

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

M.A. No.591/2020

In

O.A. No.757/2019

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)

Ram Chandra Dhenwal

...Applicant.

(By Advocate: Ms.Kavita Bhati)

vs.

Union of India & Others.

...Respondents.

(By Advocates: Shri Lalit Mohan Bhardwaj for Respondent
No.1 and Shri V.D.Sharma for Respondents
No.2 and 3)

ORDER

Per: Dinesh Sharma, Member (A):

The Miscellaneous Application (No.591/2020) has been filed by Respondents No.2 and 3 for vacating this Tribunal's interim order dated 18.12.2019 by which the recoveries pursuant to orders dated 11.09.2019, and 23.05.2018 (Annexures A/2 and A/3 respectively) were stayed. It is stated that the Respondents No.2 and 3 have already filed a detailed reply to the OA which will show that the applicant does not have a prima facie case nor does the balance of convenience lie in his favour. The department will suffer

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irreparable loss if the stay order is not vacated. The applicant has replied to this MA stating that he has a strong prima facie case of which details are given in the OA and in the rejoinder to the reply filed.

2. The matter was heard on 05.03.2021. The learned counsel for the Respondents No.2 and 3 (MA applicant) argued that a wrong pay fixation was done due to a wrong interpretation of order dated 07.04.2017. This was corrected by the impugned orders 23.05.2018, 26.09.2019 and 11.09.2019. The applicant has not assailed the legality and validity of the OMs on the basis of which the correction has been made. 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 and recoveries have already been made from them. The learned counsel for the applicant argued that the facts of this case were different from that of Mahaveer Prasad Sharma's case (another case where the Tribunal has recently vacated a stay on recovery from a high ranking retired officer) and therefore, the stay should not be vacated.

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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 18.12.2019. 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 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.591/2020 is allowed and the interim order dated 18.12.2019 is hereby vacated.

5. List the OA on 26.04.2021 under appropriate heading.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

/kdr/