

**Central Administrative Tribunal
Chandigarh Bench**

OA No.060/00074/2014

Order reserved on 17.09.2014

Pronounced on: 19.9.2014

Coram:

Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mrs. Rajwant Sandhu, Member (A)

1. Gurnam Singh S/o Sh.Ajit Singh, Hospital Attendant Grade III, Recruitment Cell, Post Graduate Institute of Medical Education and Research, Chandigarh.
2. Raj Kumar S/o sh. Ram Nath, Hospital Attendant Grade III, Department of Radiotherapy, Post Graduate Institute of Medical Education and Research, Chandigarh.
3. Balbir Singh S/o Sh. Gurdial Singh, Hospital Attendant Grade III, Department of Legal Cell, Post Graduate Institute of Medical Education and Research, Chandigarh.
4. Gulzar Singh S/o Sh. Bhag Singh, Hospital Attendant Grade III, Department of Training Branch, Post Graduate Institute of Medical Education and Research, Chandigarh.
5. Swarn Singh S/o Sh. Mehar Singh, Hospital Attendant Grade III, Department of General Surgery, Post Graduate Institute of Medical Education and Research, Chandigarh.

6. Harmeet Singh S/o Sh. Amar Puri, Hospital Attendant Grade III, Accounts Branch, Post Graduate Institute of Medical Education and Research, Chandigarh.
7. Uma Shankar S/o Sh. Ram Dhani, Hospital Attendant Grade III, Accounts Branch, Post Graduate Institute of Medical Education and Research, Chandigarh.
8. Neelam Rani w/o Sh. Nand Lal, Hospital Attendant Grade III, National Institute of Nursing Education, Post Graduate Institute of Medical Education and Research, Chandigarh.
9. Jaswinder Kaur W/o Sh. Sher Singh, Married Doctors Hostels, Post Graduate Institute of Medical Education and Research, Chandigarh.
10. Nanhey Babu Saxena S/o Sh. Shiv Lal, Old Doctors Hostels, Post Graduate Institute of Medical Education and Research, Chandigarh.
11. Kuljeet Kaur w/o Sh. Harbans Lal, Office of Medical Superintendent, Post Graduate Institute of Medical Education and Research, Chandigarh.
12. Gurmeet Singh S/o Sh. Laxman Singh, Department of Virology, Post Graduate Institute of Medical Education and Research, Chandigarh.
13. Nirmal Singh S/o Arjun Singh, Nivedita Hostel, Post Graduate Institute of Medical Education and Research, Chandigarh.
14. Raj Kumar S/o Sh. Diwan Chand, Department of Nephrology, Post Graduate Institute of Medical Education and Research, Chandigarh.

15. Murli Dharn S/o Sh. Krishan Nair, Department of Procurement, Post Graduate Institute of Medical Education and Research, Chandigarh.
16. Paramjeet Singh S/o Man Singh, Department of Library, Post Graduate Institute of Medical Education and Research, Chandigarh.
17. Dhan Bahadur S/o Dal Bahadur, Department of Orthopedics, Post Graduate Institute of Medical Education and Research, Chandigarh.
18. Neelam Kumari W/o Kansi Ram, Office of Registrar, Post Graduate Institute of Medical Education and Research, Chandigarh.
19. Varinder Biba W/o Sh. Jagan Nath, Department of Oral Hygiene and Dentistry, Post Graduate Institute of Medical Education and Research, Chandigarh.
20. Bhoop Singh S/o Babu Ram, Department of Central Stores, Post Graduate Institute of Medical Education and Research, Chandigarh.
21. Gurmeet Singh S/o Sh. Dilbag Singh, Department of Psychiatry, Post Graduate Institute of Medical Education and Research, Chandigarh.
22. Krishan Chand S/o Sh. Jadish Chand, Department of C.S.S.D, Post Graduate Institute of Medical Education and Research, Chandigarh.
23. Rajinder Prasad S/o Sh. Murti Ram, Department of C.S.S.D, Post Graduate Institute of Medical Education and Research, Chandigarh.
24. Jagtar Singh S/o Sh. Baksheesh Singh, Married Doctors Hostel, Post Graduate Institute of Medical Education and Research, Chandigarh.

25. Amrit Lal S/o Jattu Ram, Department of Virology, Post Graduate Institute of Medical Education and Research, Chandigarh.

26. Surinder Kumar Pander S/o Sh. Ram Bhushan, Department of Endocrinology, Post Graduate Institute of Medical Education and Research, Chandigarh.

-Applicants

(By Advocate Shri Karan Singla)

Vs

Post Graduate Institute of Medical Education and Research, Sector -12, Chandigarh through its Director.

