

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

OA No.2338/2016

Order Reserved on :31.10.2017  
Order pronounced on :13.11.2017

**Hon'ble Ms. Praveen Mahajan, Member (A)**

Harish Chand  
Aged 60 years  
UDC  
S/o Late Shri Pokhar Dass  
No.9/82, 2<sup>nd</sup> Floor, Geeta Colony  
Delhi – 110 031.

... Applicant

(By Advocate: Shri G.L.Verma)

**VERSUS**

1. Delhi Development Authority  
(Through Vice Chairman)  
Vikas Sadan, INA  
New Delhi – 110 023.

2. Chief Accounts Officer  
DDA, B Block, 2<sup>nd</sup> Floor  
Vikas Sadan  
New Delhi – 110 023.

3. Senior Accounts Officer (Pension)-V  
Pension Cell-V DDA  
C-2/115, Vikas Sadan  
New Delhi – 110 023.

...Respondents

(By Advocate: Shri M.S.Reen)

**O R D E R**

The applicant has come before the Tribunal against the alleged arbitrary recovery from his retiral dues and deduction of pension. The applicant retired as Upper Division Clerk from the office of DDA on 31.12.2015. Three months after his retirement and four months from the date of issue of 'No Dues Certificate' dated 14.12.2015, the respondent no.3 issued a letter on 11.04.2016 asking the IDBI Bank to carry out deductions of Rs.80,943/- from the gratuity and commutation value etc. of the applicant. No opportunity was granted to the applicant to present his

defence. The applicant made a representation dated 05.04.2016 against these deductions. However, the respondent-DDA did not consider the same and again issued an order on 22.04.2016 asking the IDBI Bank to reduce his monthly pension. On 06.05.2016, the applicant represented to the Vice-Chairman, DDA i.e. respondent no.1 to intervene in the matter in light of DOPT orders dated 02.03.2016. However, the respondents went ahead by issuing a letter dated 17.05.2016 confirming all deductions/reductions without assigning any reasons. It is submitted that the only reason mentioned in the above mentioned letter is stated to be an error of fixation of pay at the time of promotion to the post of Lower Division Clerk on 08.12.1998. The applicant states that such a deduction, after a period of 17 years is time-barred and could not have been effected in view of DOPT OM/orders dated 02.03.2016 as well as in view of the decision given by Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih** CA No.11527 of 2014. Hence, the applicant has prayed for the following reliefs :-

- "(a) To set aside the impugned order dated 11.04.2016, 22.04.2016 and 17.05.2016;
- (b) To direct the Respondent to release the amount illegally deducted from the retiral benefits to the Applicant ;
- (c) To restore the Pension fixed earlier without any reduction;
- (d) To pass any order/directive/relief as this Hon'ble Tribunal may consider at its discretion just and proper."

3. In their counter, the respondents submit that they have a legal right to recover any wrongful/excess payment made to the applicant and that the impugned orders have been passed by the competent authority after taking into account all material facts into consideration. In the case of the applicant, an error of fixation of pay was observed by Works Audit Cell in fixation of his pay at the time of his promotion as LDC. To avoid any financial

hardship to him, Provisional Pensionary benefits were granted to him pending finalization of settlement of observations of Works Audit Cell by withholding Rs.50,000/-, only and provisional pension was authorised. On the basis of the revised Last Pay Certificate, an amount of Rs.80,943/- was found to be recoverable from the applicant. After adjusting an amount of Rs.50,000/-, already withheld, balance amount Rs.30,493/- was to be recovered from him. Therefore, IDBI Bank, was, asked to do the needful, vide letter dated 11.04.2016.

4. During the course of hearing, the learned counsel for the applicant reiterated the submissions already made in the OA and emphasised that as per judgment of the Hon'ble Apex Court in **Rafiq Masih(supra)** such a recovery from Group "D" employee is totally illegal.

