

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

OA-1013/2015

With

OA-1448/2015

MA-1306/2015

Reserved on : 23.12.2016.

Pronounced on : 10.01.2017.

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

OA-1013/2015

1. Sh. Inder Paul Singh Kohli,
Aged about 60 years,
S/o Sh. Chet Singh,
R/o B-152, Fateh Nagar,
New Delhi-110018.
(Retired from the post of Administrative Officer)
2. Ms. Asha Rani,
Aged about 58 years,
W/o Sh. Tarsem Kumar,
R/o DG-807, Sarojini Nagar,
New Delhi-110023.
(Working as Administrative Officer)
3. Sh. V. Nagaraju,
Aged about 57 years,
S/o Sh. V. Srinivasa Rao,
R/o B-188, Phase-I,
Ashok Vihar, Delhi-110052.
(Working as Chief Accounts Officer)
4. Ms. Jaswinder Kaur,
Aged about 55 years,
W/o Sh. Harbhajan Singh Bains,
R/o GG-1/15C, Vikas Puri,
New Delhi.
(Working as Chief Accounts Officer)
5. Sh. Ramesh Kumar Sharma,
Aged about 55 years,

S/o late Sh. K.N. Sharma,
R/o G-29/89, Sector-3,
Rohini, New Delhi.
(Working as Administrative Officer)

..... Applicants

(through Sh. S.K. Gupta, Advocate)

Versus

Union of India through

1. Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

2. Director General of Inspector,
Custom & Central Excise,
I.P. Bhawan, New Delhi.

..... Respondents

(through Sh. D.S. Mahendru, Advocate)

OA-1448/2015, MA-1306/2015

1. Sh. P.K. Sehgal,
Aged about 59+years,
S/o late Sh. Om Prakash Sehgal,
R/o 20B, Arjun Apartment,
Vikaspuri, New Delhi.
(Worked as Sr. P.S.)

2. Sh. Satya Prakash,
Aged about 58+years,
S/o late Sh. Tara Chand,
R/o E-21/261, Sector-3,
Rohini, New Delhi.
(Working as P.S.)

3. Ms. Pritpal Kaur Bedi,
Aged about 54 years,
W/o Sh. Tarlok Singh Bedi,
R/o 5/7, Pant Nagar,
Jungpura, New Delhi.
(Working as P.S.)

4. Sh. Kamal Malik,
Aged about 54 years,
S/o late Sh. H.L. Malik,
R/o 490, Nimri Colony,
Ashok Vihar, Phase-4,
Delhi-110054.
(Working as Sr. P.S.)
5. Ms. Grace Patrick,
Aged about 59 years,
W/o Sh. Patrick,
R/o 8/530, Lodhi Colony,
New Delhi.
(Working as Sr. P.S.)
6. Ms. Arjuna Setia,
Aged about 55 years,
W/o Sh. M. Shah Setia,
R/o H.No. 237, Sector-4,
R.K. Puram, New Delhi.
(Working as P.S.)
7. Ms. Meera,
Aged about 49 years,
W/o Sh. Suresh Kumar,
R/o 17/11, 1st Floor,
Ashok Nagar, Delhi.
(Working as P.S.)
8. Ms. Veena Sapra,
Aged about 60 years,
W/o Sh. Virendra Sapra,
R/o F-240, Rishi Nagar,
Rani Bagh, Delhi-110034.
(Worked as Sr. P.S.)

..... Respondents

(through Sh. S.K. Gupta, Advocate)

Versus

1. Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Director General of Inspector,
Custom & Central Excise,
I.P. Bhawan, New Delhi.

..... Respondents

(through Sh. D.S. Mahendru, Advocate)

ORDER

In these two OAs same issue is involved, hence they are being disposed of by this common order.

2. Facts of OA-1013/2015 (Inder Paul Singh Kohli) are that the applicants filed OA-2561/1999 before this Tribunal claiming the same benefits as were allowed to the applicant Sh. Gurdev Sandhu Vs. UOI. This O.A. was allowed on 13.07.2000. The aforesaid order of the Tribunal was challenged by the respondents before the Hon'ble High Court of Delhi vide Writ Petition No. 915/2001. This Writ Petition was decided on 06.10.2009 and the order of this Tribunal was set aside. The operative part of the order reads as follows:-

“Taking all these decisions into consideration, there is no doubt that this writ petition filed by the Union of India deserves to be allowed and the impugned order should be set aside. We do so accordingly.

However, we may note that an interim order was passed in this case on 9th February, 2001 that the order passed by the Tribunal will be implemented subject to the outcome of the writ petition. Learned counsel for the Petitioners confirms that the order has been implemented subject to the outcome of the writ petition. We, therefore, make it clear, while allowing the writ petition, that if recoveries have not already been made by the Union of India of any excess payments made to any of the Respondents pursuant to earlier decisions, the recoveries will not be made from today onwards.

The writ petition is disposed of on the above terms.”

