

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

OA No.060/00668/2017

Chandigarh, this the 31st day of August, 2018

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

...

1. Arif Hussain S/o Deen Mohd., age 37 years, Depot No.III, R/o House No.1436/12, Sector 29-B, Chandigarh (Group-C).
2. Sant Singh S/o Bhagat Ram, Depot No.II, Plot No.701, Industrial Area, Phase-I, Chandigarh.
3. Gurvinder Singh S/o Lawkvinder Singh, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
4. Harpreet Singh S/o Nirmal Singh, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
5. Ashok Kumar S/o Ram Kumar, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
6. Sukhwinder Singh S/o Pujara Singh, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
7. Ashwani Kumar S/o Gian Chand, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
8. Ranjit Singh S/o Chhaju Ram, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
9. Gurpreet Singh S/o Bhadur Singh, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
10. Neeraj Kumar S/o Vijendra Kumar, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
11. Amrik Singh S/o Gurdial Singh, Depot No.III, C.T.U. Workshop, Sector 25, Chandigarh.
12. Paramjit Singh S/o Sant Singh, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
13. Alokik Sharma S/o Anand Parkash, Depot No.I, Plot No.701, Industrial Area, Phase 1, Chandigarh.

14. Jai Singh S/o Amarnath, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
15. Naib Singh S/o Amarnath, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
16. Rajiv Kumar S/o Ravinder, Depot No.III, C.T.U. Workshop, Sector 25, Chandigarh.
17. Supinder Singh S/o Bawa Singh, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
18. Rinku Sharma S/o Ishwer Chand, Depot No.I, Plot No.701, Industrial Area, Phase 1, Chandigarh.
19. Ashok Kumar S/o Satbir Singh, Depot No.I, Plot No.701, Industrial Area, Phase 1, Chandigarh.
20. Rajneesh Singh S/o Ajaib Singh, Depot No.I, Plot No.701, Industrial Area, Phase 1, Chandigarh.
21. Ved Pal S/o Jai Singh, Depot No.I, Plot No.701, Industrial Area, Phase 1, Chandigarh.
22. Naveen Kumar S/o Jagdish Kumar, Depot No.I, Plot No.701, Industrial Area, Phase 1, Chandigarh.
23. Vijay Pal S/o Bheem Singh, Depot No.III, C.T.U. Workshop, Sector 25, Chandigarh.
24. Raj Pal S/o Anoop Singh, Depot No.I, Plot No.701, Industrial Area, Phase 1, Chandigarh.
25. Satinder Kumar S/o Shamlal, Depot No.I, Plot No.701, Industrial Area, Phase 1, Chandigarh.
26. Kuldeep Singh S/o Mahavir Singh, Depot No.I, Plot No.701, Industrial Area, Phase 1, Chandigarh.
27. Raj Mukesh S/o Narain Singh, Depot No.I, Plot No.701, Industrial Area, Phase 1, Chandigarh.
28. Sunil Kumar S/o Maghar Singh, Depot No.I, Plot No.701, Industrial Area, Phase 1, Chandigarh.
29. Balwinder Singh S/o Gian Chand, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.
30. Jaswinder Singh S/o Barpoor Singh, Depot No.II, Plot No.701, Industrial Area, Phase 1, Chandigarh.

....APPLICANTS

(Present: Mr. Kshitij Sharma, Advocate)

VERSUS

1. U.T. Administration through its Secretary, Transport, U.T. Secretariat, Sector 9, Chandigarh.
2. Divisional Manager, Chandigarh Transport Undertaking cum The Director Transport, U.T. Chandigarh.
3. The Finance Secretary, U.T. Secretariat, Sector 9, Chandigarh.

....RESPONDENTS

(Present: Mr. Arvind Moudgil, Advocate)

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

1. The present Original Application (OA) has been filed by the applicants seeking the following relief:-

"1. To quash the action of the official respondents in straightway effecting recoveries of various amounts as reflected in the salary slips and in the absence of a recovery order as such.
2. Stay the recoveries as are being effected in case of the applicants.
3. To refund the deducted amounts in the case of the applicants alongwith penal interest of 18%.
4. Any other order or direction deemed fit and proper in the facts and circumstances of the case may also kindly be issued in favour of the applicants.
5. Costs of the Original Application be allowed in favour of the applicants.
6. The applicants are identically situated may kindly be allowed to file a joint Original Application."

2. Learned counsel for the applicants submitted that the applicants are aggrieved against the action of the respondents in straightway effecting recoveries of various amounts as reflected in the salary, on the alleged ground that the salary of the applicants has wrongly been fixed. The applicants have taken various grounds for invalidation of impugned order. Secondly, it is argued if the view of the

respondents is accepted, the recovery cannot be affected from Group-C and Group-D employees, in the light of law laid down in the case of ***State of Punjab versus Rafiq Masih*** 2015 1 RSJ 323.

3. Learned counsel for the respondents submitted that wrong fixation of pay has been done and accordingly after correction they started recovery. But he has not been in a position to rebut the arguments raised by the applicants that it was done by wrong interpretation of the relevant rules.

4. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record. Since issue is with regard to only recovery on refixation of pay, and the applicants have not challenged the refixation, therefore, we have to examine whether the respondents can effect recovery from Group-C and Group-D employees or not. This issue was considered while deciding the case of Rafiq Masih (supra). Explanation given in para 12 of the said judgment is relevant, wherein it is categorically held that no recovery can be affected. The Lordship after analyzing the law on the subject have summarized the view, which reads as under:-

“12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from 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. In view of the above, and finding that the case of the applicants being Group-C employees is covered on all fours within the criterion laid down by the Hon'ble Apex Court in the aforesaid decision, we dispose of the present OA in the above terms. No costs.

**(P. GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated: 31.08.2018.

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