

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
Order reserved on: 10.09.2014

ORIGINAL APPLICATION NO. 060/00176/2014
Chandigarh, this the 18th day of September, 2014

...
CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. RAJWANT SANDHU, MEMBER (A)
...

Nihal Singh son of Ninnu Ram working as S.M. Signal, Maintenance,
Northern Railway, resident of Quarter No. 249, GRP, Thana,
Bathinda.

...APPLICANT

BY ADVOCATE: SHRI AMARJIT SINGH AHLUWALIA

VERSUS

1. Union of India, through Divisional Railway Manager, Delhi
Division, Northern Railway, New Delhi.
2. Divisional Railway Manager, Northern Railway, New Delhi.
3. Audit Officer, Delhi Division, DRM Office, Northern Railway,
New Delhi.

...RESPONDENTS

BY ADVOCATE: SHRI G.S. SATHI

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ORDER**HON'BLE MR. SANJEEV KAUSHIK, MEMBER(J):-**

The present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 against the order dated 15.01.2014 (Annexure A-1), whereby a sum of Rs. 40,500/- received by the applicant on account of Children Education Allowance has been ordered to be recovered.

The facts need to be spelt out first:

2. The applicant herein working as a S.M. Signal Maintenance, with the Northern Railways availed the reimbursement of tuition fee as admissible under the Children Education Allowance scheme for his two sons studying in +1 and +2 classes. It is the case of the applicant that without passing any order the respondents have started deduction of the said allowance from the salary of the applicant against which he filed a representation on 08.07.2013 (Annexure A-4). The applicant was compelled to approach this Tribunal by filing O.A. No. 1156/PB/2013 which was disposed of vide Order dated 29.08.2013 (Annexure P-6) with a direction to the respondents to take a view on his pending representation. It is in compliance

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of said direction of this Tribunal that the impugned order dated 15.01.2014 has been passed which is under challenge in this O.A.

3. Pursuant to notice, respondents resisted the claim of the applicant by filing a detailed written statement wherein it is submitted that the applicant has claimed the benefits available under the Children Education Allowance Scheme for his 3rd and 4th children, which is not admissible in terms of clarification dated 10.06.2009. After having an audit note dated 22.10.2012, a show cause notice was issued to the applicant, but he refused to accept the same in the presence of two witnesses and, thereafter, the impugned order was passed for recovering the excess amount for which he was not entitled to.

4. The applicant has filed a replication contradicting the averments made in the written statement.

5. We have heard Shri A.S. Ahluwalia, learned counsel for the applicant and Shri G.S. Sathi, learned counsel for the respondents.

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6. The learned counsel for the applicant vehemently argued that the action of the respondents in passing the impugned order of recovery is totally arbitrary and against the mandate of office memorandum dated 02.09.2008. He submitted that there is no bar for claiming the Children Education Allowance for 3rd and 4th children and in terms of the said O.M. the applicant submitted his claim for reimbursement which was allowed by the Competent Authority and, therefore, the same cannot be recovered now. He stated that the respondents do not deny the fact that the applicant has not deposited the fees with the concerned school. He further maintained that the applicant has not been afforded an opportunity of hearing before effecting the impugned recovery and, therefore, the established principle of natural justice has been violated. Lastly the learned counsel submitted that even the recovery of the excess amount cannot be ordered. In support of his submissions he places reliance on the Full Bench judgment of Hon'ble jurisdictional High Court in the case of Budh Ram Vs. State of Haryana (P&H)(FB) [2009 (3) SCT 334].

7. Per contra, Shri Sathi, learned counsel for the respondents vehemently opposed the prayer of the applicant and

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started from where the applicant stopped. He submitted that before passing the impugned recovery order, a show cause notice was issued to the applicant, but he refused to accept the same in presence of two witnesses and acknowledgment to this effect has also been annexed as (Annexure R-2) and to this effect an averment has been made in para 2 of the "Preliminary Submissions" in their written statement. It is, thereafter, that considering the audit objection in terms of the O.M. issued by the DoP&T and the clarification issued by the Railways in this regard dated 10.06.2009 (Annexure R-1), the impugned order of recovery has been passed. Lastly, he submitted that since the applicant has availed the above benefit knowing fully well about rule-position, thus, he cannot seek the benefit of the judgment in the case of Budh Ram (Supra) to the effect that payment already made cannot be recovered.

