

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

**M.A. No.563/2020
In
O.A. No.719/2019**

Reserved on :05.03.2021
Pronounced on: 10.03.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Anil Gupta ...Applicant.

(By Advocate: Shri Amit Mathur)

vs.

Union of India & Others. ...Respondents.

(By Advocates: Shri Anand Sharma for Respondent No.1 and
Shri V.D.Sharma for Respondent No.2)

ORDER

Per: Dinesh Sharma, Member (A):

The Miscellaneous Application (No.563/2020) has been filed by Respondent No.2 for vacating this Tribunal's interim order dated 20.11.2019 by which the recoveries pursuant to orders dated 28.05.2019 and 11.06.2019 were stayed. It is stated that the respondents have already filed a detailed reply to the OA which will show that the applicant does not have a *prima facie* case. The applicant has replied to this MA stating that he does have a *prima facie* case. Recovery from retiral benefits cannot be made and this matter has been

(2)

settled by this Tribunal in the case of **Dr. Girish Malhotra vs. Union of India** (OA No.291/630/2016), based on the verdict of the Hon'ble Supreme Court in the case of **State of Punjab & Others vs. Rafiq Masih (White Washer) and Others** (2015) 4 SCC 334. There are circulars issued by the Rajasthan Government where it is observed that the criteria laid down in the case of Rafiq Masih (supra) should be followed and no distinction has been made between Group A, B and C services. The case of Matadeen Sharma decided by this Tribunal (where the Tribunal has vacated the interim order) cannot be treated as a precedent since that order has been passed "without going into the merit". The balance of convenience lies with the employee as the amount has been paid to the employee and it is the Government who is changing the stand and not the employee. The Jagdev Singh's judgment does not apply since the facts are different. The applicant had no role in pay fixation and therefore the interim order should not be vacated.

2. The matter was heard on 05.03.2021. The learned counsel for the Respondent No.2 (MA applicant) argued that a wrong pay fixation was done when the applicant was himself the HoD and thus cannot escape the blame for the mistake. The pay on getting IAS was wrongly fixed protecting this wrongly fixed pay earlier and hence the need

(3)

for correction. The applicant being a high ranking officer who has himself given an undertaking for recovery in case of wrong payment, cannot get protection from recovery of excess amounts paid from the public exchequer. Other, similarly placed employees have agreed to the recovery of similarly made excess payments. The learned counsel for the applicant repeated the arguments mentioned in his reply to the MA and further argued that a 3 Judges Bench decision in **Syed Abdul Quadir vs. State of Bihar** should prevail over the Chandi Prasad Uniyal case which is a 2 Bench decision. He vehemently argued for continuation of the Interim relief claiming that the applicant had a strong *prima facie* case and the balance of convenience also lies in his favour.

3. We are not going into the detailed merits of this case at this stage. The present decision is only about whether to continue with the ex-parte stay order on recovery issued on 20.11.2019. After going through the available records and hearing the arguments, we are satisfied that, *prima-facie*, the applicant does not have a very strong case. No irreparable loss will be caused to the applicant, if the recovery is made of the amounts allegedly paid in excess of entitlement. The balance of convenience also lies in favour of not staying the recovery since there is a higher probability of applicant not being able to pay up if the amount is

(4)

ultimately found to be recoverable. The applicant was a very high-ranking officer and other similarly placed officers have already paid up or allowed the amount to be recovered.

4. Taking all these factors into account, MA No.563/2020 is allowed and the interim order dated 20.11.2019 is hereby vacated.

5. List the OA on 26.04.2021 under appropriate heading.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/