with liberty to the respondents to put the applicant on notice, have his reply and pass an order which, we are sanguine, would be a speaking one, if the respondents have to stick to their stand of reducing the pay of the applicant. The interim order, vide which we stayed the recovery, would continue till the disposal of the representation that would be made by the applicant."

10. Thereafter, efforts were made by the respondents to grant the GP Rs.4800/- as well as GP Rs.5400/- to SOs of CISF, ITBP etc. However, the Ministry of Home Affairs decided that the same was not applicable to the SOs/PSs of the CISF/ITBP etc. and the decision was communicated on 24.07.2012. This reads as under:

"Reference is invited to CISF's U.O. note no.E-27015/3/Pay(SO)/2003/Pers.II/1179 dated 6.5.2012 regarding placement of SOs/PSs of CISF in PB-2 (Rs.9300-34800/-) in GP of Rs.4800/- and in non functional scale in PB-3 (Rs.15600-39100/-) in GP of Rs.5400/- on completion of 4 years regular service.

2. The proposal has been examined in this Ministry in consultation with IFD and has not been agreed to."

11. Thereafter, a show cause notice (SCN) was issued to all concerned staff on 12.09.2012, for re-fixation of their salary to GP Rs.4600/-. This SCN was issued to a large number of staff, both serving and retired. The applicant's name appears at Sl. No.22 of the said letter, and this communication was sent by registered post. It is pleaded that the applicant did not submit any representation. Thereafter, orders were passed for all concerned staff and in respect of instant applicant, the speaking order was passed by the respondents on 12.02.2013.

It is strange that while applicant has pleaded that the said SCN letter dated 12.09.2012, was not received by her. However, as per her rejoinder, the speaking order dated 12.02.2013 appears to have been received by the applicant as the same has been acknowledged in the rejoinder. The only plea taken by the applicant is that she was not in service at that point of time and as such was neither party to the OA No.419/2011 nor the reduction is applicable to her.

12. Respondents also brought out another history of protracted litigation in this

connection earlier by other similarly placed SOs/PSs.

13. Certain SOs/PSs working in ITBP, who were denied the GP Rs.4800/- and GP Rs.5400/-, had preferred an OA No.1373/2010 and another OA No.921/2010. These two OAs were allowed on 28.01.2011 and 24.01.2011 respectively. While allowing these two OAs, the Tribunal relied upon another judgment in S.R.Dheer and ors. vs. Union of India and ors., in OA No.164/2009 which was decided on 19.02.2009.

The respondents challenged this decision in Hon'ble High Court of Delhi in WP (C) No.2217/2011 and in WP (C) No.3643/2011. A common order was passed by the Hon'ble High Court on 23.01.2013. Both these OAs were remanded back to the Tribunal for fresh adjudication along with a hope expressed that reasons for parity, if any, are found and if the Tribunal is of the opinion that its decision in S.R.Dheer (supra) squarely applies to the claim made by the applicants, reasons for the same shall also be recorded.

14. Meanwhile, two other OAs were also filed by SOs/PSs working in CISF vide OA No.916/2013 and another OA No.4568/2011. Therefore, while taking up the matter on the two OAs for readjudication (para 13 supra), all these four OAs were clubbed. A common judgment was passed on 16.01.2015. All the four OAs were dismissed being bereft of merit. The operative part of this judgment reads as under:

"11. For the above reasons, we find that the instant set of cases are not covered by S.R.Dheer and Others versus Union of India and Others (supra) and P.C.Chinhara, SO & Others versus Union of India & Others (supra) but are rather covered by a recent decision of this Tribunal in Harjeet Singh & Others versus Union of India & Others (supra), and for parity of reasons in this case, we find no good ground on which these four OAs should be allowed. Therefore, all these four OAs are dismissed being bereft of merit. However, the applicants have the liberty to approach the 7th Pay Commission which has been constituted by the Government. There shall be no order as to costs."

14.1 It was only after this stage that revision of pay fixation and pension in respect of the applicant was finally issued on 17.01.2018 which has been agitated in instant OA (Para 3 supra).

15. In view of the foregoing, it was pleaded that the pay fixation has been correctly fixed as the earlier pay fixation under 6th CPC was incorrect as is also established by the adjudication as brought out in para 13 and 14 above.

