

**Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member**  
**Hon'ble Ms. Jaya Das Gupta, Administrative Member**

For the Applicant(s) : Mr. A. Chakraborty, Counsel  
For the Respondent(s): Mr. B.P Manna, Counsel

**ORDER**

**Per Ms. Jaya Das Gupta, Administrative Member:**

The applicant Shri Asit Chaudhuri has approached CAT under Section 19 of the AT Act, 1985 seeking the following relief:

(a) An order do issue directing the respondents to release last month's salary as well as leave salary withheld by the respondents without deducting any amount with interest as admissible under rule."

2. Heard the 1d. counsels for both parties. Shri Asit Chaudhuri retired as an Administrative Officer, CQA(MET), Ichapur on 31.01.2013. During the course of his service career, Shri Asit Chaudhuri who was promoted to the Grade of Assistant Cashier on 02.09.1983 joined as Cashier w.e.f 26.05.1984 after re-designation at the post of Assistant Cashier to Cashier. The post of Cashier was further re-designated to UDC in the same pay scale of Rs. 4000-6000 as per 5<sup>th</sup> CPC. Since Shri Asit Chakraborty, who was a UDC, was performing duties of cashier, he was allowed to draw special pay of Rs. 125/- pm w.e.f 30.10.1991 as cash handling allowance, and as per recommendations of the 5<sup>th</sup> CPC, the cash handling allowance was enhanced to Rs. 300/- pm w.e.f 01.08.1997. Shri Asit Chaudhuri received such cash handling allowance from 30.10.1991. During the subsequent pay fixation under 6<sup>th</sup> CPC, the cash handling allowance was merged with respective basic pay during pay fixation of 6<sup>th</sup> CPC, and Financial Upgradations of ACP and MACP.

3. The Audit Authority, during the Audit of the service book of the

applicant pointed out a discrepancy in fixation of pay on 01.09.1999 as Rs. 5750, because the cash handling allowance of Rs. 300/- was merged with a basic pay and this should not have been done. This was against the pay fixation rules prevalent and since then all subsequent fixations were affected and the applicant has been over paid. As a result differential payment of Rs. 2,81,396/- was recovered from his retiral benefits from the last pay and allowance and leave salary after getting approval from the concerned authorities.

4. The learned counsel of the applicant at the Bar referred to the Rafiq Massi case and submitted no recovery should be made as excess payment has been made for more than five years.

5. We are also aware of a judgment pronounced by Hon'ble Apex Court which are set out below:

The Hon'ble Supreme Court of India in Civil Appeal No. 3500 of 2006 **High Court of Punjab and Haryana -vs- Jagdev Singh** has given the following judgement:

"IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3500 OF 2006

HIGH COURT OF PUNJAB & HARYANA .....APPELLANTS  
& ORS

Versus

JAGDEV SINGH

.....RESPONDENT

JUDGMENT

Dr. D Y CHANDRACHUD, J:

1. The High Court of Punjab and Haryana allowed, by its judgment dated 1 August 2005, a petition filed by the Respondent under Article 226 of the Constitution to challenge a direction issued by the State to the Accountant General for the recovery of an excess payment towards salary.
2. The facts lie in a narrow compass. The Respondent was appointed

as a Civil Judge (Junior Division) on 16 July 1987 and was promoted as Additional Civil Judge on 28 August 1997 in the judicial service of the State. By a notification dated 28 September 2001, a pay scale of Rs. 10000-325-15200 (senior scale) was allowed under the Haryana Civil Service (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2001. Under the rules, each officer was required to submit an undertaking that any excess which may be found to have been paid will be refunded to the Government either by adjustment against future payments due or otherwise.

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.* 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.

.....CJI

[T S THAKUR]

.....J

[Dr D Y CHANDRACHUD]

New Delhi  
JULY 29, 2016.      "

6. Learned counsel for respondents has submitted an undertaking, given by the applicant in September 2008 which is given below:

**"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.

Date : Sep 2008      Signature : Asit Chaudhuri  
Station : Ishapore      Name : ASIT CHAUDHURI  
Designation: Office Supdt.  
Office : CQA (Met), Ishapore"

7. As the applicant has given an undertaking as per Hon'ble Apex Courts' order recovery of excess payment can be made by the authorities. In the above context, there is no case for intervention in the stand taken by the respondent authority.

8. The O.A is accordingly dismissed with the above observations. No costs.

(Jaya Das Gupta)  
Member (A)  
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(Bidisha Banerjee)  
Member (J)