3. Facts of OA-1448/2015 are that the applicants along with others filed OA-527/1997 claiming higher pay scale of Rs. 1640-2900. The aforesaid O.A. was allowed vide order dated 28.09.1998. The respondents challenged the aforesaid order before Hon'ble High Court of Delhi by filing Writ Petition(C) No. 3091/1999. This Writ Petition was decided on 26.11.2008 and the order of this Tribunal was set aside. The operative part of the order reads as follows:-

“The issue is no longer res integra with the decision of this Court in **Mahender Pal Singh & Ors. v. Union of India & Ors.** in (WP(C) No. 102/2001 and other connected cases decided on 23rd April, 2002.

Following the decision of this Court, the writ petition is allowed and the impugned order is set aside.”

4. The grievance of the applicants is that after passing of the aforesaid orders by Hon'ble High Court of Delhi, the respondents did not take any action for several years either to re-fix the pay of the applicants or to recover the excess payment from them. It was only vide impugned order dated 16.02.2015 that recovery was ordered from the applicants of OA-1013/2015 and vide impugned order dated 18.03.2015 from the applicants of OA-1448/2015. The applicants have contended that the respondents cannot now recover the excess payment made to them in view of the judgment of Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vs.**

Rafiq Masih (White Washer) etc., (Civil Appeal No. 11527/2014) dated 18.12.2014. Hence, they are seeking the following relief:-

“OA-1013/2015

- (i) Quash and set aside the action of the respondents in effecting recovery from the pay/pension of the applicants in terms of the statement supplied along with communication dated 16.02.2015 (Annexure-A-1 (Colly);
- (ii) Direct the respondents not to give effect to any recovery in terms of the statement/due and drawn statement at Annexure-A-1 and the gratuity in respect of applicant no.1 may be ordered to be released along with the interest at the rate of 15% p.a.
- (iii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

OA-1448/2015, MA-1306/2015

- (i) Quash and set aside the order dated 16.02.2015 (Annexure –A-1) and order dated 18.03.2015 (Annexure-A-2).
- (ii) Direct the respondents not to make any recovery of the amount which was paid to the applicants after 26.11.2008 i.e. after the judgment of Hon'ble High Court of Delhi in WP(C) No. 3091/1999.
- (iii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

5. In almost identical reply filed by the respondents in both these OAs, the respondents have tried to explain why there was so much delay in ordering recovery from the applicants after passing of the orders of Hon'ble High Court of Delhi. They have stated that

recovery of excess public money paid to applicants can be made and have relied on the judgment of Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal and Ors. vs. State of Uttarakhand and Ors.**, 2012 (8) SCC 417 wherein the following has been laid down:-

"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.

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."

5.1 Regarding the judgment of Hon'ble Supreme Court in the case of **Rafiq Masih (White Washer) etc.**(supra) relied upon by the applicants the respondents have stated that they were only recovering the excess payment made to the applicants pursuant to the orders of Hon'ble High Court of Delhi and the judgment of

Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) relied upon by the applicants will not apply in the instant case.

6. I have heard both sides and have perused the material placed on record. Both sides agreed that recovery of excess payment made prior to the passing of orders of Hon'ble High Court of Delhi would be governed by the orders of Hon'ble High Court of Delhi in each case. However, as far as recovery after the orders of Hon'ble High Court of Delhi is concerned, learned counsel for the applicants stated that this would cause extreme hardship to the employees. Some of them have already retired while others are on the verge of retirement. The excess payment has not been made to them on account of any misrepresentation or false declaration on their part. The respondents themselves are responsible for not taking timely action for recovery. Now in view of the judgment of Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) recovery from the applicants would be impermissible in law. The applicants also relied on the O.M. No.18/03/2015-Estt.(Pay-I) dated 02.03.2016 of the Department of Personnel & Training.

7. On considering submissions of both sides, I find that the only issue to be decided in these cases is whether recovery cannot be made from the applicants in view of the judgment of Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) or whether

recovery is permissible in view of the judgment of Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal** (supra). On going through the O.M. dated 02.03.2016 relied upon by the applicants I find that in the aforesaid O.M. both the above mentioned judgments have been considered by DoP&T. Consultations have also been held with Department of Expenditure and Department of Legal Affairs. Thereafter, directions have been given to the Ministries to deal with the issue of wrongful/excess payments made to government servants in accordance with the decision of Hon'ble Supreme Court in the case of **Rafiq Masih** (supra). Thus, after considering both the judgments of Hon'ble Supreme Court, the DoP&T itself had decided and directed the Ministries to follow the judgment of Hon'ble Supreme Court in the case of **Rafiq Masih** (supra). I find no reason to take a different view.

8. Accordingly, I dispose of these OAs with a direction to the respondents to examine the case of each of the applicant in both these OAs in the light of the judgment of Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) and not to affect recovery from those applicants who are found to be covered by the circumstances mentioned in the Hon'ble Supreme Court judgment as well as in para-4 of the O.M. dated 02.03.2016. Recovery can, however, be made from those applicants who are not covered by

the circumstances mentioned in **Rafiq Masih's** (supra) judgment. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/