

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application Nos. 290/00127/2018

Reserved on : 18.09.2018

Pronounced on : 25.09.2018

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Babu Singh Chouhan s/o Shri Chandra Singh Chouhan, aged 61 years, Resident of Maderna Colony, near Kalka Mata Mandir, Jodhpur (Raj.), last working as Staff Car Driver under respondent No.3.

...APPLICANT

BY ADVOCATE : Mr. Harsh Vardhan Singh

VERSUS

1. The Union of India through Secretary to the Government of India, Ministry of Finance, New Delhi – 110 001.
2. The Chief Commissioner of Income Tax, Central Revenue Building, Bhagwan Das Road, Jaipur (Raj.)
3. The Chief Commissioner of Income Tax, Paota 'C' Road, Jodhpur-342001
4. Administrative Officer (DDO), Office of Chief Commissioner of Income Tax, Paota 'C' Road, Jodhpur 342001.

..RESPONDENTS

BY ADVOCATE: Mr. Sunil Bhandari

ORDER

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- A. That the impugned order dated 25/01/2018 passed by respondent No.4 may be quashed and set-aside.
- B. The order dated 29/01/2018 passed by respondent No.4 regarding revised pay fixation may kindly be quashed and set-aside.
- C. That respondents may be directed not to recover Rs. 3,16,555 or any other amount from the amount of gratuity of the applicant.
- D. The respondents may further be directed to release the gratuity other outstanding service benefits of the applicant alongwith interest @ 18% p.a. without any delay.
- E. That cost may also be allowed to the applicant.

2. Brief facts of the case, as stated by the applicant, are as under:-

The applicant was initially appointed as Peon on 21.12.1983 and thereafter promoted as Staff Car Driver Grade-I on 7.3.2005. It is his contention that his pay was fixed in the pay band of Rs. 9300-34800 w.e.f. 1.7.2015. After completion of 34 years of service, he retired on 31.1.2018 from his post of Staff Car Driver (Special Grade) on attaining the age of superannuation. He was served with a notice on 15.9.2016 wherein it is stated that his pay was wrongly fixed in higher scale and the applicant was asked to

show-cause as to why recovery of the excess/wrongful payment of Rs. 3,16,555 made due to wrong fixation of pay may not be made (Ann.A/6). The applicant submitted his reply dated 24.9.2016 and stated that it was not his mistake in getting any excess/wrongful payment and in view of the fact that the Hon'ble Apex Court in the case of **State of Punjab vs. Rafiq Masih**, 2015 (4) SCC 334 has held that no such recovery may be made from the employees of Group-C and D and the employees who are retired or going to retire within one year, however, if any such recovery will be done, the applicant shall be free to take any legal remedy available to him. Though the applicant had submitted his reply to the notice dated 15.9.2016, yet the respondents have passed the impugned order dated 25.1.2018 stating that the applicant has received the excess/wrongful payment for the period from January, 2006 to July, 2016 aggregating to Rs. 3,16,555 out of the consolidated fund of the Govt. of India, which was made due to wrong fixation of pay on promotion on 12.03.2005, hence the same deserves to be recovered in toto. The applicant states that the said recovery will cause hardship and inconvenience to the applicant and, therefore,

the recovery of the said amount from the applicant against the gratuity payment should not be recovered.

3. The respondents have resisted the claim of the applicant and have filed their reply dated 23.8.2018 wherein they have discussed and pointed out the entire details which led to passing of the impugned order. The respondents state that the pay scale of the applicant on the post of Staff Car Driver Grade-II was Rs. 4000-100-6000 under the 5th CPC and the pay scale upon promotion to the post of Staff Car Driver Grade-I under the 5th CPC was Rs. 4500-125-7000 (revised to PB-1 of Rs. 5200-20200 with Grade Pay of Rs. 2800 under the 6th CPC). However, the applicant was wrongly granted the pay scale of Rs 5000-150-8000 (revised PB-2 of Rs. 9300-34800 with Grade Pay of Rs. 4200 under 6th CPC) for which he was not entitled to as per the rules as it was the pay scale of the post of Staff Car Driver (Special Grade). As a result of which, the recovery arose due to excess payment made to the applicant while incorrectly fixing his pay under the 6th CPC on being promoted to the post of Staff Car Driver Grade-I. Thus, it is clear that the applicant was not entitled to the pay scale of Rs. 5000-8000 and the same was wrongly paid to him. Therefore, the only question for consideration of

