

**Central Administrative Tribunal
Principal Bench**

OA No.2367/2016

New Delhi this the 31st day of October, 2017

Hon'ble Mr. V.Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury Member (A)

Subhash Chander Baghla
S/o Tej Bhan Baghla
R/o B-17, 1st Floor,
New Krishna Park, Vikaspuri,
New Delhi.

Aged around 61 years
Retired Pharmacist
From Sanjay Gandhi Memorial Hospital,
Mangol Puri, Delhi-110088.

Applicant

(By Advocate: Shri Sourabh Ahuja)

Versus

1. Govt. of N.C.T. of Delhi
Through its Chief Secretary,
Delhi Sachivalaya,
Players Building, New Delhi.
2. Secretary
Health & Family Welfare
Department of Health & Family Welfare
GNCT of Delhi
9th Level, A-Wing, IP Extension
Delhi Secretariat, Delhi-110002.
3. Medical Superintendent
Sanjay Gandhi Memorial Hospital,
GNCT of Delhi
Mangol Puri, Delhi-110088.
4. Pay and Account Officer
PAO-VII,
GNCT of Delhi, Peeragarhi, Delhi.

..... Respondents

(By Advocate: Shri N.K. Singh)

ORDER(ORAL)**Hon'ble Mr.V. Ajay Kumar, Member(J)**

Heard both sides.

2. The applicant who retired from service while working as Pharmacist on 30.06.2015, filed this OA against the action of the respondents in recovering an amount of Rs.3,28,368/- from his gratuity while releasing his retirement benefits.

3. The respondents vide office order dated 27.4.2011 re-fixed the pay scale of the applicant along with certain Pharmacists w.e.f. 01.01.2006 after granting non-functional upgradation in the pay of Rs.9300-34,800/- with admissible Grade Pay. However, vide order dated 29.06.2015, i.e. one day prior to the retirement of the applicant, the respondents ordered recovery of an amount of Rs.3,28,368/- from the gratuity of the applicant. Aggrieved of the same, the applicant represented to the respondents and the respondents vide Annexure A-1 order dated 15.07.2015 replied that the re-fixation of pay and recovery had been effected on the basis of clarification dated 03.06.2015 received from Health & Family Welfare Department, GNCTD.

4. Though the applicant questioned the revised pay scale and consequential recovery in the O.A., however, when the OA is taken up, learned counsel for the applicant submitted that he is not pressing the relief regarding re-fixation of his pay and limiting the O.A. only to the extent of recovery.

5. Learned counsel submitted that the applicant belongs to Group 'C' and the recovery has been made from him illegally without following any due procedure, and in violation of the principles of natural justice. He also submits that the alleged excess payment was not due to any misrepresentation of the applicant and that the respondents themselves granted the higher pay scale in 2011. The applicant retired from service on attaining the age of superannuation on 30.06.2015 and hence the impugned recovery is bad as per the decision of the Hon'ble Apex Court in **State of Punjab & Others Vs. Rafiq Masih etc.** (2014) 14 SCALE 300.

6. On the other hand, learned counsel for the respondents submits that once re-fixation of pay was not challenged, the challenge to consequential recovery is not maintainable. It is further submitted that in earlier pay fixation order dated 27.04.2011, it had been specifically mentioned that the said pay fixation was subject to audit verification and any excess amount paid to the officials would be recovered without issuing any notice. Accordingly, the excess payment was recovered from the applicant, as per rules.

7. The Hon'ble Apex Court in **Rafiq Masih** (supra) held as under:-

" 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.

13. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

14. The appeals are disposed of in the above terms."

8. Since the applicant belongs to Group 'C' and the recovery has been effected only one day prior to the date of his retirement, his case falls within the sub-paras (i) and (ii) of para 12 of the aforesaid judgment and consequently, he is entitled to get the benefit of the judgment.

9. In these circumstances, the OA is allowed to the extent that the respondents are directed to refund the recovered amount to the applicant, however, without any interest, within a period of four weeks from the date of receipt of a certified copy of this order. No costs.

(Nita Chowdhury)
Member(A)

(V. Ajay Kumar)
Member (J)

/rb/