

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

O.A.No.803/2014

Thursday, this the 10th day of September 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)

Mr. Bhupinder Singh Joon
s/o Mr. Partap Singh Joon
r/o H.No.417/5A, Forest Cross Lane No.11
Neb Sarai Ext. Neb Sarai, New Delhi-68

..Applicant

(Mr. Ajesh Luthra, Advocate)

Versus

1. The Principal Secretary
(Home), GNCT of Delhi
Delhi Secretariat,
IP Estate, New Delhi
2. Directorate of Prosecution
Through its Director, GNCT of Delhi
Room No.139, Tis Hazari Court, Delhi-54

..Respondents

(Mr. Amit Anand, Advocate)

O R D E R (ORAL)

The applicant herein retired as Director of Prosecution, Home Department, Government of NCT of Delhi w.e.f. 31.12.2013. The grievance raised by him in the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 is against the recovery of an amount of `3,26,869/- paid to him as transport allowance till the date of retirement. According to Mr. Ajesh Luthra, learned

counsel for applicant merely because on account of threat to security of the applicant, at the instance of Ministry of Home Affairs, he was provided a vehicle by the Directorate of Prosecution, the transport allowance paid to him over a period of about 6 years cannot be recovered after his retirement.

2. The further submission made by the learned counsel is that in view of the law declared by Hon'ble Supreme Court in **State of Punjab v. Rafiq Masih (White Washer)** 2014 SCC OnLine SC 1027, recovery of the amount from the applicant after his retirement would cause him hardship.

3. On the other hand, Mr. Amit Anand, learned counsel for respondents argued that in terms of Rules 71, 72 and 73 of CCS (Pension) Rules, 1972 and the Government of India's instructions reported thereunder, the dues against a government servant need to be assessed and recovered from his terminal benefits. The Rules and the decision read thus:-

“71. “Recovery and adjustment of Government dues

(1) It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

(2) The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the death-cum-retirement gratuity becoming payable.

(3) The expression 'Government dues' includes -

- (a) dues pertaining to Government accommodation including arrears of licence fee, if any;
- (b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961).

72. Adjustment and recovery of dues pertaining to Government accommodation

- (1) The Directorate of Estates on receipt of intimation from the Head of Office under sub-rule (1) of Rule 57 regarding the issue of No Demand Certificate shall scrutinize its records and inform the Head of Office eight months before the date of retirement of the allottee, if any licence fee was recoverable from him in respect of the period prior to eight months of his retirement. If no intimation in regard to recovery of outstanding licence fee is received by the Head of Office by the stipulated date, it shall be presumed that no licence fee was recoverable from the allottee in respect of the period preceding eight months of his retirement.
- (2) The Head of Office shall ensure that licence fee for the next eight months, that is up to the date of retirement of the allottee, is recovered every month from the pay and allowances of the allottee.
- (3) Where the Directorate of Estates intimates the amount of licence fee recoverable in respect of the period mentioned in sub-rule (1), the Head of Office shall ensure that outstanding licence fee is recovered in instalments from the current pay and allowances of the allottee and where the entire amount is not recovered from the pay and allowances, the balance shall be recovered out of the gratuity before its payment is authorized.
- (4) The Directorate of Estates shall also inform the Head of Office the amount of licence fee for the retention of Government accommodation for the permissible period of two months beyond the date of retirement of the allottee. The Head of Office shall

adjust the amount of that licence fee from the amount of the gratuity together with the unrecovered licence fee, if any, mentioned in sub-rule (3).

(5) If in any particular case, it is not possible for the Directorate of Estates to determine the outstanding licence fee, that Directorate shall inform the Head of Office that ten per cent of the gratuity or one thousand rupees, whichever is less, may be withheld pending receipt of further information.

(6) The recovery of licence fee for occupation of the Government accommodation beyond the permissible period of two months after the date of retirement of allottee shall be the responsibility of the Directorate of Estates.

