

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**OA NO.3523/2016**

Order reserved on 12.05.2017  
Order pronounced on 22.05.2017

**HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J)**

Neelam, aged about 59 years,  
A.I., T.No.44099,  
Estate Office,  
W/o Shri Rajesh Maini,  
R/o 108-B, Pocket-2,  
Double Storied Flats,  
Paschim Puri,  
New Delhi-110063. ...Applicant

(By Advocate: Mr. Anil Mittal)

**VERSUS**

Delhi Transport Corporation,  
I.P. Estate,  
New Delhi-110002.  
(through Chairman-Cum-Managing Director) ...Respondent

(By Advocate: Ms. Charu Sangwan and Mr. Anmol Jain for Mr.  
Ajesh Luthra)

**:ORDER:**

An amount of Rs.1,02,293/- overpaid to the applicant, a junior clerk in the DTC, on account of erroneous fixation of pay on grant of third financial upgradation under the MACPS on 08.06.2013, has been ordered to be recovered from her salary, vide the respondent's "Shuddhi Patra" dated 29.08.2016 (Annexure A-1) ["impugned order"] and the applicant, relying on the Hon'ble Supreme Court's judgment in **State of Punjab and**

**Ors. Vs. Rafiq Masih (Whitewasher) and Ors. [2014 (14)**

SCALE 300], through the instant OA, prays that the said impugned order be quashed.

2. I have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given my thoughtful consideration to the matter.

3. Learned counsel for the respondent fairly concedes the claim of the applicant.

4. Paragraph 18 of the aforesaid judgment of the Hon'ble Supreme Court is reproduced hereinunder:

"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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the 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."

5. Obviously, the case of the applicant, due to superannuate on 31.05.2017, is covered under the first and second categories delineated hereinabove and the impugned order (Annexure A-1) to the extent it orders recovery of 'excess payment' from the salary of the applicant deserves to be and is hereby quashed.

6. The OA is allowed accordingly. No order as to costs.

**(DR BRAHM AVTAR AGRAWAL)  
MEMBER (J)**

/JK/