

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

Orders pronounced on: 30.08.2019
(Orders reserved on: 12.07.2019)

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

(i) O.A.NO.061/01354/2018

1. Prem Nath S/o Sh. Shiv Ram, aged 40 yrs Driver O/o Area Organiser, SSB, Bhinga District Shrawasti (UP) R/o Village Badali, P.O.Vijay Pur, District Jammu.
2. Raj Kumar S/o Sh. Bihari Lal, age 35 yrs Safaiwala O/o Area Organiser, SSB, Bhinga District Shrawasti (UP) R/o Vill. Kothey Sainia, P.O. Rehal, Tehsil Bishnah, District Jammu.
3. Krishan Chand S/o Sh. Sudagar Mal, Age 34 Yrs, Safaiwala O/o The Area Organiser, SSB, Bhinga District Shrawasti (UP) R/o Village Allah, P.O. Rehal, Tehsil Bishnah, District Jammu.
4. Lekh Raj S/o Sh. Bhagat Ram, Age 43 years, Driver O/o Area Organiser, SSB, Bhinga Distt. Shawasti (UP) R/o Village Lamberi (Takia), P.O. Lamberi Tehsil, Nowshera.
5. Paras Ram S/o Sh. Manga Ram, Age 59 years, Car Driver O/o Area Organiser, SSB, Bhinga District Shrawasti (UP) R/o Village Deoli P.O. Khani, Tehsil Bharmour, District Chamba (H.P).
6. Sudarshan Kumar S/o Sh. Sain Ram, Age 30 years, Peon O/o Area Organiser, SSB, Bhinga District Shrawasti (UP) R/o village Bhalwal P.O., Bhalwal, Tehsil Akhnoor District Jammu.
7. Sunder Pal Singh S/o Kashmira Lal, Age 35 Yrs, Safaiwala O/o SHQ, HQs, FCI, Complex, Gorakhpur (U.P) R/o Village Jhukhaori, Tehsil Nakur District Saharanpur.

8. Man Singh S/o Sh. Noju Ram, age 50 yrs U.D.C. O/o Area Organiser, SSB, Bhinga R/o Village Majhgaon, P.O. Shadhar, Tehsil Rapur, District Shimla (H.P).
9. Mohan Chandra Kashiyala S/o Chinta Mani Kashniyal age 34 years FPO O/o Area Organiser, SSB R/o Vill. Doula, P.O. Bin Tehsil Distt. Pithoragarh (U.P).
10. Narinder Pal Singh S/o Sh. Terlok Singh, age 37 yrs o/o Area Organiser SSB A/P Sidhrath Nagar, UP R/o Village Sunderpur P.O., Chohala Tehsil R.S. Pura District Jammu (J&K).
11. Madan Lal S/o Late Beli Ram, age 38 yrs, Dvr, O/o Area Organiser SSB A/P Sidharath Nagar, UP R/o P.O. Bhour Camp P.S Satwari, District Jammu.
12. S.K. Raina, Chowkidar S/o Lt. J.N. Raina, age 31 years, O/o Area Organiser SSB A/P Sidhrath Nagar, U.P. R/o Migrant Camp Nagrota Q.No. 650, P/o Nagrota District Jammu (J&K).
13. Shyam Singh S/o Bali Ram, age 39 years, Driver O/o Area Organiser, SSB, Maharajganj, Gorakhpur (U.P) R/o Sagon PO Saruinsar & District Jammu.
14. Darbara Singh, age 60 yrs S/o Bir Singh, Retd. Driver, O/o Area organiser, SSB, Maharajganj, Gorakhpur (U.P) R/o Dablehar Tehsil R.S. Pura.
15. S. Nayak, LDC S/o late Girdhari Nayak age 52 years O/o Area Organiser, Sidharath Nagar, (UP), R/o Village Badasamantarapur PO Dablehar Tehsil Tangi Choudwar Distt. Cuttack (Orissa).
16. Ashwani Kumar S/o Sh. Kunj Lal village Age 26 Yrs Driver O/o Area Organiser, Sidharath Nagar, (UP) R/o Pheru Chack Tehsil Hiranagar PO Hiranagar District Kathua (J&K).
17. Surinder Kumar, Peon S/o Guru Ditta Age 35 yrs O/o Area Organiser, SSB, Maharajganj, Gorakhpur (UP), R/o Village Godhar PO Potha Tehsil Rajouri Distt. Rajouri (J&K).
18. Shamsher Singh S/o Inder Singh, age 35 yrs Chowkidar, R/o vill. Atgaon Distt. Office Gushali, Tehsil Chirgoan Distt. Shimla H.P.
19. Ajay Kumar S/o Late Chandu Ram, age 30 years, Safaiwala O/o Area Organiser, Sidharath Nagar, (UP). R/o New Basti Ward no. 2 Tehsil Haveli Distt. Poonch (J&K).

