

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

OA-2031/2016

Reserved on : 01.11.2018.

Pronounced on : 13.11.2018.

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

1. Dina Nath Sharma,
Aged about 62 years
S/o Lae Sh. Paras Ram Sharma,
R/o H.No. 179, Shiv Colony,
Near Co-operative Society, Harkukar
P.O. Ghumarwin District Bilaspur,
Himanchal Pradesh-174021
Retired as SFA(H) office at SSB,
East Block-V, R.K. Puram,
New Delhi-66.
2. Ashwani Kumar,
S/o Sh. Ishwar Dass,
Aged about 61 years
R/o Village & P.O. Pather,
Tehsil & District Kangra,
Himanchal Pradesh,
Retired as SFA(H) Office at SSB,
East Block-V, R.K. Puram,
New Delhi-66.
3. Nand Lal,
S/o Late Sh. Badri Ram,
Aged about 61 years
R/o Village Ghumarwin P.O. Lagmanwin
Bhoranj District Hamirpur, Himanchal Pradesh,
Retired as SFA (H) office at SSB, East Block-V,
R.K. Puram, New Delhi-66. Applicants

(through Sh. Sudershan Ranjan, Advocate)

Versus

1. Union of India through

Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

2. The Director General,
Directorate General,
SSB, East Block-V,
R.K. Puram, New Delhi-110066. Respondents
(through Sh. Gyanendra Singh, Advocate)

ORDER

The current O.A. has been filed seeking the following reliefs:-

"(a) quash and set aside the impugned orders.
(b) This Hon'ble Tribunal may be graciously pleased to declare that by virtue of the judgment in the case of Rafiq Masih (2015) 4 SCC 334, with particular reference to paragraph 18(i) and (ii) thereof, recovery of excess amount paid to the applicants is impermissible in law.
(c) This Hon'ble Tribunal may further be pleased to hold that the applicants are entitled to the refund of the amount adjusted/recovered by the respondents from out of his terminal benefits towards the recovery made and accordingly direct the respondents to refund forthwith the withheld amount of the terminal benefits.
(d) This Hon'ble Court may further be pleased to declare that the respondents are liable to pay interest on the delayed payment of the terminal benefits per annum if there be delay in making payment beyond four weeks, the above amount be further augmented corresponding to the period of delay till the date of payment with a penal interest of 1% per month.
(e) Direct the respondents to grant the cost of the litigation to the applicants."

2. The facts of the current O.A. are that the applicants were functioning as NK/GD in the pay scale of Rs.950-20-1150-EB-25-1400 wherefrom after tendering their technical resignation, they were inducted (on transfer basis) in the SSB as Senior Field Assistant in the

pay scale of Rs. 975-25-1150-EB-30-1660. Taking into account their past service, they were first afforded financial upgradations under the ACP/MACP Schemes. Later on, as per the DoP&T advice, the ACP granted to the applicants, the respondents rescheduled the pay/grade pay of the applicants, and also ordered to recover the excess amount without issuing any show cause notice to them.

3. The applicants along with others filed OA-2074/2012. Vide order dated 23.12.2014, the Tribunal dismissed the O.A. However, the respondent authorities were directed to allow the applicants to make representations as to how excess amount paid is to them is to be recovered or adjusted. The respondents issued an O.M. dated 16.02.2015 to the Area Organizer for taking necessary action regarding implementation of the order passed by this Tribunal.

4. Applicant No.1 sent a legal notice on 13.04.2015 stating that in view of the judgment of Hon'ble Supreme Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer)**, 2015 (4) SCC 334 recovery from employees belonging to Group-C and Group-D, and from employees who are due to retire within one year of the order of recovery or already retired would be impermissible in law. In support, the applicants have relied upon the following judgments:-

(i) **Siddharam Satlingappa Mhetre Vs. State of Maharashtra**, (2011) 1 SCC 694.

