

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00164/2018

Pronounced on : 04.07.2018

Reserved on : 01.06.2018

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

Harvinder Kaur D/o S. Jagir Singh, aged about 39 years, working as Nursing Sister, Northern Railway Hospital, Ambala Cantt., R/o House No. 427-A, Railway Colony, Ambala Cantt (Hr.).

.....Applicant

BY ADVOCATE: **Sh. Nand Lal**

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Divisional Office, Northern Railway, Ambala Cantt., Ambala.
3. Senior Divisional Personnel Officer, D.R.M. Office, Ambala Cantt.

.....Respondents

BY ADVOCATE: **Sh. Yogesh Putney**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. Applicant is challenging recovery from her salary of Rs. 3050/- per month as such recovery is impermissible as per Apex Court judgement in **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors., (2012) 8 SCC 417** on the ground that no recovery can be effected from Group C & D employees.

2. Applicant is serving as a Nursing Sister and had requested for stepping up of pay in comparison of her junior Ms. Karuna Xarenia. The stepping up was allowed and subsequently, the same was set aside on the ground that the applicant is a person who is transferred from Delhi Division to Ambala Division and Ms. Karuna Xarenia was transferred from Moradabad to Ambala Cantt. Hence, the two of them are borne on different seniority lists and a comparison is feasible.

3. The applicant argues that she has not committed a fraud or misrepresented when she claimed the benefit of stepping of salary vis-à-vis Ms. Karuna Xarenia which was duly sanctioned by the respondents. The respondents should have been more alert while processing her request for stepping up of pay. The prayer of the applicant is for setting aside the order of recovery of Rs. 3050 per month in the light of **State of Punjab Vs. Rafiq Masih JT 2015(1) SC 1995 & Chandi Prasad Uniyal** (supra).

4. The applicant is also praying for refund of the 46 instalments of recovery amounting to Rs. 1,40,300/- with interest.

5. Respondents argue that the recovery was made in order to rectify the mistake of their erroneous action in allowing stepping up of pay to the applicant. They argue that the mistake of allowing stepping up should not be allowed to be perpetuated, when it was detected and hence stands withdrawn. The applicant while working as a Nursing Sister in the pay scale of Rs. 5500-9000, had in the year 2006 sought transfer on her own request to a post in lower pay scale of Rs. 5000-8000, on bottom seniority basis. Similarly, Ms. Karuna Xarenia was working as Staff Nurse in Moradabad Division and sought transfer on her own request on the basis of bottom

seniority in the year 2008. The two transfers were made with a gap of two years.

6. The question of parity would not arise as the applicant was appointed as a Staff Nurse in 2003 and promoted as Nursing Sister in 2006. Karuna Xarenia was appointed as a Staff Nurse and continued to be a Staff Nurse while on inter-hospital transfer in July, 2008. The date on which the two transfers were effected were also different with a difference of one and a half years between two transfers. Whereas the applicant was Nursing Sister at the time of transfer, Karuna Xarenia with whom applicant is seeking stepping up was only a Staff Nurse. Hence, the gradation list on which both the applicant and Miss Karuna Xarenia are borne, are different and no comparison can be made. Staff Nurse is a Divisional Cadre. The stepping up of pay was as per provisions of the rules not admissible to applicant.

7. Since both the applicant and Miss Karuna Xarenia are not borne on the same seniority list, the stepping up of pay of the senior with reference to her junior would not arise. This is a case where the stepping up of pay is also not admissible as the post in which applicant has been promoted or party respondent Karuna Xarenia was appointed are not identical or borne in the same cadre.

8. The only issue that arises before us is whether recovery can be effected from the applicant in view of Rafiq Masih (supra). The counsel for the respondents produced a copy of the Classification of Railway Service Rules, 2008 dated 08.01.2010, on the request of the Bench, in order to understand whether the applicant was a Group C or Group B employee.

The post of Nursing Sister carrying Grade Pay of Rs. 4800 in Pay Band Rs. 9300-34800 is classified as Group 'C' post. Hence, applicant is covered by the Apex Court judgement in Rafiq Masih (supra) and no recovery of excess amount paid can be made. Respondents are directed to return the recovered amount to the applicant, but are at liberty to fix Grade Pay as admissible under the Rules. There shall be no order as to costs or interest.

9. OA is disposed of accordingly.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:

ND*