this Tribunal relates to the recovery being made pursuant to incorrect fixation resulting in excess payment made to the applicant. The respondents state that they have duly complied with the principles of natural justice while providing due opportunity of hearing/notice to the applicant prior to effecting recovery from him. The said recovery was due to incorrect fixation done under the 6th CPC and for which the applicant had duly submitted his undertaking on 26.9.2008 while opting for the revised pay scale. The applicant while opting for revised pay scale had submitted undertaking for refund/adjustment of excess payment made due to incorrect fixation and thus there is no error committed by the respondents while passing order dated 25.1.2018 and 29.1.2018. The applicant had nowhere disputed that he had wrongly been allowed the pay scale of Rs. 5000-8000 (revised to PB-2 of Rs. 9300-34800 with Grade Pay of Rs. 4200 under the 6th CPC) and his only case is that no recovery can be affected from him as he was not aware about the excess payment made to him.

It is settled principle of law that an employee cannot retain any amount paid to him by mistake to which he is not entitled and any amount paid and received without authority of law can always be recovered as and when

noticed subsequently and more so when there is unambiguous undertaking in that regard given by the employee himself. The applicant has furnished undertaking while opting for revised pay scale under 6th CPC and he was bound by that undertaking. Therefore, the submission made by the applicant that since he belongs to Group-C, no recovery can be made from him as per the judgment of Rafiq Masih (supra). As per the judgment of the Hon'ble Apex Court in the case of **High Court of Punjab and Haryana & Ors. vs. Jagdev Singh**, it is clear that once an employee furnishes an undertaking he would refund the excess payment made to him due to incorrect fixation as he is bound by that undertaking and recovery pursuant thereto cannot be faulted. It is further stated that the applicant has already been released the due retiral benefits in accordance with law after adjusting the amount of recovery pursuant to incorrect fixation of pay. Therefore, as nothing survives in the matter, the OA filed by the applicant deserves to be dismissed.

4. The applicant has not filed rejoinder.

5. Heard Shri Harsh Vardhan Singh, counsel for the applicant and Shri Sunil Bhandari, counsel for the respondents.

6. The learned counsel for the applicant contended that he is not pressing for quashing of the impugned orders dated 25.1.2018 and 29.1.2018, but only pressing that no recovery be effected in respect to the excess payment made to him. He stated that there is no mistake or misrepresentation or fraud played by him in getting the pay fixed and, therefore, as the respondents have themselves fixed his pay without any mis-leading statement made by him, they cannot order for recovery of any excess payment already paid to him. He specifically relied upon the Apex Court judgment in **Rafiq Masih** and stated that as he belong to Group-C category and since recovery is for more than 5 years, therefore, he is completely covered by this judgment and the respondents be restrained from making any recovery as it would cause hardship to him.

7. The respondents denied the submissions of the applicant and stated that the applicant has not pleaded the actual facts as he himself has given an undertaking that any excess payment made to him will be refunded to the Government. Therefore, as per the undertaking dated 26.9.2008, his argument pertaining to the excess payment made to him cannot be recovered, is baseless. The respondents placed reliance on the judgment of **High Court**

of Punjab and Haryana and Ors. Vs. Jagdev Singh.

The respondents have also relied on the order dated 3.11.2016 of this Tribunal passed in OA No.178/2014 - Shashi Kant Goswami vs. UOI and Ors.