- (ii) **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhan & Ors.**, 2012(8)SCC 417.
- (iii) **Union of India Vs. Justice S.S. Sandhawalia**, (1994(2) SCC 240.
- (iv) **Clariant International Ltd. Vs. Securities & Exchange Board of India**, (2004) 8 SCC 524.
- (v) **Uma Agrawal (Dr) Vs. State of U.P.**, (1999)3 SCC 438.
- (vi) **Vijay L. Mehrotra Vs. State of U.P.**, (2001) 9 SCC 687.
- (vii) **Bal Kishore Mody Vs. Arun Kumar Singh**, (2001)10 SCC 174.
- (viii) **Ghaziabad Development Authority Vs. Balbir Singh**, (2004)5 SCC 65.
- (ix) **S.K. Dua Vs. State of Haryana**, (2008)3 SCC 44.

5. In their counter affidavit, the respondents state that the applicants were initially appointed as Constable (GD) in the pay scale of Rs.950-20-1150-EB-25-1400/- . Thereafter, the applicant joined as SFA (Homeo) in the pay scale of Rs.975-25-1150-EB-30-1660/- . They were wrongly granted ACP/MACP by counting their past services rendered as Constable (GD). Accordingly, orders of recovery from the applicants were made. Being aggrieved, the applicants filed OA-2074/2012 in which stay order was passed on 15.06.2012, but later the OA was dismissed on 23.12.2014. Vide letter dated 16.02.2015, the applicant No.1 was requested to submit a representation as to how the excess amount paid to him is to be recovered/adjusted. Subsequently, the applicant was informed vide letter dated 10.04.2015 that the excess amount paid to him will be

recovered/adjusted from his gratuity and other retiral benefits, after calculation. This action of the respondents is in accordance with the directions issued by the Tribunal on 23.12.2014 and as per law.

6. I have gone through the facts of the case and carefully considered the rival contentions of both sides.

During the course of hearing, the learned counsel for the applicant Sh. Sudarshan Ranjan stated that the OA-2074/2012 decided along with OA-3984/2012 on 23.12.2014 did not take cognizance of the law laid down by the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) regarding recovery. He submitted that the decision of the Tribunal in the aforesaid OAs falls in the category of "per incuriam" judgment, probably rendered in ignorance of the judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra). Making a valiant attempt, Sh. Ranjan emphasized that the judgment of **Rafiq Masih** (supra) would be operative retrospectively, making the decision dated 23.12.2014, not tenable and pleaded that the recoveries ordered to be made from the applicant by the Tribunal vide their order dated 23.12.2014 should be set aside.

7. Per contra, the learned counsel for the respondents Sh. Gyanendra Singh forcefully argued that the Tribunal vide judgment

dated 23.12.2014 in OA-2074/2012 with OA-3984/2012 has held as under:-

"18.....Under the terms of this order, the employee is under obligation to repay the amount even if it has been paid on account of negligence on part of the authority making the payment and retaining the same would tantamount to unjust enrichment. Therefore, we are conscious of the fact that the recovery is not unjust or without legal authority in terms of this order. However, we are also aware that it causes undue hardship to the applicants.

19. It is an admitted fact that no notice had been issued to the applicants prior to making the recovery. This brings the law of natural justice into play. The convenience of the applicants to make the payment has also to be taken into account. Therefore, while dismissing these OAs, we direct that the respondent authorities should allow the applicants to make representations as to how excess amount paid is to be recovered or adjusted and thereafter taking their convenience into account they may decided to make the recovery of the excess amount. There shall be no order as to costs."

Sh. Singh also emphasized that in view of the categorical judgment of the Tribunal, the relief sought by the applicant in the O.A. tantamounts seeking review of the order dated 23.12.2014, which is beyond the purview of this Bench. He further drew my attention to Para-6 of the judgment. wherein decision in the case of **Chandi Prasad Uniyal** (supra) was duly considered by the Tribunal before arriving at the conclusion of ordering recovery from the applicant.

8. Be that as it may, on going over facts of the case, I find that the decision of the Tribunal dated 23.12.2014 in OA-2074/2012 with OA-3984/2012 is unambiguous. The prayer of the applicants in the aforesaid O.A. has been rejected in clear and categorical terms directing the respondents to recover the amount from the

applicants after taking their convenience into account. If the applicants were aggrieved with the said decision, the proper remedy available to them was either to file a review or to go in appeal against the aforesaid order before the Hon'ble High Court.

9. In view of the aforesaid, O.A. is dismissed. No costs.

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

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