73. Adjustment and recovery of dues other than dues pertaining to Government accommodation

(1) For the dues other than the dues pertaining to occupation of Government accommodation as referred to in Clause (b) of sub-rule (3) of Rule 71, the Head of Office shall take steps to assess the dues two years before the date on which a Government servant is due to retire on superannuation; or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.

(2) The assessment of Government dues referred to in sub-rule (1) shall be completed by the Head of Office eight months prior to the date of the retirement of the Government servant.

(3) The dues as assessed under sub-rule (2) including those dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of death-cum-retirement gratuity becoming payable to the Government servant on his retirement.

Government of India's decision

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(5) Whether Government dues written off after retirement can be recovered from pay during subsequent re-employment.— A. question has been raised whether the expression "any sums which are subsequently found due" occurring in Decision 4 above covers only the dues relating to the period when the person concerned

was originally in Government service or also covers any dues which may accrue to him as a result of his subsequent re-employment under Government; in other words, whether an amount of overpayment made to a Government servant and written off on the ground that the person concerned is no longer in Government service, can be recovered from him by adjustment of the pay and allowances earned by him in the course of his re-employment under Government. It has been decided that in cases where the amount of over-payment is written off merely because the person concerned is no longer in Government service and not on any other ground, as for example that its recovery would cause hardship to the individual concerned, the dues which may accrue to him during the period of his re-employment under Government may be adjusted against the amount written off.”

According to him, the judgment of Apex Court in **Rafiq Masih (White Washer)** (supra) may apply only in such cases where the amount is already paid and then sought to be recovered.

4. I heard the learned counsels for the parties and perused the record.
5. It is not in dispute that in his capacity as Special Public Prosecutor, the applicant had to represent the State in sensitive matters and in the wake of perception of threat to his life, arrangement of government vehicle for his commutation between residence and office was made. When the applicant commuted in the vehicle provided by the Directorate of Prosecution, at the instance of Ministry of Home Affairs, the transport allowance admissible to him in terms of the instructions by the Government of India, Ministry of Finance, Department of Expenditure

from time to time was not discontinued. Relevant excerpt of the O.M. No.21(2)/2008-EII(B) dated 29.8.2008 (Annexure R-I) reads thus:-

“Subject: Grant of Transport Allowance to Central Government employees.

The undersigned is directed to say that consequent upon the decision taken by the Government on the recommendations of the Sixth Central Pay Commission, the President and pleased to decide that in medication of this Ministry's OM. No.21(1)/97-E-II (B) dated 3.10.1997, the Central Government employees shall be entitled to Transport Allowance at the following rates:-

Employees drawing grade pay of	Rate of Transport Allowance as per month	
	In 13 cities classified as A-1/A earlier	Other Places
Grade pay of Rs.5400 & above	Rs.3200 + DA thereon	Rs. 1600 + DA thereon
(i) Grade pay of Rs.4200, Rs.4600 and Rs.4800 (ii) those drawing grade pay below Rs.4200 but drawing pay in the pay band equal to Rs.7400 & above	Rs.1600 + DA thereon	Rs.800 + DA thereon
Grade pay below 4200 and pay in the pay band below Rs.7440		
Grade pay below 4200 and pay in the pay band below Rs.7440	Rs.600 + DA thereon	Rs.400 + DA thereon

It was only after his retirement that the transport allowance paid to him during the aforementioned period was sought to be recovered.