20. Kuldeep Raj Safaiwala S/o Bhola Ram, age 37 years, o/o Area organiser, Sidharath Nagar (UP) R/o village Rani Talab Digiana PO Gangyal.
21. Hardeep Singh, Dvr. S/o S. Sarwan Singh, age 38 yrs R/o P.O., Badali Rakh Udampur O/o DIG, SSB, Kasumpti, Shimla.
22. Vinod Kumar S/o Sh. Ishwar Dass, age 42 years, Driver O/o DIG, SSB, Kasumpti, Shimla R/o village Siot Sunderbani.
23. Yogender Gupta, Age 42 years, Driver R/o Aligarh, U.P. O/o DIG, SSB, Kasumpti, Shimla.
24. Jaishi Ram, Asstt. S/o Baintu Ram, Age 59 years R/o village P.O. Hatli Distt. Kangra H.P. A/o O/C Area Organiser SSB Bakriach, U.P. At Kattichoraha, Hajirpur Road.
25. Narvir Singh S/o Ram Lal, Aged 39 years, R/o Simbal Camp Ward no.2 Tehsil RS Pura O/o Area organiser, SSB, Maharajganj, Gorakhpur (UP).
26. Romesh Kumar S/o Late Bodh Raj, Age 38 years, R/o Jandyal P.O. Ajora A/P at O/O Area, Organiser SSB maharajganj U.P.
27. Mohan Singh S/o Sh. D alar Singh, Age 35 years, Peon O/o Area Organiser, SSB, Bhinga, Distt. Shrawasti (UP) R/o Village Bhandral P.O., Ramgarh, Tehsil Samba District Jammu.
28. Natha Ram, Age 35 years, Car Driver, o/o Area Organiser, SSB, Bhinga, Distt. Shrawasti (UP) R/o Village Heera Chak P.O. Bhalwal, Tehsil & District Jammu.
29. Kewal Krishan S/o Sh. Nanak Chand, Age 35 yrs, peon O/o The FIR, HQRS, SSB, Lucknow (U.P) R/o V.P.O. Prat, Tehsil Sunderbani.
30. Duryodhan Sahoo S/o Jangbhangdu Sahoo, Age 32 years, UDC O/o SHQ, HQS, SSB, FCI Complex, Gorakhpur VPO Padmapur District Katak.
31. Mohan Lal S/o Late Sh. Bhimu Ram, Age 42 years, Peon O/o Area Organiser, SSB, Nanpara Minipurba R/o VPO Kanachak, Distt. Jammu.
32. Sardari Lal S/o Sh. Bhaju Ram, Age 50 years, Dvr O/o Area Organiser, SSB Lakhimpur (East) R/o Bhaju Ram, V.U.P.O Bari Brahmana Tehsil & District Jammu.

33.Naresh Kumar S/o Sh. Dewan Chand, age 40 yrs Car Driver O/o Area Organiser, SSB Lakhimpur R/o villages Rara, P.O.,Vijaipur Tehsil Samba District Jammu.

34.Ashwani Kumar, Car Dvr S/o Chet Ram, Age 35 yrs, O/o Area organiser, SSB Lakhimpur, R/o village P.O. Rai Siot.

35.Sardari Lal, age 40 years, R/o Vill,. Karyal Khurd, P.O., Allah. Age 40 yrs Driver O/o Area organiser, SSB, Bhinga Distt. Shraswasti, R/o Tehsil Bishnah, District Jammu.

