

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/00351/2014

Date of Order: 19.1.2015

CORAM

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

1. Prakash Janjani son of Shri P.S.Janjani, age 49 years, resident of 4/533, Jawahar Nagar, Jaipur.
2. Ram Lal Meena son of Late Shri Umraw Singh Meena, age 51 years, resident of Quarter No.43/IIIrd CPWD Colony, Sector-10, Vidyadhar Nagar, Jaipur.
3. Rajendra Prasad Jat son of late Shri Gheesa Ram Jat, age 51 years, resident of Quarter No.99/II, CPWD Colony, Sector 10, Vidyadhar Nagar, Jaipur.
4. Mahesh Kumar Pandey son of Shri Harish Chandra Pandey, age 46 years, resident of 1038, Barkat Nagar, Tonk Phatak, Jaipur.
5. Ashok Kumar son of Shri Chiranjee Lal Sharma, age 50 years, resident of 22, Bhomiya Nagar-I, Kalwar Road, Jhotwara, Jaipur.
6. Ramesh Kuamar Pareek son of late Shri Ramswaroop Pareek, age 49 years, resident of Quarter No.29/III, CPWD Colony, Sector 10, Vidyadhar Nagar, Jaipur.
7. Surjeet Singh son of Shri Uttam Singh, aged around 50 years, resident of 116, Tara Nagar-E, Jhotwara, Jaipur(Rajasthan).

All are presently working in the Ministry of Health and Family Welfare and posted at Jaipur.

.....Applicants

(By Advocate Mr. Amit Mathur)

VERSUS

1.The Union of India through its Secretary, Ministry of Health & Family Welfare, North Block, New Delhi.

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2.The Director General, Health Services, Ministry of Health & Family Welfare, New Delhi.

3.The Director, National Vector, Borne, Disease Control Programme, Ministry of Health & Family Welfare, 22, Shamnath Marg, New Delhi.

4.The Senior Regional Director, Regional Office, Health & Family Welfare, Sector 10, Vidyadhar Nagar, Jaipur.

.....Respondents

(By Advocate Mr. Mukesh Agarwal)

ORDER

(Per Hon'ble Mr. Anil Kumar, Administrative Member)

The applicants have filed the present OA praying for the following reliefs:-

8.(i) the present original application may kindly be allowed and order Annexure-A/1 dated 21.5.2014 may kindly be quashed and set aside. Further directions may be issued to respondents not to initiate any recovery from the salary of the applicants for the grant of MACP.

(ii) any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicants.

(iii) cost of this original application also may be awarded in favour of the applicants.

2. The brief facts of the case are that the applicants were extended the benefit of MACP from the date of initial recruitment in the Malaria Operational Field Research Scheme. However, later on the respondents decided to extend the benefit of MACP from the date of absorption in National Malaria Eradication Programme and, therefore, the

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respondents decided to withdraw the benefit of MACP granted to the applicants from their appointment in a Malaria Operational Field Research Scheme Staff (known as MOFRS).

3. The Ld. Counsel for the applicants submitted that the short controversy involved in the present OA is concerning the recovery from the applicants. The Ld. Counsel argued that the MACP was granted to the applicants by the respondents. It was not granted to the applicants on account of any misrepresentation or fraud on the part of applicants. The Ld. Counsel for the applicants relied upon the judgment of the Hon'ble Supreme Court in the case of State of Punjab and others etc. Vs. Rafiq Masih(White Washer) etc. arising out of SLP(C) No.11684 of 2012 and other connected matters decided on 18.12.2014. He submitted that the Hon'ble Supreme Court in Para 12 of the judgment have summerised a few situations wherein recovery by the employers would be impermissible in law. Para 12 of the judgment is quoted below:-

"12. 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:

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- (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."

4. When this OA came for hearing on 15.1.2015, the Ld. Counsel for the respondents was given the opportunity to find out whether the applicants are covered by anyone of the 5 situations mentioned in the judgment of the Hon'ble Supreme Court as referred to by the Ld. Counsel for the applicants. Today the Ld. Counsel for the respondents submitted that all the applicants are Group-C employees and, therefore, they are covered by the judgment of the Hon'ble Supreme Court in the case of State of Punjab and others etc. Vs. Rafiq Masih(White Washer) etc. (supra) as referred to by the learned counsel for the applicants.

5. Heard the learned counsel for parties, perused the documents on record and the case law referred to by the counsels of the parties. The learned counsel for the

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applicants reiterated his arguments. The learned counsel for the respondents submitted that the order or recovery of arrears given on account of MACP is as per the law and the applicants have no ground to challenge the same before this Hon'ble Tribunal. He also referred to the judgment of the Hon'ble Supreme Court in the case of Chandi Prasad Uniyal & others Vs. State of Uttrakhand & others (2012) 8 SCC 417 wherein Hon'ble Supreme Court has held that employer has right to recover any amount paid to an employee in excess to his entitlement otherwise it would amount to undue enrichment. However, he admitted that the judgment of the Hon'ble Supreme Court in the case of State of Punjab and others etc. Vs. Rafiq Masih(White Washer) etc.(supra) is applicable under the facts and circumstances of the present OA.

6. The case law referred to by the learned counsel for the respondents i.e. Chandi Prasad Uniyal & others Vs. State of Uttrakhand & others (supra) is not applicable under the facts and circumstances of the present OA because the Hon'ble Supreme Court in the case of State of Punjab and others etc. Vs. Rafiq Masih(White Washer) etc. have also considered its judgment in the case of Chandi Prasad Uniyal & Others Vs. State of Uttrakhand & Others(supra) and has laid down the guidelines in Para 12 of the judgment which has been quoted in Para 3 of this order.

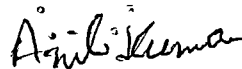
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7. Having heard the rival submissions of the parties and after the careful perusal of documents and the case law as referred to by the learned counsel for parties, I am of the view that the applicants are entitled to relief in the present OA. It is not disputed that the applicants were sanctioned MACP not on account of any misrepresentation or fraud on the part of applicants. It is settled that applicants are not entitled to MACP from the initial date of appointment in MOFRS but they were entitled to MACP from the date of their absorption in National Malaria Eradication Programme (i.e. NMEP). Therefore, the order of recovery can be passed by the respondents against the applicants but in view of the ratio decided by the Hon'ble Supreme Court in the case of State of Punjab and others etc. Vs. Rafiq Masih(White Washer) etc. actual recovery cannot be made from the applicants because the MACP was sanctioned to them not on account of misrepresentation or fraud on their part and all the applicants belong to Group-C. According to the Hon'ble Supreme Court in the case of State of Punjab & Others Vs. Rafiq Masih(White Washer)etc. (supra), recovery is impermissible in law from employees belonging to Group-C and Group-D service. Therefore, the respondents are directed not to recover any amount from the applicants which has been paid to them on account of wrong sanction of MACP to the applicants. Further, it is made clear that if

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any recovery has been made from the applicants then it would be refunded to them.

8. With these directions the OA is disposed of with no order as to costs.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/