

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(CIRCUIT BENCH AT JAMMU)**

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**ORIGINAL APPLICATION NO. 061/342/2019
(Order reserved on: 11.07.2019)
Order pronounced on _____**

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. ARADHANA JOHRI, MEMBER (A)**

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1. Avtar Krishan Raina S/o Late Shri Tika Lal Raina R/o Quarter No.III/8 P&T Colony Bakshi Nagar, Jammu (Aged 58 years).
2. S.K. Sawehney S/o Late Om Prakash Sahney R/o Postal Quarter Trikuta Nagar, Jammu (Aged 47 years).
3. Ashok Kumar Raina S/o Shri Kashi Nath Raina R/o 23/18, East Extension Trikuta Nagar, Jammu (Aged 44 years).
4. Brij Nath Raina S/o Late Vishamber Nath Raina, R/o Quarter No. Type II/2 Postal Quarters, Bakshi Nagar, Jammu (Aged 58 years).
5. Roshan Lal Koul S/o Shri Gopi Nath Koul R/o Quarter No. B-8, Postal Quarters, Roop Nagar, Jammu (Aged 47 years).
6. Kanaya Lal Matoo S/o Jia Lal Matoo R/o Quarter No. A-2, Postal Quarters Roop Nagar, Jammu (Aged 57 years).
7. Ravinder Kumar Koul S/o Shri Anand Ram Koul R/o Postal Quarters, Q.No. 8, Block-G, Roop Nagar, Jammu (Aged 57 years).
8. Surinder Kumar Koul S/o Sh. J.N. Koul R/o Qtr. No. F-Z, Type 20, Postal Colony, Roop Nagar, Jammu, age 36 years.

....Applicants

(By Advocate: Mr. Kapil Gupta)

VERSUS

1. Union of India through Secretary to Government, Department of Posts, New Delhi.
2. Chief Post Master General, J&K Circle, Srinagar.
3. Chief Post Master General, J&K Circle, Jammu.
4. Accounts Officer (Admn.) office of Director Accounts (Postal), Jammu.
5. Senior Post Master, Jammu Tawi Head Post Office, Jammu.
6. Senior Post Master, General Post Office, Srinagar.
7. Accounts Officer, ICO (SB), office of Chief Post Master General, J&K Circle, Srinagar.

....RESPONDENTS

(By Advocate: Mr. Rohit Sharma, Advocate for
Mr. Sanjay Goyal, Sr.CGSC)

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The challenge in this Original Application (OA) is to the orders dated 22.1.2007 vide which recovery on account of payment of House Rent Allowance (HRA), has been ordered and they have also prayed for restraining the respondents from making recovery from their pay and allowances.

2. The facts of the case are largely not in dispute. The applicants plead that due to disturbed conditions in Kashmir Valley on account of militancy, they had shifted their families out of Valley. The Government framed a Scheme for employees, who chose to perform their duties in Kashmir, inter-alia, that all such employees who perform their duties in disturbed conditions in valley and keep their families at safe places in country, would be given HRA facility at Class A rates w.e.f. 27.3.1990 in addition to HRA already being drawn by them, vide order dated 29.5.1990 (Annexure A) and clarification dated 29.10.1990 (Annexure B). The grant of benefit is without imposition of any condition. The applicants availed this benefit. However, without any show cause notice or opportunity of being heard, the said facility was withdrawn and impugned orders were issued making recovery from applicants, hence the O.A.

3. The respondents have resisted the claim of the applicants. They plead that as per notification dated 19.12.1990 (Annexure R-4), issued by Govt. of India, the applicants were paid HRA at A class rates, subject to condition that they continued to incur expenditure on rent or maintain their establishments in their own houses. These orders are specifically for Postal Department. The respondents are bound to follow their own orders and not by any other department. For

applicants, departmental arrangements were made, so they were not eligible for HRA for place of posting, as per OM dated 11.9.2006 (Annexure R-5). They submit that incentive HRA at A class rate has been paid erroneously to such employees who have been allotted government quarters outside Kashmir Valley for keeping their families as they were not entitled for the same as per rules. Thus, recovery has rightly been ordered from the applicants.

4. We have heard the learned counsel for the parties at length and examined the pleadings on file, with their assistance.

5. It is not in dispute, at all, that the applicants could be granted benefit of HRA at Class A city rate, only on fulfillment of two conditions namely they continued to incur expenditure on rent or maintain their establishments in their own houses. Since, it has gone unrebuted on the part of the applicants that they did not fulfill these conditions, as they have not even cared to file any rejoinder to rebut the submissions made in the written statement, it is proved that benefit was granted to them due to oversight. Thus, one cannot find fault in action of the respondents in withdrawing the wrong benefit granted to the applicants as it is well settled that an administrative error can always be corrected by the department and no estoppel lies against such an action.

6. Having said that, it is also equally true that there was no misrepresentation on the part of the applicants in the entire fiasco and it was an inadvertent mistake. Thus, they cannot be made to suffer by making recovery from their pay and allowances for amounts drawn by them in good faith a long time back. Moreover, no undertaking was obtained from the applicants.

7. The issue with regard to recovery is no more res-integra and stands settled by Hon'ble Apex Court in case of **State of Punjab & Ors Vs Rafiq Masih (White Washer)** (2014(8) SCC 883). There is no whisper in the written statement or suggested by counsel for the respondents at the time of argument that the applicants have played fraud or misrepresented while availing the benefit. Accordingly, we are in agreement with the submissions made by learned counsel for the applicants that the respondents cannot effect recovery of excess amount paid by them in view of the ratio laid down by the Hon'ble Supreme Court in case Rafiq Masih (supra) wherein their lordship has carved out following exceptions in para 12:-

“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.
- (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.”

8. In the backdrop of the above discussion, and the exceptions carved out by their Lordship in case of Rafiq Masih (supra), the respondents cannot effect recovery from persons like the present applicants. Learned counsel for applicants also submitted that no undertaking was taken from the applicants by respondents for refund of amount. Learned counsel for the respondents is unable to show any

contrary law to the settled law in case of Rafiq Masih (supra). Accordingly, we left with no other option but to quash the action of the respondents in making recovery as the same cannot be sustained in the eyes of law. The respondents are also directed to disburse the recovered amount to the applicants within a period of four weeks from the date of receipt of certified copy of the order. The present O.A is disposed of in above terms. No costs.

(ARADHANA JOHRI)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 07.2019

HC