36.Muthuswami Driver S/o Sh. M. Raju, Age 32 years, O/o Area organiser, SSB, Bhinga Distt. Shrawasti C Block, Khayala, J.J. Colony, New Delhi.

Applicants

Versus

1. Union of India through Secretary, Ministry of Home Affairs, New Delhi.
2. Director, Shastra Seema Bal, SSB, Directorate General of Security, East Block-5, R.K. Puram, New Delhi.
3. SHQ HQRS, FCIO Complex, Gorakhpur (U.P).
4. Area Organiser, SSB, Bhinga Sharawasti (U.P).
5. Area Organiser, Nanpara, At Mihampurbia, Barahi, (U.P).
6. Area Organiser, Lakhimpur, Kheri, East, Distt. Lakhimpur (U.P).
7. Area organiser, Hussainganj, Uska Road, P.O.Tetri Bazar, Distt,. Sidharath Nagar (U.P).
8. Area Organiser, SSB, FCI, Complex, Maharajganj, Gorakhpur (U.P).
9. DIG, SSB, Ministry of Home Affairs, Kasumpti, Shimla.

Respondents

(II) **O.A.NO.061/01355/2018**

1. Sudesh Kumar Bhat, Chowkidar Aged 36 years, S/o late Sh. R.K. Bhat O/o The Area organiser, SSB Kati Chouraha, Hazurpur Road, Bahraich (UP) R/o Q.No. 325, Phase-I, Muthi Camp Jammu – Tawi.

2. S. Manjeet Singh, Driver, aged 52 years S/o S. Narain Singh O/o The Area Organiser, SSB Kati Chouraha, Hazurpur Road, Bahraich (U.P) R/o Vill. Mukhanpur Gujran Tehsil R.S. Pura, Jammu.
3. Sunil Singh, Driver, Aged 41 years, S/o Late Sh. Chajju Singh O/o The Area organiser, SSB Kati Chouraha, Hazurpur road, Bahraich (UP) R/o Halri Morh, Kathua, J&K.
4. Bhagwan Dass, Peon, aged 49 years, S/o Late Sh. Chanoo Lal O/o The Area Organiser, SSB Kati Chouraha, Hazurpur Road, Bahraich (UP) R/o Vill. Vilhori P.O. Nowgang, Distt. Cheterpur (M.P).
5. Paras Ram, Peon, Aged 42 years S/o Sh. Fimu Ram, O/o The Area organiser, SSB, Kati Chouraha, Hazurpur Road, Bahraich (UP) R/o Chatha Gujran P.O.Halqa District Jammu.
6. Bhupinder Kumar, Peon, Aged 33 years, S/o Sh. Tara Chand, IO/o The Area Organiser, SSB Kati Chouraha, Hazurpur Road, Bahraich (UP) R/o Vill,. Rara P.O,. Gito Brahmna Tehsil Samba, District Jammu.
7. Smt. Kaushalya Devi, peon Aged 33 years, D/o Sh. Sohan Singh, O/o The Area Organiser, SSB, Kati Chouraha, Hazurpur Road, Bahraich (UP) R/o Vill,. Piplha P.O. Poirra Tehsil Chopala, Shimla (H.P).
8. Shakti Gur Bhajan Dass, Chowkidar Aged 33 years, S/o Sh. Tara Chand, O/o The Area Organiser, SSB, Kati Chouraha, Hazurpur road, Bahraich (UP) R/o Islam Chack, P.O,. Dablehar Tehsil R.S. Pura, District Jammu.
9. Prem Pal, Chowkidar, Aged 37 years S/o Sh. Gita Ram, o/o The Area organiser, SSB Kati Chouraha, Hazurpur road, Bahraich (U.P) R/o vill. Kanyan P.O. Rama Tehsil Nahin Distt. Sirmor (H.P).
- 10.Harmesh Singh, Driver, Aged 55 years, S/o Gurdas Singh, O/o Deputy Inspector General SSB, SHQ Bahraich (UP) R/o Village and P.O. Panjavar, Distt. Una (H.P).
- 11.Chaman Lal, Peon, aged 61 years (Retired), O/o The Area Organiser, SSB Kati Chouraha, Hazurpur road, Bahraich (U.P).

