

OFFICE OF PR. CHIEF CONTROLLER OF ACCOUNTS
MINISTRY OF FINANCE, DEPT OF REVENUE
CBIC, DGACR BUILDING, IP ESTATE, NEW DELHI

No. PAO/Hq/Pen/NDA/20-21/8973

Dated: 27.12.2021

OFFICE MEMORANDUM

Sub: Checking of Pay fixation cases to avoid litigation and delays in finalization of pension cases

Reference above cited subject, it has come to notice that while checking of pay fixation by the various field PAOs at the time of processing of pension cases, sometimes discrepancies are found and consequently the PAO raises objections which results into issuing of Orders of recoveries from the final retiral benefits of the retiring officials by the concerned HoD/Dept.

2. Aggrieved of such recovery orders issued by the concerned HoD/Dept, these said officials take recourse to litigation in the Hon'ble Central Administrative Tribunal by taking shelter under the Hon'ble Apex Court judgement in the case of "**State of Punjab & Others vs Rafiq Masih**" and the subsequent OM issued by the DoPT vide No. F.No. 18/03/2015-Estt.(Pay-I) dated 02.03.2016 wherein the Hon'ble Apex Court, while recognizing the right of the employer to recover monetary benefits wrongly extended to its employees, has laid down few situations wherein such recoveries would be impermissible under the law. These said situations are reproduced herein below:

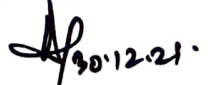
- i. *Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- ii. *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- iii. *Recovery from employees, when the excess payment has been made 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.

3. Further, it has been seen that most of the pension cases are processed in the PAOs when the officials are about to retire in less than 1 year. Therefore, inadvertently a situation is created wherein the orders of recoveries, so issued, are in teeth of the settled law laid down by the Hon'ble Apex Court and the outcome of litigation in Hon'ble CAT of such cases is mostly against the Government rendering the whole exercise of meticulously checking pay fixations at the time of processing pension cases by the PAOs, to be futile and counter-productive and also resulting in unnecessary financial burden on the retiring officials who are forced to move the Hon'ble Courts. Also, it has been seen that most of such cases involving recoveries are pertaining to a certain category of officers such as Assistant Commissioners/Superintendents revolving around the issue of 3rd MACP granted in pursuance of 6th Pay Commission.

4. Therefore, with a view to avoid unnecessary litigation and delay in finalization of pension cases, it is hereby directed that, PAOs may adhere to the statutory provisions of Rule 32 read with Rule 59 of the CCS (Pension Rules) 1972 which prescribe mandatory verification of service. Further, the PAOs are at liberty to check the pay fixation orders at the time whenever such pay fixation orders are issued during the tenure of the officials. In case to check the correctness of the pay fixations, the Service books are required, the PAOs may call for such information and complete the verification exercise in a time bound manner.

5. This issues with the approval of Pr. Chief Controller of Accounts.



(Ameesh Aggarwal)

Dy. Controller of Accounts

To: All PAOs

Copy for information to:

1. Sr.PS to Pr.CCA
2. PS to CCA
3. All Zonal officers