CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(orders reserved on 13.5.2019.

O.A.NO. 060/01379/2017 Date of order:- 21.5.2019.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**

Narinder Singh, Electrical Instructor(Retd.), Govt. Model High School, Sector 20-D, Chandigarh, son of Sh. Kehar Singh, resident of House No.2437-H, Sector 4, near Dussehra Ground, Behind Uchha Pir Kharar, District Mohali.

……Applicant.

(By Advocate :- Mr. Kulwant Singh)

Versus

1. Union of India through its Secretary, Ministry of Home Affairs, North Block, New Delhi.
2. The Secretary, Education Department, Union Territory, Chandigarh Administration.
3. The Director Public Instruction(Schools), Chandigarh Administration, Sector 9, Chandigarh.
4. The District Education Officer, Chandigarh Administration, Sector 19, Chandigarh.
5. The Principal cum Drawing & Disbursing Officer, Govt. Model High School, Sector 20-D, Chandigarh.

…Respondents

(By Advocate : Mr.Rohit Sharma for Mr.Vinay Gupta).

O R D E R

Sanjeev Kaushik, Member (J):

The applicant assails orders dated 6.11.2017 & 5/7.6.2017 (Annexures A-5 & A-6) whereby the respondents have

decided to effect recovery from the applicant to the tune of Rs.62,930/- of medical allowance and city compensatory allowance.

2. The solitary grievance in this OA is against the respondents for effecting recovery from an employee who retired on 31.3.2010, vide orders dated 5/7.6.2017 & 6.11.2017, thus, the learned counsel for the applicant has prayed that in terms of the law laid down by the Hon'ble Apex Court in the case of **State of Punjab & Ors.** Versus **Rafiq Masih (white washer) etc.** (Civil No.111527 of 2014) decided on 18.12.2014 (A.I.R. 2015 S.C. Page 696), the impugned order of recovery is liable to be set aside.

3. The facts are not in dispute. The applicant who opted for central pay scale was to get actual reimbursement of medical claim, but contrary to that he was paid fixed medical allowances forcefully and the applicant who was getting central pay pattern, was deprived of his right to get medical allowances to be spent on the welfare of his family members. Thus, the applicant has been paid a sum of Rs.45,450/- as fixed medical allowance and Rs.17480/- as city compensatory allowance for the period from 1.1.1996 to 31.3.2010, which the respondents have sought to recover vide impugned order on the ground that the same has been wrongly paid to him. Hence the present OA.

4. Though the respondents have stated that the impugned orders have been passed in furtherance to the orders passed by the Hon'ble High Court, where the employees were held not entitled to fixed medical allowance and they are entitled for actual expenses incurred by them on the medical treatment of their family members.

5. I have heard the learned counsel for the parties and have perused the material placed on record.

6. Learned counsel for the applicant stated that the impugned recovery is bad in law for two reasons firstly that there was no mis-representation on the part of the applicant for getting fixed medical allowance, rather, the applicant was put in dis-advantage by giving fixed medical allowance whereas he had given option to get actual medical expenses which he or she spent on the welfare of his/her family. Secondly, the impugned recovery which the respondents are effecting from the applicant pertains to the period starting from 1996 to 2010 i.e. prior to the date of his retirement. Thus, the impugned recover is liable to be set aside in view of law laid down in the case of Rafiq Masih (supra).

7. Learned counsel for the respondents has reiterated what has been stated in the written statement.

8. The issue in the present case is with regard to recovery of excess payment from employees/retirees has been put to rest by the Lordships in the case of **Col. B.J. Akkara (Retd.)** vs. **Govt. of India & Ors.** (2007(1) SCC (L&S) 529), where while answering to question no.4 dealing with recovery of excess payment made on account of wrong interpretation/understating and by relying upon various judgment i.e. in the case of **Sahib Ram** vs. **State of Haryana,** 1995 Suppl. (1) SCC 18**, Shyam Babu Verma** vs. **Union of India**, 1994 (2) SCC 521**,** Lordships have opined that if excess payment made on account of mis-representation or fraud on the part of employee then

employer has right to recover the said amount otherwise if there is no misrepresentation or fraud play by employee then excess payment cannot be recovered. Lordships have reiterated findings in para 28 as under:-

> "28. Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

Lordships have further gone to record finding that to a pensioner recovery at later stage is mis-advantageous position when compared to a in service employee and intention to recover excess payment would cause undue hardships to him where there is no finding by the department that the excess payment to employee has been made on account of misrepresentation or fraud. This view has consistently been followed in the case of **Chandi Prasad Uniyal & Ors**.(2012 S.C.C.(8) Page 417) also. Subsequently, while summarizing their view after considering judgment on recovery in the case of Rafiq Masih (white washer) (supra), Lordships have recorded findings in para no.12 where they have held that recovery from retired employee would be inadmissible in law and have held that it is not possible to

palpitate all circumstances of hardships and laid down criteria where recovery cannot be effected. The same reads as under:-

> "(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).

The case of the applicant falls under category (i) & (iii), thus, the impugned orders do not sustain in the eyes of law and are accordingly quashed and set aside.

9. The OA is allowed in the above terms. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- 21.5.2019.

Kks