16. Thereafter, the applicant also made a representation dated 07.10.2018 and 08.10.2018 seeking the details in respect of the proposed recoveries. Applicant was advised on 20.11.2018 to approach the pension paying bank in respect of these details. Respondents, however, mention that the proposed recoveries were stayed by the Tribunal and the same has been implemented vide respondents order dated 05.11.2018.

17. Respondents also brought attention to an undertaking given by the applicant on 03.03.2008 at the time when pay fixation was being done under 6th CPC. This undertaking reads as follows:

"I, Kamlesh Mittal hereby undertake that I shall refund the excess retirement benefits, if any, paid to me by oversight, immediately on demand from the Head of Office, failing which the same may be recovered from my pension."

It was pleaded that once the applicant has given the consent to effect recoveries in respect of any excess payment, the applicant cannot turn now to question those recoveries. This issue has also been adjudicated by the Hon'ble Apex Court in High Court of Punjab and Haryana & others vs. Jagdev Singh, 2016 (14) SCC 267.

18. In view of the above, the respondents pleaded that OA is required to be dismissed. Respondents relied upon the following judgments:

(a) D.C.S.Negi vs. Union No.7956/2011, CC 7.3.2011 of India and ors., [SLP(C) 3709/2011], decided on 7.3.2011

(b) Shri Ramji Tripathi vs. The Secretary, OA No.2024/2012 decided by the Tribunal on 07.11.2012.

(c) Alok Saxena vs. Union of India and Ors., OA No. 3791/2015 decided by the Tribunal on 16.11.2018.

19. Matter has been heard at length. Sh. S.N.Kaul, learned counsel represented the applicant and Sh. Satish Kumar, learned counsel represented the respondents.

20. It is admitted that the applicant was working in the scale of Rs.6500-10500 at the time of her retirement on 31.08.2008. The normal replacement scale as per 6th CPC was PB-2 + GP Rs.4600/-, i.e. Rs.9300-34800 + GP Rs.4600/- (para 7.0 supra). However, in keeping with the historical parity, the CISF took consent (para 17 supra) and went ahead and granted the scales of SOs as were applicable to CSS, i.e. PB-2 + GP Rs.4800/- and PB-3 + GP Rs.5400/-(para 7.1 supra).

On correction of the same to PB-2 + GP Rs.4600/-, the protracted litigation that has ensued in this connection and the efforts made by the respondent - CISF to still treat their SOs/PSs at par with those of CSS, are already brought out in para 10 above. This parity has, however, not been found applicable, even on merit, as is clear from the common order by the Tribunal in OA No.916/2013 dated 16.01.2015 (para 9, 13 and 14 supra).

It, therefore, follows that on merit, the applicant is not entitled for the pay fixation and corresponding pension fixation as was granted to her on 05.10.2009. Accordingly, this fixation was in the nature of being provisional, as is also exemplified by her consent for correction letter (para 17 supra) and was required to be corrected and has since been corrected also vide revised pay and pension

fixation order dated 17.01.2018 (para 3 supra).

21. The applicant had pleaded that she had already retired by the time, the OA No.916/2013 was filed and decided and in any case she was not a party to the same. It was pleaded that this OA was filed by those who were still serving and as such the same decision is not applicable to her, who had already retired. Since all SOs/PSs were to be given the revised pay fixation as per 6th CPC and when the very fixation itself has been adjudicated by the Tribunal on merit (para 14 supra) after remand by Hon'ble High Court, it would be incorrect to treat those SOs/PSs, who had already retired on a different footing vis-a-vis those who were still serving.

In any case, as was ordered by the Tribunal, a show cause notice was issued to all SOs/PSs, who were serving as well as those who had already retired. This show cause notice dated 12.09.2012, was sent by registered post to the applicant also. The applicant has, however, claimed that she did not receive this notice. However, the speaking order dated 12.02.2013, which was subsequently passed, has been acknowledged by the applicant, as seen from her rejoinder.

It, therefore, follows that she was very well aware in February, 2013 that the pay fixation has been revised to PB-2+GP Rs.4600/-. She has, however, chosen neither to agitate the matter in association with the applicants of OA No.916/2013 nor in her individual capacity. This, however, cannot change the fact of the matter and she will have to be necessarily governed by the adjudication as done by the Tribunal vide their orders dated 16.01.2015 in OA No.916/2013 (para 14 supra).

