IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.21/57/2019

Date of Order: 26.06.2019

Between:

M.I.Malik,
S/o late I.H.Malik, aged 58 years
Occ: Director (Group `A')
Southern Printing Group
Survey of India
Uppal, Hyderabad500039, T.S. …. Applicant

AND

1. Union of India rep. by the
The Secretary, Department of Science & Technology
Technology Bhavan, New Mehrauli Road
New Delhi.

2. The Surveyor General of India
Survey of India,
Hathibarkala, Dehradun-248001.

3. The Director
Southern Printing Group
Survey of India
Uppal, Hyderabad -500039, T.S.

4. The Ministry of Finance Rep. by
The Secretary, Government of India,
Department of Expenditure
North Block, New Delhi.

5. The Secretary
Government of India
Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training
North Block
New Delhi – 110001. … Respondents

Counsel for the Applicant … Mr. K.R.K.V.Prasad.

Counsel for the Respondents …Mr. V. Vinod Kumar,Sr.CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA has been filed challenging the direction of the respondents to deposit the overdrawn amount in regard to Transport Allowance (hereinafter called as `TA') paid from 21.02.2011 to 31.03.2016.

3. Brief facts of the case are that the applicant while working as Director with Grade Pay of Rs.8700/- was granted Non-Functional Upgradation with Grade Pay of Rs.10,000/-, which is equivalent to Grade Pay of Joint Secretary level officers. Respondents have allowed drawal of TA applicable to the Grade Pay of Rs.10,000/- for the period from 21.02.2011 to 31.03.2016. Thereafter, the TA was stopped and it was restricted to the rate of TA applicable to Grade Pay of Rs.8700/-. Respondents have directed the applicant to deposit the excess TA over and above the eligible amount paid to him from 21.02.2011 to 31.03.2016. Applicant is relying on the Hon'ble Apex Court Judgement

and the relevant DOPT Orders in support of his cause. Respondents rejected his request not to force him to pay back the excess amount released to him in lumpsum. Aggrieved, the applicant has filed the OA.

4. The main contentions of the applicant are that the TA was paid on par with those similarly situated officers, who are drawing Grade Pay of Rs.10000/-, at the rate of Rs.7000 + DA as per the recommendations of the 6th Central Pay Commission. The TA paid by the respondents during the said period was a decision of the respondents. The applicant has incurred expenditure towards transportation by private conveyance, and, therefore, directing him to remit the excess amount at later date, is arbitrary, unjust and illegal. The recovery of excess TA has been made applicable to the officers from civilian stream not to those from the Army stream.

5. Respondents in their reply statement submitted that in view of Audit objection raised in January, 2016, the officer was ordered to deposit the excess amount drawn. Officers, as per the Audit observation, who are working in the HAG grade are entitled to use the Staff Car for commuting between office to residence, and in case they are using the Staff Car, they are not eligible for the TA at the rate of Rs.7000+DA. As per the orders of the Ministry, the higher TA @ Rs.7000+DA is not been drawn w.e.f. 01.04.2016. Respondents vide

their letter dated 24.04.2017 have communicated to all the officers who are drawing excess TA, over and above their entitlement of TA, about the necessity to repay. Applicant is going to retire on 30.04.2020. Hence, the Hon'ble Supreme Court in **State of Punjab and Others etc.** v. **Rafiq Masih (White Washer) etc.**, (2015) 4 SCC 334, does not apply to the applicant. Applicant was also placed on notice before directing him to repay the amount. Applicant has given an undertaking while opting for revised pay scales and, therefore, he is bound by the undertaking so furnished. As per the direction, the case of the applicant is of the Hon'ble Supreme Court of India in **Punjab & Haryana High Court & Others** v. **Jagdev Singh,** (2016) 14 SCC 267, applicant is liable to deposit the excess amount paid to him. Taking cognizance of this fact, Jodhpur Bench of this Tribunal has not entertained a case of similar nature in OA No.481/2018. The applicant has admitted that the recovery was stopped on 01.04.2016 and, therefore, there is delay in approaching this Tribunal. The respondents cited the Hon'ble Supreme Court Judgement in **C. Jacob** v. **Director of Geology and Mining and Another,** (2008) 10 SCC 115 and **Union of India** v. **M.K.Sarkar** (2010) 2 SCC 59, wherein it was observed that mere making a representation does not extend the limitation.