-Respondents

(By Advocate Shri Anil Sharma proxy for Shri Amit Jhanji, Advocate)

O R D E R

Mr. Sanjeev Kaushik, Member (J):

By means of this Original Application the applicants have sought issuance of a direction to the respondents to withdraw/cancel their decision to effect recoveries of the excess payment made on account of financial up-gradation under MACP and to refund the amount already recovered from their salary for the month of December, 2013. The applicants have filed the present Original Application jointly as they are having a common cause of action in impugning the action of the respondents.

2. We have heard Shri Karan Singh, learned counsel for the applicants and Shri Amit Jhanji for the respondents.

3. The short question that emerges in this OA for our consideration is as to whether recovery can be ordered for an amount wrongly paid to an employee over and above his entitlement?

4. The facts are not in dispute, therefore, need not be spelt out. The only argument raised on behalf of the applicants is that the impugned recovery cannot be ordered, firstly without complying with the principles of natural justice and secondly even if the amount had been paid to them wrongly, the same cannot be recovered because there is no misrepresentation or misstatement of facts on their part. To buttress his submission Shri Karan Singhla, learned counsel for the applicants placed reliance on the following judgments passed by the Hon'ble Supreme Court:

- i) **Syed Abdul Qadir and Ors. v. State of Bihar and Ors.**, (2009) 3 SCC 475.
- ii) **Sahib Ram v. State of Haryana**, 1995 Supp (1) SCC 18.
- iii) **Shyam Babu Verma v UOI**, 1994 SCC (2) 52.
- iv) **Jeewan Singh and others v. State of Punjab and others**, 2013 (1) SLR 204 (P&H).
- v) **Kusheswar Nath Pandey v. State of Bihar & Ors.**, Civil Appeal No.6658 of 2013.
- vi) **Chandi Prasad Uniyal and Ors. v. State of Uttarakhand and Ors.**, 2012 (8) SCC 417.
- vii) **Budh Ram v. State of Haryana**, 2009 (3) SCT 333.

5. Per contra, Shri Anil Sharma, proxy for Shri Amit Jhanji, appearing on behalf of the respondents submitted that since the

applicants have been paid the amount over and above their entitlement, a conscious decision was taken to recover the same in instalments and thereafter an order of recovery has been passed.

6. We have given our thoughtful consideration to the entire matter and perused the pleadings on record with the able assistance of the learned counsel appearing for the respective parties.

7. Perusal of the written statement makes it clear that the respondents themselves have admitted the fact that under a mistaken belief the applicants have been given benefit of financial up-gradation under MACP Scheme from 01.01.2006 instead of 01.09.2008. When this mistake came to their notice, they immediately ordered recovery of the excess amount. Nowhere in the written statement or even at the time of arguments it was suggested by the learned counsel for the respondents that in getting the payment, applicants played any fraud or misrepresented the respondents. Therefore, it can safely be concluded that there is no misrepresentation on the part of the respondents.

8. The only question to be answered now is as to whether recovery can be effected or not? There is a plethora of decisions which have considered the similar issue whether a recovery can be ordered or not. In a recent judgment in the case of **Chandi Prasad Uniyal and Ors. V State of Uttarakhand and Ors** 2012 AIR SCW 4742, the Hon'ble

Supreme Court has considered the earlier precedent on this subject and held as follows:

"15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

9. Hon'ble Supreme Court also distinguished the cases like

Shyam Babu Verma, Syed Abdul Qadir and Sahib Ram (supra)
declining recovery of excess payment in view of the peculiar facts and circumstances of those cases so as to avoid extreme hardship to the concerned employees, for example, where the employees concerned were

mostly junior employees, or they had retired or were on verge of retirement, the employees were not at fault, and recovery which was ordered after a gap of many years would have caused extreme hardship, was not allowed.

10. It would, thus, be apparent that the finding of the Hon'ble Court that the recovery of excess payment is to be stopped as a matter of rule, proceeded to carve out specific situations where stoppage of recovery could be ordered. In other words, the recovery cannot be stopped as a matter of rule. It has been explained that recovery could be stopped where the employees concerned were on lower ladders or they had retired or were on verge of retirement, the employees were not at fault, and recovery which was ordered after a gap of many years and same would have caused extreme hardship to the concerned employee.

11. Perusal of the above legal position makes it clear that three exceptions have been carved out, viz. where the employees concerned were mostly junior employees, or they had retired or were on verge of retirement, the employees were not at fault, and recovery which was ordered after a gap of many years would have caused extreme hardship, was not allowed. Considering that the applicants before us are class IV employees and come within the exceptions carved out by the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal** (supra), we declare the action of the respondents effecting recovery as bad in law and

OA No.060/00074/14
Gurnam Singh & Ors. v. PGI, Chandigarh

accordingly their decision to effect recovery is hereby quashed and set aside. However, the action of the respondents in correcting the error is upheld.

12. The OA stands disposed of accordingly. No costs.

(Mrs. Rajwant Sandhu)
Member (A)

(Sanjeev Kaushik)
Member (J)

Chandigarh

Dated 19.9.2014

'San.'