22. The applicant had laid lot of emphasis that pension once fixed, rightly or wrongly, is final and cannot be reduced or rectified. The present stipulations as per CCS (Pension) Rules (para 5 supra), clearly establish that the mistake can be rectified and the instant case is the one wherein the pay was fixed wrongly. It cannot be ignored that the applicant herself has given an undertaking on 03.03.2008 and consented to subsequent correction and recoveries (Para 17 supra).

23. The relied upon judgments have been scrutinised as under to assess their applicability or the ratio thereof in the instant case:

(a) In the case of C.R.Rangadhamaiah (para 4 (a) supra), the issue under adjudication as noted by Hon'ble Apex Court was as under:

"The respondents were railway employees belonging to the category of "running staff". They retired from service after 1-1-1973 and before 5-12-1988. Their pensionary benefits were to be calculated on the basis of "average emoluments" as defined in Rule 2544 of the Indian Railway Establishment Code. The "running allowance" up to maximum of 75% taken as part average emoluments for determination of their pension and gratuity. When the pay scales of railway employees were revised w.e.f. 1-1-1973 under the Railway Services (Revised

Pay) Rules, 1973, the Railway Board vide its letter dated 21-1-1974, intimated that existing percentage of running allowance would continue for the time being, though it was under revision. In a subsequent letter dated 22-3-1976, the percentage was reduced to 45% retrospectively w.e.f. 1-4-1976 but this was quashed by the Central Administrative Tribunal in another case. The Railway Board did not challenge validity of the judgment of the Tribunal but it issued two statutory notifications, both dated 5-12-1988, in which the percentage was reduced to 45% retrospectively w.e.f. 1-1-1973 and to 55% retrospectively w.e.f. 1-4-1979."

The Hon'ble Apex Court while deciding this case also drew attention to another case decided by the Hon'ble Apex Court, namely, Devkinandan Prasad vs. State of Bihar, (1971) 2 SCC 330 wherein Court had made following observations:

"6. The fundamental right to receive pension according to the rules in force on the date of his retirement accrued to the appellant when he retired from service. By making a retrospective amendment to the said Rule 299(1)(b) more than fifteen years after that right had accrued to him, what was done was to take away the appellant's right to receive pension according to the rules in force on the date of his retirement or in any event to curtail and abridge that right. To that extent, the said amendment was void."

Keeping these in view, the Hon'ble Apex Court gave the following ruling on 25.07.1997:

"35. For the reasons aforementioned, the appeals as well as special leave petitions filed by the Union of India and Railway Administration are dismissed. But in the circumstances, there will be no order as to costs."

It can be seen from above that the judgment is in the context of running staff of Railways whose salary has two components, namely, basic pay and running allowance. Certain percentage of running allowance also counts towards working out pensionary benefits. Subsequent downwards revision to this percentage, which were applied retrospectively, was not upheld by the Hon'ble Apex Court in this judgment. In the Devakinandan case, the payment of pension was stopped, long after it was already paid. This denial was struck down by Hon'ble Apex Court.

As against this, the applicant in the instant case was eligible to draw salary alone (Basic Pay + GP). There is no other component. On implementation of 6th CPC scale, the applicant was given a scale which she was not entitled to. This error was realised later and was a subject matter of adjudication also as brought out in para 14 above. Correction of the same is in accordance with adjudication and is logical and cannot be faulted. It is not a case where new instruction has been issued and which is applied retrospectively. Keeping this in view, the ratio of this judgment by Hon'ble Apex Court is not attracted in the instant case.

(b) The relevant parts of judgment of U.P.Raghavendra Acharya (para 4 (b)

supra), which brings out the issue at hand and adjudication thereof are reproduced below:

"2. The appellants in these appeals are retired teachers of the University and Private Aided Colleges (to whom UGC scales of pay were applicable). They have retired during the period 1.1.1996 to 31.3.1998. So far as the teachers of the University or Privates Aided Colleges are concerned, indisputably, they were being paid the same salary as was being paid to the teachers of the Government colleges.

3. The Government of Karnataka, by a letter dated 17.12.1993 directed that the matter relating to the fixation of pension on the basis of UGC pay scales would be governed by Rule 296 of the Karnataka Civil Services Rules (hereinafter referred to as 'the Rules'), providing for computation of emoluments for the purpose of pension and gratuity of a Government servant.