8. I have carefully gone through the submissions made by the respective parties and perused the pleadings and the judgment produced.

9. It is amply clear that while implementing the recommendations of the 6th CPC, the applicant had submitted an undertaking to the following effect:-

"UNDERTAKING

I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.

Signature: Sd/-

Name: बाबू सिंह

Designation: स्टाफकार ड्राईवर

Date: 26.09.08

Station: Jodhpur"

From perusal of the above undertaking, it is clear that the applicant undertook to repay any excess payment that may be found to have been made to him as a result of incorrect fixation of pay. From the impugned order, it is very clear that pay of the applicant was wrongly fixed in the scale of Rs. 5000-8000 instead Rs. 4500-7000. The

applicant was not entitled to this scale as per rules being the pay scale of the Staff Car Driver (Special Grade), as a result to which, recovery arose due to excess payment made to the applicant. Incorrect fixation was made under 6th CPC while promoting the applicant to the post of Staff Car Driver Grade-I. Though the applicant has relied upon the judgment of the Hon'ble Apex Court in the case of **Rafiq Masih**, but subsequently the Hon'ble Apex Court in the case of **Jagdev Singh** considered the entire matter and came to the conclusion that if an employee furnishes undertaking and granted revised pay scale, then as per the undertaking the employee has to refund the excess payment, which was detected and demanded. The Hon'ble Apex Court in the case of Jagdev Singh (supra) observed as under:-

"3 The Respondent furnished an undertaking and was granted the revised pay scale and selection grade of Rs. 14300-400-18000-300. While opting for the revised pay scale, the Respondent undertook to refund any excess payment if it was so detected and demanded subsequently. The revised pay scale in the selection grade was allowed to the Respondent on 7 January 2002.

4 The Respondent was placed under suspension on 19 August 2002 and eventually, was compulsorily retired from service on 12 February 2003.

5 In the meantime, this Court in Civil Writ (C) 1022 of 1989 accepted the recommendations of the First National Judicial Pay Commission (Shetty Commission). Thereupon, the Haryana Civil Services (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2003 were notified on 7 May 2003.

6 In view thereof the pay scales of judicial officers in Haryana were once again revised with effect from 1 January 1996. An exercise was undertaken for adjustment of excess payments made to judicial officers, following the notification of the revised pay rules. On 18 February 2004, a letter for the recovery of an amount of Rs. 1,22,003/- was served upon the Respondent pursuant to the direction of the Registrar of the High Court.

7 The Respondent challenged the action for recovery in writ proceedings under [Article 226](#). The petition was allowed by the impugned judgment of the High Court. The High Court found substance in the grievance of the Respondent that the excess payment made to him towards salary and allowance prior to his retirement could not be recovered at that stage, there being no fraud or misrepresentation on his part.

8 The order of the High Court has been challenged in these proceedings. From the record of the proceedings, it is evident that when the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit which has been filed by the Respondent in these proceedings, this position has been specifically admitted. Subsequently, when the rules were revised and notified on 7 May 2003 it was found that a payment in excess had been made to the Respondent. On 18 February 2004, the excess payment was sought to be recovered in terms of the undertaking.

9 The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10 In *State of Punjab & Ors etc. vs. Rafiq Masih (White Washer) etc.*¹ this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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." (emphasis supplied).

11 The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12 For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.

13 The judgment of the High Court is accordingly set aside. The Civil Appeal shall stand allowed in the above terms. There shall be no order as to costs."

10. Applying the above ratio of **Jagdev Singh's** case to the facts and circumstances of the present OA, I am of the view that the orders dated 25.1.2018 and 29.1.2018 passed by the respondents are just and proper and, therefore, the same cannot be quashed and set-aside. Accordingly, the present OA is devoid of merit and the same is dismissed.

11. No order as to costs.

(HINA P.SHAH)
MEMBER (J)

R/