Applicant seeking relief based on OA No.274/2017 filed by one of his colleague officer in the Coordinate Bench of this Tribunal at Jaipur, cannot be extended in view of the principle laid down by Hon'ble Supreme Court of India in **BSNL** v. **Ghanshyam Das,** (2011) 4 SCC 374 in paras 25 and 26 as under:

> "25. The principle laid down in K.I.Shephered that is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief would apply only in the following circumstances:
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> (a) Where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;
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> (b) Where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;
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> (c) Where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and
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> (d) Where the court expressly directs that the relief granted should be extended to those who have not approached the court.

> 26. On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which has accrued to others."

Hence, the submission of the applicant that his case is fully covered by the decision in OA No.274/2017 is untenable. The recovery of excess payment is as per the instructions of the DOPT and the concerned Ministry. As per the general principle of financial propriety, any amount paid to a Government employee, in excess of the actual entitled amount, is to be recovered. In fact, as per the Hon'ble Supreme Court Judgement in **Chandi Prasad Uniyal and Others** v. ***State of Uttarakhand and Others***, (2012) 8 SCC 417, relief sought is inadmissible. The applicant was drawing TA with the Grade Pay of Rs.10000/- but in NFSG as Director which is below the rank of Joint Secretary to the Government of India. Therefore, he is not entitled for the excess TA. Respondents have also stated that an identical issue has been challenged before the Hon'ble High Court of Rajasthan of Judicature at Jaipur by way of Writ Petition No.10114/2018. The Hon'ble High Court has made the following order:

> "The petition is admitted in view of the decision of the Supreme Court of India in the

matter of High Court of Punjab and Haryana v. Jagdev Singh, (2016) 14 SCC 267."

Therefore, the respondents proposed to recover the excess paid amount of Rs.5.54.097/- from the officer concerned in 12 equal monthly instalments.

6. Heard both the counsel and perused the pleadings on record.

7. (I) It is clear from the facts of the case that respondents have granted TA @ Rs.7000+DA on their own and on later date objected stating that the Director level officers in NFSG are not eligible. Applicant was, therefore, directed to deposit the said excess amount paid. Besides, it is to be emphasized that the mistake has been committed by the respondents and, hence, their mistake should not be rubbed on to the applicant. This is impermissible as per Hon'ble Apex Court observation in ***Rekha Mukherjee*** *v.* ***Ashis Kumar Das****,(2005) 3 SCC 427* :

"36. The respondents herein cannot take advantage of their own mistake."

(II) Further, the direction to deposit excess TA, is contrary to the decision of the Hon'ble Supreme Court Judgement in **Rafiq Masih** case (supra), wherein it was observed as under:

> *"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:*
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> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
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> *(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.*
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> *(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."*

Applicant has neither misrepresented or misguided the respondents to grant the TA. Moreover, he did not commit any fraud to seek the benefit of higher T.A. Applicant has spent the money to commute between

office and residence, after having being legally granted by the respondents. After having used the money for the purpose it was granted, directing the applicant to deposit the amount fringes on arbitration.

Therefore, Clause (v) of the above Judgement covers the case of the applicant.

(III) Respondents have cited the Hon'ble Supreme Court Judgement in **Jagdev Singh** (supra) stating that the applicant has given undertaking and therefore, he is liable to repay the excess amount. The cited Judgement is not relevant to the present case because the Hon'ble Supreme Court dealt with pay revision in **Jagdev Singh's** case (supra) and in the present case it is about excess payment of Transport Allowance.

(IV) The respondents have stated that there is delay in filing the OA, and, therefore, it need not be entertained. The applicant has been representing and when it was not considered the applicant has approached this Tribunal. Besides, the OA after being admitted, the contention of delay does not stand to reason. The objections should have been raised at the stage of admission itself. At this stage, raising such an objection lacks relevance. Moreover, TA is paid in a monthly

basis and any increase or decrease of TA leads to continuous cause of action. Therefore, the question of limitation does not arise.

(V) Further, in regard to limitation and similarly situated employees being granted similar relief, is supported by a catena of Judgements of the Hon'ble Apex Court.

(a) In **K. C. Sharma & Ors**. Vs. **Union of India**, (1997) 6 SCC 721, a Constitution Bench Judgement of the Hon'ble Apex Court, it was observed as under:

> "4. The validity of the retrospective amendments introduced by the impugned notifications dated 5-12-1988 had been considered by the Full Bench of the Tribunal in its judgment in *C.R.Rangadhamaiah v. Chairman, Rly. Board,* ***[(1994) 27 ATC 129]*** and connected matters and the said notifications insofar as they gave retrospective effect to the amendments were held to be invalid as being violative of Articles 14 and 16 of the Constitution. Since the appellants were adversely affected by the impugned amendments, they sought the benefit of the said decision of the Full Bench of the Tribunal by filing representations before the Railway Administration. Since they failed to obtain redress, they filed the application (OA No.774 of 1994) seeking relief before the Tribunal in April 1994. The said application of the appellants was dismissed by the Tribunal by the impugned judgment on the view that the application was barred by limitation. The Tribunal refused to condone the delay in the filing of the said applications.

