

**Central Administrative Tribunal
Principal Bench**

OA No.3852/2016

New Delhi this the 28th day of September, 2017.

HON'BLE MR. R. RAMANUJAM, MEMBER (A)

Joginder Chanana
S/o Shri Ghanshyam Dass Chanana
R/o 906-A, Rani Bagh,
Delhi-110034.
Aged around 61 years
Retired Pharmacist
From Delhi Government Dispensary,
Shakurpur, Delhi-34.

-Applicant

(By Advocate: Shri Sourabh Ahuja)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary,
Delhi Sachivalaya,
Players Building, New Delhi.
2. Secretary/Principal Secretary
Health & Family Welfare
Department of Health & Family Welfare
GNCT of Delhi
9th Level, A-Wing, IP Extension
Delhi Secretariat, Delhi-110002.
3. CDMO (North-West District)
Delhi Health Service (GNCT of Delhi)
DGD Building Complex,
Sector-13, Rohini, Delhi-110085.
4. Pay and Account Officer
PAO-VII, GNCT of Delhi,
Peergarhi, Delhi.
5. Director,
Department of Health Service
GNCT of Delhi
F-17, Karkardooma, Delhi

6. Finance Secretary
GNCT of Delhi, 4th Level, A-Wing
IP Estate, New Delhi.

-Respondents

(By Advocate: Ms. Harvinder Oberoi)

Order (Oral)

Heard both sides.

2. Learned counsel for the applicant submits that the applicant retired on 31.12.2015 as Pharmacist, a Group 'C' post in the 5th Respondent-organization. An amount of Rs.2,98,024/- had been recovered from his gratuity on the plea that he had been wrongly given the Grade Pay of Rs.5400/- as III MACP benefit whereas he was entitled to only Rs.4800/- as per the MACP Scheme. Learned counsel would rely on the order of the Hon'ble Apex Court in **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** in Civil Appeal No.11527/2014 arising out of SLP (C) No 11684/2012 and claim that the applicant being a Group 'C' employee, as also the fact that recovery had been made within one year of the date of retirement, he is entitled to the benefit of the said judgment. He would also draw attention to Annexure A-6 order dated 20.08.2016 of this Tribunal in OA No. 2083/2015 wherein an identically placed person was granted relief by way of a direction to the respondents to refund the recovery effected from his gratuity. He also points out that the order of the Tribunal in the said case had been accepted and implemented by the Competent Authority by Annexure-10

Sanction Order dated 19.01.2017. He would accordingly pray for the OA to be allowed.

3. Learned counsel for the respondents submits that the DoP&T has already accepted the judgment of the Hon'ble Apex Court in **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** (supra) and has since issued an OM dated 02.03.2016 in this regard. Since the applicant had already retired on 31.12.2015 and the recovery had also been effected, he could not be given the benefit of the said OM. Nevertheless since the ratio laid down in **State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.** (supra) of the Hon'ble Apex Court has already been accepted, the respondents would not be averse to consider a refund of the amount recovered from the applicant, if he is identically placed as the applicant in OA No.2083/2015.

4. In view of the aforesaid submissions, respondents are directed to re-consider the recovery of excess amount paid to the applicant amounting to Rs.2,98.024/- and refund the same to him within a period of six weeks from the date of receipt of a copy of this order, if he is identically placed as the applicant in OA No.2083/2015.

5. The OA is disposed of with the above directions. No costs.

(R. Ramanujam)
Member (A)

cc.