8. We have given our thoughtful consideration to the matter and have gone through the pleadings with the able assistance of the learned counsel for the parties.

9. While accepting the recommendation of 6th CPC qua the grant of Children Education Assistance and reimbursement of

tuition fee, the Govt. of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), New Delhi (for short DoP&T) issued O.M. on 02.09.2008 for implementation of decisions relating to the grant of Children Education Assistance and Reimbursement of Tuition Fee vide which Central Govt. allowed reimbursement of Children Education Allowance subject to a ceiling of Rs. 12000/- per child with ceiling of Rs. 3000/- per quarter upto a maximum of two children w.e.f. 01.04.2008. Subsequently, the DoP&T issued another O.M. dated 13.11.2009 with reference to the earlier O.M. dated 02.09.2008 clarifying that Children Education Allowance is admissible for the two eldest surviving children only. Relevant para of the said O.M. reads as under:

" This department has also been receiving references seeking clarification whether Children Education Allowance can be claimed in respect of any two children by Government Servants who have more than two children. It is clarified that Children Education Allowance is admissible for the two eldest surviving children only, except when the number of children exceeds two due to second child birth resulting in multiple births."

Similarly, a clarification has already been issued by the Railway Board on 10.06.2009 on the subject "Grant of Children Education Allowance & Hostel Subsidy to Railway employees-clarification" wherein it has been clarified that the reimbursement of Children

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Education Allowance is admissible for eldest two surviving children studying in school affiliated to Board of Education the same also reads as under:

S.No.	Points of doubts/clarification	Comments
1.	Whether reimbursement of children Education Allowance under the revised Scheme is admissible in respect of children studying in unrecognised school also?	Reimbursement of children Education Allowance is admissible for eldest two surviving children studying in schools affiliated to Board of Education.
2.	Under the revised orders reimbursement is admissible for a maximum of two children (exceptions aside). In case of employees having more than two children which two children (i.e. eldest two or youngest of any two school going children) will qualify for reimbursement of Children Education Allowance?	

10. It is clear from the DoP&T O.M. dated 13.11.2009 that Children Education Allowance is admissible only for two eldest surviving children, except when the number of children exceeds two due to second child birth resulting in multiple births. Concededly, in the present case the applicant is having 7 children and he had claimed the benefit under the said scheme for his 3rd and 4th children for which he is not entitled to in term

of the above clarification. Hence, we find no illegality in passing of the impugned recovery order. The contention of the applicant for not making any recovery is also ill founded, as he cannot be allowed to retain the amount to which he was not entitled to.

11. In so far as plea of the applicant that in view of decision of Hon'ble Jurisdictional High Court in the case of Budh Ram (supra), the respondents cannot make any recovery, it may be mentioned here that the Hon'ble Supreme Court in **Chandi Prasad Uniyal And On vs State Of Uttarakhand And Ors**, 2012 AIR SCW 4742 : (2012) 8 SCC 417, decided on 17th August, 2012, has held as under:-

"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,

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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."

12. Hon'ble Supreme Court also distinguished the cases like Shyam Babu Verma v UOI, 1994 SCR (1) 700 : 1994 SCC (2) 52, Syed Abdul Qadir and Ors. v. State of Bihar and Ors, (2009) 3 SCC 475, Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18 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.

13. It would, thus, be apparent that the Hon'ble Apex Court finding that the recovery of excess payment was being stopped as a matter of rule, proceeded to carve out specific situations where

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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. In this case the applicant drew relevant allowance after 2009 by which time instructions had been circulated that one can claim allowance qua two eldest children only. Thus, the applicant was not entitled to claim the allowance as per the instructions. Judicial notice can be taken of the fact that DoPT had issued instructions on 13.11.2009 with reference to earlier O.M. dated 2.9.2008 clarifying that CEA is admissible for the two eldest surviving children only.

14. Despite the above instructions, the applicant submitted his claim of Children Education Allowance knowingly fully that he was not entitled to the same. The law cited in the case of Budh Ram (Supra) is not applicable as it is not that the applicant was ignorant of his ineligibility. In fact he claimed the benefit with his eyes wide open despite a rule to the contrary.

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15. In view of the above, the O.A. is found to be devoid of any merits and the same is dismissed accordingly. No order as to costs.

(SANJEEV KAUSHIK)
MEMBER(J)

(RAJWANT SANDHU)
MEMBER(A)

Dated: 18.09.2014
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