6. As far as the plea regarding liability of the applicant to refund the amount due against him is concerned, there can be no two opinions that the Department can always recover the dues remaining outstanding against an employee till the date of retirement. I am not dealing with a proposition “whether the Department can recover the dues of the Government from its employee on his retirement or not”. Where both the employee and the employer are conscious about the liability of the employee and liability is not discharged till retirement, the recovery can always be made. The proposition arise to be determined in the present case is “when certain overpayment was made to the applicant not consciously but by mistake over a period of 6 years from time to time, whether at the time of retirement recovery of the amount can be made from him”. In a series of judgments, Hon’ble Supreme Court could rule that in such cases where the recovery of the overpayment made by mistake may cause hardship to a government servant, the recovery should not be made. In **Syed Abdul Qadir v. State of Bihar & others**, (2009) 1 SCC (L&S) 744, Hon’ble Supreme Court ruled that once the extra payment is made by the employer by applying its own principle for calculating the pay and allowances, recovery should not be made.

7. Also in **Chandi Prasad Uniyal & others v. State of Uttarakhand & others** (Civil Appeal No.5899/2012) decided on

17.8.2012, when the recovery of the overpayment made by mistake was approved, a view could be taken by the Apex Court that the same should not be made from a retired employee, as it may cause him hardship.

Relevant excerpt of the judgment reads thus:-

“9. We are of the considered view, after going through various judgments cited at the bar, that this court has not laid down any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular/wrong fixation of pay be recovered.

10. Shyam Babu Verma case (supra) was a three-Judge Bench judgment, in that case the higher pay scale was erroneously paid in the year 1973, the same was sought to be recovered in the year 1984 after a period of eleven years. The court felt that the sudden deduction of the pay scale from Rs.330-560 to Rs.330-480 after several years of implementation of said pay scale had not only affected financially but even the seniority of the petitioners. Under such circumstance, this Court had taken the view that it would not be just and proper to recover any excess amount paid.

11. In Sahib Ram case (supra), a two-Judge Bench of this Court noticed that the appellants therein did not possess the required educational qualification and consequently would not be entitled to the relaxation but having granted the relaxation and having paid the salary on the revised scales, it was ordered that the excess payment should not be recovered applying the principle of equal pay for equal work. In our view, this judgment is inapplicable to the facts of this case. In Yogeshwar Prasad case (supra), a two-Judge Bench of this Court after referring to the above mentioned judgments took the view that the grant of higher pay could not be recovered unless it was a case of misrepresentation or fraud. On facts, neither misrepresentation nor fraud could be attributed to appellants therein and hence, restrained the recovery of excess amount paid.

12. We may in this respect refer to the judgment of two-Judge Bench of this Court in Col. B.J. Akkara (retd.) case (supra) where

this Court after referring to Shyam Babu Verma case, Sahib Ram case (supra) and few other decisions held as follows:

“Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.”

13. Later, a three-Judge Bench in Syed Abdul Qadir case (supra) after referring to Shyam Babu Verma, Col. B.J. Akkara (retd.) etc. restrained the department from recovery of excess amount paid, but held as follows:

“Undoubtedly, the excess amount that has been paid to the appellants - 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 appellants-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 appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.

(emphasis added)"

14. We may point out that in Syed Abdul Qadir case such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them.

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.

17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (*supra*) and in Col.

B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.

18. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012. The appeal stands dismissed with no order as to costs. IA Nos.2 and 3 are disposed of."

8. Finally, in **Rafiq Masih (White Washer)** (supra), Hon'ble Supreme Court could outline the circumstances, which may be described as resulting in hardship when recovery is made. Paragraph 12 of the judgment reads thus:-

"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:

- (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."

9. *Ex facie* the recovery from a retired government servant has been described by the Apex Court as hardship to him. As far as the argument that the present case is not a case of recovery but is the case of withholding of terminal benefits is concerned, I am of the considered view that it was the amount of transport allowance, which was paid to the applicant and has been treated as overpayment and when the terminal benefits due to him are withheld, the ramification is nothing but recovery of the amount, which has already been paid as transport allowance.

10. In the wake, the Original Application is disposed of with direction to the respondents to pay the amount withheld from terminal benefits of applicant on account of overpayment of transport allowance, within eight weeks from the date of receipt of a copy of this Order. No costs.

(A.K. Bhardwaj)
Member (J)

September 10, 2015
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