

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



No.O A /350/1206/2017

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

1. Prabir Kumar Sanyal,
Son of Late Santosh Kumar Sanyal,
Working for gain at Ordinance Factory Board,
In the post of Junior Works Manager,
10A, S.K. Bose Road,
Kolkata – 700 001,
Residing at Flat No. 5, 108,
Sarat Park, Nandi Bagan, Haltu,
Police Station – Kasba,
Kolkata – 700 078;
2. Madhumita Das,
Daughter of Late S.C. Bhattacharya,
Working for gain at Ordinance Factory Board,
In the post of Junior Works Manager,
10A, S.K. Bose Road,
Kolkata – 700 001,
Residing at 3/7, 2nd Floor, New Raipur,
P.O. – Garia,
Police Station – Jadavpur,
Kolkata – 700 084;

.... Applicants.

- Versus -

1. The Union of India
Represented by its Secretary,
Ministry of Defence,
Department of Defence Production
South Block,
New Delhi – 110 001;
2. The Secretary (Defense Production),
Ministry of Defence,
Department of Defence Production,
South Block,
New Delhi – 110 001;

3. The Chairman,
Ordinance Factory Board,
"Ayudh Bhavan" Ministry of Defence,
10A, Saheed Khudiram Bose Road,
Kolkata – 700 001;

4. The Director General,
Head Quarter, Govt of India,
"Ayudh Bhavan" Ministry of Defence,
Ordinance Factory Board,
10-A, Saheed Khudiram Bose Road,
Kolkata – 700 001.

..... Respondents.

For the applicants : Mr. C. Sinha, counsel

For the respondents : Mr. B. P. Manna, counsel

Heard on : 14.11.2018

Order on : 14.11.2018

Bidisha Banerjee, Judicial Member

This application has been preferred in order to seek the following reliefs:-

"8. (a) An order quashing or setting aside the OM dated 30.03.2017, being the Annexure "A-13" and office order No. 57, dated 22.11.2016, being Annexure "A-9", whereby the respondent authority is deducting the excess amount paid to the applicant in the pay scale of Rs. 1350-2200/-.

(b) An order directing the respondent authority to act according to the guidelines provided in the judgment dated 09.12.2014 passed by the Hon'ble Supreme Court in Civil Appeal No. 10862 of 2014 being Annexure "A-4" and to reinstate the office order dated 08.04.2015.

(c) An order directing the respondent authority to refund back the amount that has been deducted from the salary of the month of the applicants till date on basis of the purported circulars dated 30.03.2017 and 07.04.2015."

2. At hearing, Id. counsel for the applicants admitted at the bar that the refixation is inevitable the issue being already decided by the Hon'ble Apex

Court. However, Id. counsel would voice his grievance on behalf of his clients in regard to recovery already made from their salary and retiral benefits on the ground of excess payment/over payment.

3. Id. counsel for the applicants would cite the decisions rendered by Hon'ble Apex Court in **Shyam Babu Verma & Ors. vs. Union of India & Others** reported in (1994) 2 SCC 521 and **State of Punjab & Others vs. Rafiq Masih(White Washer)** etc. reported in (2014)8 SCC 883 in support of his contentions. In **Shyam Babu Verma**, the Hon'ble Apex Court while permitting the respondents to carry on with their decisions to implement two scales of pay for two categories of Pharmacists Gr.B, held in regard to recovery of any excess amount as under:-

"11.but as they have received the scale of Rs. 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

4. The view of the Hon'ble Apex Court in **Shyam Babu Verma** was quoted in a later decision of Hon'ble Apex Court in **Rafiq Masih**. In the judgment of **Rafiq Masih** Hon'ble Supreme Court held 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.

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(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 positions as emanated supra, we feel it appropriate to direct the authorities to refund the excess payment recovered from the applicants due to refixation, within three months from the date of receipt of a copy of this order and not to make any further recovery, if already proposed.

6. The O.A. is accordingly disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member