

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1527/2015

Reserved on : 07.04.2016.

Pronounced on : 18.04.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

1. S.S. Kashikar,
Aged about 41 years,
S/o Sh. Shantaram P. Kashikar,
R/o Pune, Maharashtra.
2. Abhishek Gupta,
Aged about 32 years,
S/o Monoj Gupta,
R/o Pune, Maharashtra.
3. Amit Bhetiwal,
Aged about 30 years,
S/o Sh. Ganga Ram Arya,
R/o Pune, Maharashtra.
4. Kusumkant Devendra Dhote,
Aged about 41 years,
S/o Sh. Devendra Krishnarao,
R/o Pune, Maharashtra.
5. Suvash Kumar,
Aged about 35 years,
S/o Sh. Ramyatan Singh,
R/o Pune, Maharashtra.
6. G. Venkatesan,
Aged about 40 years,
S/o Sh. N. Ganesan,
R/o Chennai, Tamilnadu.
7. P. Nijalingappa,
Aged about 38 years,
S/o Sh. Parasappa,
R/o Ahmednagar, Maharashtra.

... Applicants

(All applicants are working as Scientist-D)

(through Ms. Priyanka Bhardwaj for Sh. M.K. Bhardwaj, Advocate)

Versus

UOI & Ors. through:

1. Union of India,

Through its Secretary,
Ministry of Defence, south Block,
New Delhi-110011.

2. Department of Defence Research & Development,
Ministry of Defence,
Through its Secretary, DG of DRDO &
Scientific Advisor to Raksha Mantri,
DRDO Bhavan, Rajaji Marg,
New Delhi-110005.

...

Respondents

(through Sh. Gyanendra Singh, Advocate)

ORDER

The applicants were deputed for long term training programme in UK during the years 2010-2011 and 2011-2012. The expenses for the aforesaid training were borne by the Government. The applicants were paid allowances as admissible under the existing Government Instructions. However, subsequently, an audit of High Commission of India was conducted and it was found that the applicants were wrongly paid both daily allowance as well as lump sum contingent grant. In view of the aforesaid audit objection, the respondents are now proposing to recover the lump sum contingent grant given to the applicants during their stay abroad. The applicants being aggrieved by the action of the respondents had submitted a representation first on 29.07.2014 and then on 03.11.2014. These representations have, however, been rejected by the respondents vide the impugned order dated 03.09.2014. The applicants have now approached this Tribunal seeking the following relief:-

- “(i) To declare the action of the respondents in recovering of contingency grant paid during foreign deputation i.e. 2010-11 & 2011-12 as illegal, arbitrary and unconstitutional and issue direction for not making any recovery.
- (ii) To quash and set aside the impugned order dated 06.05.2013 & 03.09.2014 with further directions for not making any recovery as per aforesaid impugned orders.

- (iii) To direct the respondents not to recover any amount sanctioned through Govt. of India to the applicants during deputation and release the balance sanction amount with interest.
- (iv) To allow the O.A. with costs.
- (v) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants."

2. Learned counsel for the applicants argued that the applicants were in no way responsible for the excess payment made to them. This excess payment has not been made on account of any misrepresentation made by them. As such, recovery from them was impermissible in view of the judgment of Hon'ble Supreme Court in the case of **Syed Abdul Kadir Vs. State of Bihar**, (2009) 3 SCC 475 as well as **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.**, (Civil Appeal No. 11527/2014, decided on 18.12.2014).

3. In their reply, the respondents have submitted that as a result of the audit of the High Commission of India, it has come to notice that excess payment has been made to the applicants during their stay abroad, which now needs to be recovered. They argued that the payment of contingent grant and other allowances was made to the applicants on the basis of cost estimate submitted by them and, therefore, it cannot be said that there was no misrepresentation on the part of the applicants. They have further submitted that in view of the judgment of Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Ors.**, 2012 (8) SCC 417, DoP&T have issued instructions vide their O.M. No. 18/26/2011-Estt.(Pay-I) dated 06.02.2014 according to which any excess payment made on account of a mistake committed by the authorities can be recovered from the employees.

4. I have heard both sides and have perused the material on record. At the outset, I reject the contention of the respondents that the excess payment was

made to the applicants on account of misrepresentation made by them because they had submitted the cost estimates. Whatever payments are made to persons sent on long term deputation are made in terms of existing Instructions of Government of India and not on the basis of any cost estimates provided by the beneficiaries themselves. If the respondents have gone wrong in following the Instruction of Government of India, it is their own fault and the blame cannot be passed on to the applicants.

4.1 However, even if it is held that excess payment was made due to the mistake committed by the authorities themselves, I do not find any reason as to why recovery cannot be made in this case. This is because the two judgments, namely, **Syed Abdul Kadir** (supra) as well as **Rafiq Masih (White Washer) etc.** (supra) relied upon by the applicants are of no help to them. In **Syed Abdul Kadir's** case, the following has been held by Hon'ble Supreme Court:-

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

4.2 A mere reading of the above judgment makes it clear that relief in this case was granted by the Hon'ble Supreme Court in view of the facts and circumstances of that case and also considering the fact that the majority of

the beneficiaries were either retired or were retiring shortly. In the present case that is not the situation.

4.3 Further, in the case of **Rafiq Masih (White Washer) etc.**(supra) Hon'ble Supreme Court have laid down the following circumstances under which recovery of excess payment from employees was impermissible in law:-

“(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.”

4.4 The applicants herein are neither Group-C nor Group-D employees nor are due to retire within one year nor were the excess payment proposed to be recovered from them made in a period for more than five years. Thus, the applicants are not covered by any of the circumstances mentioned in **Rafiq Masih (White Washer) etc.** case (supra).

4.5 On the other hand, the respondents have relied on the judgment of Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal and Others** (supra) in which the following has been held:-

“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 I 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. “

4.6 On the basis of the aforesaid, DoP&T have issued their O.M. dated 06.02.2014, which has also been relied upon by the respondents. In my opinion, this case is squarely covered by the aforesaid judgment as well as the O.M.

5. I, therefore, find no infirmity in the action of the respondents in recovering the excess payments made to the applicants. This O.A. is devoid of merit and is dismissed as such. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/