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6. the Central Government pursuant to or in furtherance of the recommendations made by the Central Pay Commission, revised the scales of pay of its employees with effect from 1.1.1996. The revision of such pay scales was also accepted by the University Grants Commission. Grant of revision of such pay scales was also recommended for the posts held by the appellants herein on or about 22.07.1999 the Government of India by a letter addressed to the Education Secretaries of all the State and Union Territories, stated in a categorical stand that the revision of pension structure for retired teachers shall be as is applicable to the employees working in Central Universities.

7. The Government of Karnataka issued appropriate notification extending the UGC pay scales as revised from 1.1.1996, inter alia to the teachers of Government and Aided Colleges, stating:

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The revised UGC pay scales will be retrospectively effective from 1st January, 1996, and other benefits prospectively from the date of this order."

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9. However, paragraph 27A was inserted thereto in respect of revision of pensionary benefits, which is to the following effect:

"27-A: Revision of pensionary benefits:

(i) UGC scales as revised from 1.1.96 have been linked to the index level of 1510 points inasmuch as the revised pay scale structured includes the DA admissible as on 1.1.96 to the extent of 138% of basic pay. As on 1.1.96 the pensionary benefits under the State Government had not been revised. The revised pay scales of the State Government employees came into force from 1.4.98 by merging the DA as on 1.1.96. The pensionary benefits were also simultaneously

revised w.e.f. 1.4.98. Therefore, the revised pay drawn in the UGC pay scales for the period from 1.1.96 upto 31.3.98 shall not be taken as emoluments for the purpose of pensionary benefits. Accordingly,

(a) In respect of teachers drawing UGC pay scales who have retired during the period from 1.1.96 to 31.3.98 they shall be eligible for the benefit of the fixation of pay and arrears under the revised UGC scales of pay only. There shall not be any change in their pensionary benefits with reference to the revised UGC pay and the retirement benefits already sanctioned in the pre-revised UGC pay scales will not undergo any modifications."

With this, while the petitioner's salary was revised w.e.f. 01.01.1996, their pension was not revised as they had already retired by 31.03.1998 whereas notification for revised pension was issued later on 22.07.1999. The Hon'ble Apex Court decided as under:

"If the State had taken a conscious decision to extend the benefit of the UGC pay scales w.e.f. 1.1.1996, to the appellants allowing them to draw their pay and allowances in terms thereof, we fail to see any reason as to why the pensionary benefits would not be extended to them from the said date."

While giving this ruling, the Hon'ble Apex Court has also observed that

"by reason of such notification as the appellants had been deprived of a vested right they could not have been deprived therefrom and that too by reason of executive instructions"

and also observed in para 25 that

"Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right to property. It is correlated and has a nexus with the salary payable to the employees as on the date of retirement."

It can be seen that while a higher salary was given to the petitioners yet their pensionary benefits were denied on the plea that they had retired before the revised instructions in respect of pension were issued. This was not upheld.

In the instant case with implementation of 6th CPC, the corresponding replacement scales were required to be given. However, higher scales were erroneously given and for correction of the same, SCN was issued to the applicant almost immediately thereafter, but this correction could not be implemented on account of litigation. This context is entirely different as compared to the instant case. It is thus the view of Tribunal that the ratio of this judgment is not attracted in the instant case.

(c) In the case of *Videsh Sanchar Nigam Ltd. vs. Ajit Kumar Kar* (para 4 (c) supra), the Hon'ble Apex Court relied upon the judgment of *U.P.Raghavendra* (supra) which is already discussed above. In this case the Hon'ble Apex Court had observed that

"the amount of pension payable to the respondents in accordance with the rules which were in force at the time of their retirement had been reduced. In such circumstances, this Court held that retrospective amendment of statutory rule, adversely affecting pension of employees who already stood retired on the date of the notification was invalid. A retrospective reduction of the pension was held not permissible under law."

It can be seen that in the instant case the notification remains unchanged. Incorrect fixation was given earlier. This is being corrected as per the original notification. Delay has occurred due to prolonged adjudication. It is, therefore, not a case of retrospective application. Therefore, the ratio of this judgment is not attracted.