5. The learned counsel for respondents Shri M.S.Reen supplied a copy of office order dated 11.09.2017 issued by Delhi Development Authority, Personnel Branch-III, wherein it has been ordered as under :-

**"Office Order"**

**Shri Harish Chand, Khallasi alongwith other officials was granted in-situ promotion in the pay scale of Rs.775-1025/- vide EO No.251 dated 15.07.1997, w.e.f.01.12.1992. He has retired as UDC(SSA) on 31.12.2015 vide E.O. No.1681 dated 19.11.2014 on attaining the age of superannuation.**

**He has been granted 2<sup>nd</sup> and 3<sup>rd</sup> financial up-gradation under ACP/MACP schemes vide E.O. No.1062 dated 15.7.2004 and E.O. No.25 dated 03.01.2014 respectively. As per the laid down conditions for grant of benefits under the ACP Scheme "Existing time-bound promotion schemes, including in Situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Department- not the employees- shall have the option in the matter to choose between the two schemes, i.e., existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz., for promotion, redistribution of posts, upgradation involving higher functional duties, etc.) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality."**

**The Accounts Officer, WAC-1, DDA vide note dated 24.07.2017 has pointed out that the in-situ promotion granted on 01.12.1992 is required to be withdrawn to allow the benefit of ACP Scheme and the pay required be re-fixed from entry grade.**

**In view of the above, guidelines of Govt. of India the In-situ promotion already granted in the pay scale of Rs.775-1025/- vide E.O. No.251 dated 15.07.1997 w.e.f.01.12.1992 by EE/Elect. Division No.2 is hereby withdrawn.**

**This is issued with the approval of Competent Authority.**

**Dy. Director (P)-III"  
DDA"**

6. I have carefully considered the submissions made in the OA and the counter reply of the respondents, perused the record and considered the arguments advanced by both the learned counsel.
7. In the case of **State of Punjab & Ors. Vs. Rafiq Masih**, the Hon'ble Apex Court observed that :-

**"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."**

8. The Hon'ble Lordships further observed that if the employees did not have any role in the wrong fixation, then the employees, who are the beneficiaries of wrongful amount at the hand of the employer, may not be

compelled to refund the same. In the instant case, the employee did not furnish any wrong information to the respondents based upon which the excess payment was made to him. There was no misrepresentation of facts by the applicant. The respondents have issued an office order dated 11.09.2017 withdrawing the in-situ promotion granted to the applicant on 01.12.1992 i.e. after a span of 25 years. Further, this has been done without following the principles of natural justice. The instructions of DOPT dated 02.03.2016 on the subject are clear, leaving no room for ambiguity. In para 2 of their office memorandum they have re-produced the judgment of **Rafiq Masih (supra)** in para 7 and 10 which stipulates that :-

**"7. In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant-therein were in exercise of its extra-ordinary powers under Article 142 of the Constitution of India which vest the power in this Court to pass equitable orders in the ends of justice.**

**10. Article 136 of the Constitution of India, confers a wide discretionary power on the Supreme Court to interfere in suitable cases. Article 136 is a special jurisdiction and can be best described in the words of this Court in *Ramakant Rai v. Madab Rai*, (2003) 12 SCC 395, "It is a residuary power, it is extraordinary in its amplitude, its limits when it chases injustice, is the sky itself". Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the Land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vest a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in the case of *Union of India v. Karnail Singh*, (1995) 2 SCC 728, it makes the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution."**

9. The respondent i.e. DDA should have been gracious enough to follow the judgment in **Rafiq Masih (supra)** as well as the directions contained in

the OM of DOP&T dated 02.03.2016, in letter and spirit but instead they have adopted a cussed approach to justify their action (on inaction of 2 decades) by issuing the office order justifying the recovery from the applicant. This, in my view, is in clear violation of the Hon'ble Supreme Court's Judgment. The principle laid down therein deals with recovery from government servants belonging to Group "C" and "D". The applicant is a class III employee and the effect of such a recovery from him would be unfair wrongful and improper. The role of the principles enumerated in the judgment are fully applicable to the facts and circumstances of the case. It has been held in **Rafiq Masih (supra)** that

"6. .... In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

..... "58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess."

First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir's case (supra) recognized, that the issue of recovery revolved on the action being iniquitous. **Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery.** Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of [Article 14](#) of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of [Article 14](#) of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time.

**However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.**

Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

10. In view of this observation, I allow the OA and set aside the orders dated 11.04.2016, 22.04.2016 and 17.05.2016. This exercise shall be completed during the next three months from the date of receipt of a copy of this order. No costs.

**(Praveen Mahajan)**  
**Member(A)**

/uma/