5. The correctness of the decision of the Full Bench of the Tribunal has been affirmed by this Court in *Chairman, Rly. Board v. C.R.Rangadhamaiah*, [(1997) 6 SCC 623] and connected matters decided today.

6. Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief in the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of OA No.774 of 1994 is condoned and the said application is allowed. The appellants would be entitled to the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated 16-12-1993 in OAs Nos.395-403 of 1993 and connected matters. No order as to costs."

(b) In **Amrit Lal Berry vs Collector Of Central Excise, (1975) 4 SCC 714 :**

"We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law is his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

(c) In **Inder Pal Yadav Vs. Union of India, 1985 (2) SCC 648:**

> "…those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court."

(d) In **V CPC report, para 126.5 – Extending judicial decision in matters of a general nature to all similarly placed employees:**

> "We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of **C.S. Elias Ahmed & Ors Vs. UOI & Ors, (OA 451 and 541 of 1991),** wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh V. UOI [(1992) 19 ATC 94 (SC)], dt. 20.07.1998; K.I. Shepherd V. UOI [(JT 1987 (3) SC 600)]; Abid Hussain V. UOI [(JT 1987 (1) SC 147], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing other

> employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

(e) In a latter case of **Uttaranchal Forest Rangers' Assn (Direct Recruit) Vs. State of UP (2006) 10 SCC 346,** the Apex Court has referred to the decision in the case of **State of Karnataka Vs. C. Lalitha, 2006 (2) SCC 747**, as under:

> "29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently."

As per the above observations, respondents should not have forced the applicant to the Tribunal on an identical issue, when relief has been granted by the Coordinate Bench of this Tribunal in OA No.274/2017.

(VI) Respondents have also stated that they have filed a Writ Petition in the High Court of Rajasthan at Jaipur and the same has been admitted. However, no stay has been granted by the Hon'ble High

Court. At this juncture, it is worthwhile to mention that when a similar case came up for adjudication before the Hon'ble High Court of Andhra Pradesh in W.P(C) No.5951/2019, it was observed, as under:

> "4. From the above, we are of the view that case of respondent comes under Clause v of aforesaid guidelines. Even though respondent gave an undertaking, Tribunal righly relied on Judgement of Apex Court in **Rafiq Masih** (1 supra) and passed order impugned by issuing direction to petitioners to release the amount withheld from gratuity to respondent, as such, we cannot find fault with order impugned. Further, in **Jagdev Singh** (2 supra), Apex Court dealt with the case of pay fixation and held that recovery should be made in reasonable instalments. But, in present case, issue is with regard to grant of Transport Allowance, as such, principle laid down in **Jagdev Singh** (2 supra) has no application to facts in the present case.
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> 5. In view of aforesaid facts and circumstances, we are of the view that this is not a case where we can exercise jurisdiction under Article 227 of Constitution of India, as such, we do not interfere with order impugned.
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> 6. Accordingly, this Writ Petition is dismissed."

Therefore, the case of the applicant is fully covered by the aforesaid decision.

(VII) Thus, as can be seen from any angle, the case of the applicant is supported by the Hon'ble Supreme Court Judgement referred to above, and also that of the Hon'ble High Court of Andhra Pradesh.

(VIII) Respondents cited the Hon'ble Supreme Court Judgment in **Bharat Sinchar Nigam Limited** v. **Ghanshyam Dass (2) and Others,** (2011) 4 SCC 374, to support their contention that once an employee gets relief from any of the judicial forum, the shall not apply to other persons unless the 5 conditions laid down in the said Judgement are satisfied. However, the said observation was made by the Hon'ble Supreme Court in the context of promotion to 10% posts in Grade IV scale on basis of seniority. The present case is regarding TA and not regarding promotion. Therefore, the said cited case is not relevant.

In view of the aforesaid, impugned order dated 16.01.2019 is quashed. Consequently, respondents are directed to consider as under:

(i) Not to make any recovery of the excess amount of TA paid over and above the eligibility, for the period 21.2.2011 to 31.3.2016.

(ii) Time allowed to implement the order is 3 months from the date of receipt of the order.

(iii) No order as to costs.

With the aforesaid directions, the OA is allowed.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 26th day of June, 2019

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