(d) The applicant has also relied upon the decision in WP(C) No.1597/2001 decided on 05.05.2006. In this case, the petitioner had retired as Senior Technical Officer under DGCA where IDA scales were applicable. On retirement their pension was to be fixed under CCS (Pension) Rules under Central Government as per petitioner's option. PPO issued had some components of CCS Rules and some components of IDA rules. Subsequently, a revised PPO was issued on 30.10.2006. The pension was revised under IDA Rules. This led to certain detriment of the petitioners. The Tribunal quashed the revised PPO (OA No.480/1998) in Jagdish Tuli & Ors. vs. Union of India vide orders dated 13.11.2000.

This was challenged in the Hon'ble High Court in WP(C) No.1597/2001, wherein the order by the Tribunal was upheld except on the point of interest. For the reasons given, the ratio of this judgment is also not attracted as there is no such intermixing in the instant case.

24. The applicant had also pleaded that her pay fixation under 6th CPC Rule was under statutory order while the revision effected on 12.02.2013 was by the executive instructions and the executive instructions cannot override statutory directions.

The Tribunal is of the considered view that the notification as per 6th CPC was erroneously implemented in the case of instant applicant. When this error has come to light it was rectified and this rectification is in accordance with the original notification for the 6th CPC. This is in accordance with adjudication by Tribunal in similar cases.

As such there is no retrospective implementation. The correction called for is permitted under Rule 70 of the CCS (Pension) Rules also.

25. The respondents have also relied upon certain judgments as under:

(a) Decision by the Tribunal in OA No.3791/2015 decided on 16.11.2018, wherein certain excess payments had come to light on the verge of retirement of the petitioner (Date of retirement 30.09.2014) and recoveries were ordered. These were challenged. The Tribunal, however, upheld the recoveries. The orders

by the Tribunal are reproduced below:

"8. In view of the above facts and circumstances, this Court does not find any merit in the prayer that the impugned order dated 11.9.2015 be set aside. The OM dated 6.2.2014 which has been sought to be challenged is found to be in accordance with the provisions of CCS (Pension) Rules and revision of pension has been done as per the said provisions. Further in view of the judgment of the Hon'ble Supreme Court in Jagdev Singh's case (supra), this Court does not find any merit in this case. Accordingly, the present OA is dismissed. There shall be no order as to costs."

The instant case is also one wherein excess payments took place on account of incorrect implementation of the original directions. This needs to be corrected and as such ratio of this judgment is attracted.

(b) The respondents in the instant case had pleaded that the instant OA is time barred as the pay fixation was revised in the year 2013 whereas the OA has been filed in the year 2018. The aspect of limitation was gone into by the Hon'ble Apex Court in D.C.S.Negi vs. Union of India & Ors., SLP (Civil) No.7956/2011 in CC No.3709/2011 decided on 07.03.2011 wherein the Hon'ble Apex Court observed as under:

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under Section 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:-

"21. Limitation -

(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced

before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3).

In the present case, the Tribunal entertained and decided the application without even advertng to the issue of limitation. Learned counsel for the petitioner tried to explain this omission by pointing out that in the reply filed on behalf of the respondents, no such objection was raised but we have not felt impressed. In our view, the Tribunal cannot abdicates its duty to act in accordance with the statute under which it is established and the fact that an objection of limitation is not raised by the respondent/non-applicant is not at all relevant."

There is force in the pleadings by respondents in regard to limitation in the instant case. The Tribunal, however, notes that this instant OA has already been admitted and the impugned PPO was issued in the year 2018. Accordingly, it has been taken up for decision on merit.

(c) The respondents had also relied upon a judgment dated 07.11.2012 by the Tribunal in OA No.2024/2012 titled Ramji Tripathi vs. Secretary, Ministry of Information and Broadcasting and others. In this case the pension of the petitioner was fixed at Rs.9200/- p.m. w.e.f 01.03.2000. After almost 20 months it was reduced to Rs.8070/- p.m. on 20.10.2003. The petitioner had filed OA No.2793/2003, which was dismissed on 19.05.2004. The petitioner preferred a CWP No. 10056/2006 which was allowed on 15.03.2011. It was directed that case needs to be decided after issuing a SCN.

The said SCN was issued on 06.02.2012. The petitioner made a representation to this SCN and thereafter respondents vide their order dated 30.04.2012 rejected the representation and decided the pension to be Rs.8070/- p.m. only. Feeling aggrieved, the petitioner filed OA No.2024/2012. The Tribunal observed as under:

"8. It is important to note that the Honble High Court had given the respondents six months time to pass fresh orders after giving reasonable opportunity to the applicant and considering his explanation. In accordance with the same, show cause notice was issued to the applicant and after considering his reply, the impugned orders dated 30.04.2012 were passed but not within six months stipulated time.