12. Mela Ram, Peon, Aged 61 years (Retired), S/o Sh. Fatu Ram O/o The Area Organiser, SSB, Kati Chouraha, Hazurpur road, Bahraich (UP) R/o Village Miyan Fathe P/o Bishnah Tehsil R.S. Pura Jammu.
13. Ram Dass, Peon, aged 62 years (Retired) S/o Sh. Chand Ram, O/o The Area Organiser, SSB, Kati Chouraha, Hazurpur road, Bahraich (UP) R/o Village Ladore P/O Halka Ghari Morh Domana, Jammu.
14. Nain Singh, Peon, Aged 69 years (Retired) S/o S. Devi Singh, O/o The Area Organiser, SSB, Kati Chouraha, Hazurpur road, Bahraich (UP) R/o Sibmbal Camp Tehsil R.S. Pura, Jammu.
15. Narinder Singh, Driver, aged 40 years, O/o The Inspector General, SSB, Frontier head Quarters, SSB, 11 Floor, Kendriya Bhawan, Sector-H, Aliganj, Lucknow R/o Gurha Slathian, Jammu.
16. Parkash Ram, Peon, Aged 54 years, o/o The Inspector General, SSB, Frontier head Quarters SSB, 11 Floor, Kendriya Bhawan, Sector-H, Aliganj Lucknow R/o Village Naryana P/O Khour Tehsil Akhnoor, Jammu.
17. Rishi Pal, Driver, Aged 36 years, S/o Puran Chand, O/o Deputy Inspector General SSB SHQ Bahraich, (UP) R/o Village Roop Nagar, Digiana, Jammu.
18. M.K. Bhat, Peon, aged 33 years, S/o Shri B.L. Bhat O/o The Dy. Inspector General, SSB, Sector HQ, FCI Complex, Gorakhpur (U.P) R/o House No. 666, Domana Purkhoo Camp, Jammu (J&K).
19. Rajendra Nath, Peon, Aged 49 years, S/o Sh. Gopal Nath O/o The Area Organizer, SSB Maharaj Ganj, FCI Complex, Gorkahpur (U.P) R/o Vill,. Bari, P.O., Naulakot, Tehsil Ranikhet, District Almora (UA).
20. G.M. Gaud, FPO, Aged 38 years, S/o Shri Lingamaiah O/o The Area Organiser, SSB Maharaj Ganj, FCI Complex, Gorakhpur (U.P) R/o House No., II-29, P.O., Jogipet, District Medak, Andhra Pradesh.
21. Sanjay Kumar Safaiwala, Aged 34 years, S/o Late Shri Bhaiya Lal, o/o The Area Organiser, SSB Maharaj Ganj, FCI Complex, Gorakhpur (U.P) R/o House No. 1127, (Type-II), NH-4, Faridabad, Haryana.

22. Ram Gopal, Chowkidar, Aged 32 years, S/o Late Sh. B.L. Arya O/o The Area Organiser, SSB Maharaj Ganj, FCI Complex, Gorakhpur (U.P) R/o Village Ghundara P.O., Moltari Tehsil Purola District Utter Kashi.

23. Dewan Chand, Peon, Aged 59 years, S/o Sh. Beli Ram, O/o The Area Organiser, SSB, Lakhimpur Kheri (E) Rathore market Mal Road, Lakhimpur Kheri, U.P. R/o Chaprial, P.O., Pallanwala, Tehsil Akhnoor, Jammu.

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Applicants

Vs.

