

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO. 060/00590/2017

Chandigarh, this the 1ST day of June, 2018

...

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

...

1. Suresh Kumar Siwach (SSA Group C) S/o Sh. Chattar Singh, Aged 45 years, O/O Regional Provident Fund Commissioner, Sub, Regional Office Plot No.1 Sector 3, Rohtak, Haryana.
2. Rajbir Singh, S/o Sh. Baldev Singh, Aged 51 years, MTS (Group D) O/o Regional Provident Fund Commissioner, Sub Regional Office, Plot No.1, Sector 3, Rohtak, Haryana.
3. Devinder Dagi S/o Sh. Om Prakash Aged 49 years MTS (Group D) O/o Regional Provident Fund Commissioner, Sub Regional Office, Plot No.1, Sector 3, Rohtak, Haryana.

....APPLICANTS

(Argued by: Shri Rohit Seth, Advocate)

VERSUS

1. Union of India Through Secretary, Ministry of Labour & Employment (EPFO), Government of India, Shram Shakti Bhawan, New Delhi.
2. The Central Provident Fund Commissioner Employee Provident Fund Organisation, Bhavishya Nidhi Bhawan 14-Bhikaji Cama Place, New Delhi-110066.
3. Regional Provident Fund Commissioner-I(HRM), Bhavishya Nidhi Bhawan, 14 Bhikaji Cama Place, New Delhi-110066.
4. Regional Provident Fund Commissioner, Sub Regional Office, Plot No.1 Sector 3, Rohtak Haryana.
5. Assistant Provident Fund Commissioner (Admn.), Plot No.1 Sector 3, Institutional Area, Rohtak-124001.

....RESPONDENTS

(By Advocate: Shri Rohit Sharma)

ORDER (Oral)**SANJEEV KAUSHIK, MEMBER (J)**

By means of present Original Application (O.A.), the applicants seek quashing of impugned orders dated 12.2.2016 (Annexure A-1), 09.03.2016 (Annexure A-2), and order dated 23.03.2016 (Annexure A-3), whereby the respondents have re-fixed the pay of the applicants and ordered recovery.

2. After exchange of pleadings, the matter came up for hearing.

3. At the commencement of hearing, the learned counsel appearing on behalf of respondents has produced a copy of decision passed by Hyderabad Bench of this Tribunal rendered in O.A. No. 020/00037/2014 – **A. Dhruva Kumar & Ors. Vs. UOI & Ors.** rendered on 09.01.2018 and submitted that the controversy involved in the instant O.A. is squarely covered against the applicants, therefore, instant O.A. be dismissed in the same terms.

4. Mr. Seth, learned counsel for applicants is not in a position to rebut the argument of the respondents that the case is squarely covered by the aforesaid relied upon decision against the applicants. However, he submitted that in that case the applicants therein had not challenged the recovery ordered by the respondents in pursuance of refixation of their pay. Therefore, he prays for quashing of impugned recovery orders to that extent. To buttress his submission, he placed reliance on the decision of Hon'ble Apex Court in the case of **State of Punjab and Others Vs. Raifq Masih**

(White Washer) 2015 (1) SCT, 195 . He submitted that applicants being Class-III employees, their case falls in exceptions covered out in the case of Rafiq Mashih (supra), therefore, the impugned recovery orders being illegal be quashed and set aside.

5. Learned counsel appearing on behalf of respondents vehemently opposed the prayer of the learned counsel for applicants and submitted that case of the applicants does not fall in exception Clause of Rafiq Mashih (supra's) case and stated that the recovery can be made, and therefore, the order be upheld.

6. We have given our thoughtful consideration to the entire matter and are of the considered view that with regard to fixation of pay of the applicants, their case is squarely covered by the judgment rendered in the case of **A. Dhruva Kumar** (supra) in so far fixation of pay is concerned and deserves to be dismissed accordingly. However, as regards recovery, since the applicants are Class-III employees, therefore, their contention is accepted and it is held that the respondents cannot effect recovery in terms of exception clause in the case of Rafiq Mashih (supra). Therefore, while upholding the re-fixation of pay the impugned order qua recovery only is quashed. Accordingly, the O.A. is disposed of, in the above terms. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 01.06.2018

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