9. It has been observed that when the matter was adjudicated by the Tribunal, it was decided that there was no basis for the claim of the applicant for fixation in SAG Grade. It was also held by the Tribunal that it was not a case of revision of pension but correction of error apparent on the face of record. The Honble High Court set aside these orders not on merits but on the ground that reasonable opportunity had not been provided to the applicant. It was directed that after giving the reasonable opportunity, needful be done by the respondents within six months. Unfortunately, the needful has been done by the respondents but not within a period of six months. It is to be seen whether the right of the respondents to pass suitable orders ended within a period of six months or not. In para 15 of their counter affidavit, the respondents have clarified that they were not aware of the orders of the High Court dated 15.03.2011 till the month of December, 2011 although they had contacted the Government Counsel several times. As soon as they came to know of it, they issued show cause notice to the applicant, secured the reply of the applicant and passed impugned orders dated 30.04.2012. I am satisfied that the action of the respondents is as per rules and though there has been slight delay, it does not prevent them from passing orders in this regard. It has been accepted by the respondents that fixation of pay of the applicant was wrongly done at the time of his superannuation and as per Rule 70 of CCS (Pension) Rules, the Pension Sanctioning Authority can revise the pension after authorization if such revision becomes necessary on account of detection of a clerical error subsequently. In this particular case, it was definitely a clerical mistake as the applicant had not joined duty in India before retirement and, therefore, he could not be given SAG scale. This has been clearly stipulated in the orders regarding his proforma promotion.

10. I am satisfied that the action taken by the respondents in the matter is bonafide and in accordance with rules and that no case for intervention is made out. OA is accordingly dismissed. No costs."

The instant case is also one where correction of an error has become necessary. A show cause notice was also issued by registered post and once there was no representation, pay fixation was issued only thereafter. The ratio regarding correction of an error is, therefore, applicable and cannot be faulted.

(d) Moreover, the petitioner had also given an undertaking (para 17 supra). The adjudication in respect of recoveries where an undertaking was already given was done by Hon'ble Apex Court in such cases in High Court of Punjab and Haryana vs. Jagdev Singh, (Civil Appeal No.3500 of 2006, decided on 29.07.2016) and recoveries were upheld. The ratio is, therefore, attracted in

instant case.

26. The applicant has also relied upon the judgment of Hon^{ble} Apex Court in State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334 decided on 18.12.2014. In respect of excess payment and recovery thereof, the Hon^{ble} Apex Court has made very important observations in para 6 & 7 of the judgments, which is reproduced below:

"6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

In this context, it is the view of this Tribunal that even though there was absolutely no misrepresentation on her part, she was aware as of 12.02.2013 itself when her pay fixation was revised that in follow up of this fixation pension amount shall also reduce with effect from the date of her retirement. Thus, the excess amount actually got paid and it was in her knowledge and it is in the nature of unsolicited advance.

27. In instant case, three parties are presently before us, namely, the recipient pensioner as applicant, the paying department as respondent No.2 to 4 and the paying bank as respondent No.5. However, this Tribunal is aware that pressure on the public resources, from which such pensions are actually being paid, is also to be kept in view.

28. On consideration of the issues involved in this OA, it is the Tribunal's view

that the applicant cannot be permitted to enrich herself from the limited public resources. It is also noted that the difficulty, in the context of recovery from the applicant, is also substantially mitigated now on account of the fact that the pension payable to the applicant has been substantially increased in the recent past under the 7th CPC, which has come into effect from 01.01.2016.

29. In view of the foregoing, following is ordered:

(i) Salary fixation order dated 12.02.2013 and pension fixation order dated 17.01.2018 are upheld. All retiral dues and pension revision under 7th CPC shall be done on this basis.

(ii) A detailed month-wise statement shall be issued by bank to applicant indicating "dues", "drawn" "recoveries already effected" and "excess", and also seeking her consent for balance recovery.

(iii) In case consent is not received within four weeks of having supplied the statement as at (ii) above, the excess amount shall be recovered thereafter, in interest free easy instalments, not exceeding 20% of her current family pension, till it is fully recovered.

There shall be no order to costs.