1. Union of India through Secretary, Ministry of Home Affairs, New Delhi.
2. Director, Shastra Seema Bal, SSB, Directorate General of Security, East Block-5, R.K. Puram, New Delhi.
3. The Inspector General, SSB, Frontier Head Quarters SSB, 11th Floor, Kendriya Bhawan, Sector-H, Aliganj, Lucknow, U.P.
4. Deputy Inspector General, SSB, SHQ, B Bahraich (UP).
5. The Deputy Inspector General, SSB, Sector HQ, FCI Complex, Gorakhpur (UP).
6. The Area Organiser, SSB, Kati Chouraha, Hazurpur Road, Bahraich (UP).
7. The Area Organiser, SSB, Maharaj Ganj, FCI complex Gorkahpur (U.P).
8. The Area Organiser, SSB, Lakhimpur Kheri (E), Rathore market Mal Road, Lakhimpur Kheri, U.P.

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**Present: MR. R.P. SHARMA, ADVOCATE, FOR THE APPLICANTS.
MR. RAGHU MEHTA, ADVOCATE, FOR RESPONDENTS.**

ORDER
(BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)):

The facts of the case in both these cases and point of law involved are common and as such these have been heard for disposal by a common order. For facility of reference, facts are being taken from O.A. No. 061/01354/2018 (**PREM NATH & OTHERS VS. UNION OF INDIA & OTHERS**).

2. The applicants had invoked the jurisdiction of Hon'ble High Court of J&K by filing SWP No.390/2006 and 595/2006, which have now been transferred to this Tribunal, as jurisdiction to adjudicate the issue lies with this Court, and registered as O.A. No.061/01354/2018 and O.A. No. 1355/2018, respectively. The petitions seek quashing of the impugned action of the respondents directing recovery of Ration Money Allowance (RMA) paid to them in respect of their postings at hardship stations, within the State of J&K.

3. The facts are not largely in dispute. The applicants belong to category of Ministerial Staff, working/retired from Shastra Seema Bal (SSB), having worked at various places, like Poonch, Rajouri, Sunderbani, Jammu & Kathua etc. within state of J&K during Nineties. These stations were categorized as hard stations (Category 'B'). In terms of Cabinet Secretariat's letter dated 18.12.1987, decision was taken to extend some allowances like RMA to employees working in SSB, CISF, Directorate of Accounts etc. However, the Ministerial staff was denied this allowance. OWP No. 881 of 1999 titled **BRIJ LAL GUPTA & OTHERS VS. UOI ETC.** claiming grant of aforesaid allowance was disposed of on 6.11.2001, directing the respondents to take a decision on the issue. The applicants were accordingly allowed RMA during the years 1992 to 2001. However, all of a sudden a decision has been taken to recover the amounts paid to the applicants, in violation of principles of natural justice and it would result in

hardship to the applicants more so when they belong to lower strata of society and worked as Safai Karamchari, peon, Driver etc. hence the O.A.

4. The respondents have opposed the O.A. on the grounds that the category of applicants became entitled to payment of RMA only after 30.1.2001 and as such any payment made to them on this account for a period prior thereto is recoverable from them.

5. The learned counsel for the applicants would argue that the recovery of payment of RMA from the applicants, who belong to poor strata of society is illegal and arbitrary and in violation of principles of natural justice and they never mislead the Department, in any manner, for grant of benefit to them and if that has been allowed by department and they have used the money in good faith, that cannot be recovered from them. On the other wise, learned counsel for respondents argued that the government paid to the applicants in violation of rules, can always be recovered from them.

6. We have considered the submissions made by learned counsel for the respective parties

7. It is not in dispute that the applicants belong to the Group C and D category and there is no concealment of any fact on their part. The Department, in interpretation of existing rules and instructions, granted the benefit to them and the amount drawn by applicants in good faith has been utilised by them. The question arises, as to whether such employees can be made to suffer by making recovery of amounts paid to them such a long time back. This issue stands settled by the Hon'ble Apex Court of the country in the celebrated case of **STATE OF PUNJAB & ORS VS RAFIQ MASIH (WHITE WASHER)** (2014(8) SCC 883). There is no averment that applicants have played fraud or misrepresented while drawing the benefit of RMA for the indicated period. Thus, one cannot but agree 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 of excess payment of RMA paid to 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 are left with no other option but to quash the action of the respondents in ordering recovery as the same cannot be sustained in the eyes of law. The respondents are also directed to disburse the recovered amount, if any, 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)

PLACE: JAMMU.
DATED: 30.08.2019

HC*

