

**Central Administrative Tribunal  
Principal Bench**

**OA No.4023/2016  
MA No.2594/2019  
MA No.1032/2017**



New Delhi, this the 15<sup>th</sup> day of November, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Dr. Gaurav Vinod Jain,  
Aged 46 years, Group 'A',  
S/o Sh. Vinod Kumar Jain,  
R/o 514, Konark Apartments,  
22, I.P. Extension,  
Delhi-110092.

...Applicant

(By Advocate : Shri Depender Hooda)

**Versus**

1. Union of India,  
Through Secretary,  
Ministry of Health and Family Welfare,  
Nirman Bhawan, New Delhi.
2. Medical Superintendent,  
V.M.M.C. & Safdarjung Hospital,  
New Delhi-110029.
3. V.M.M.C. & Safdarjung Hospital,  
Through Administrative Officer,  
V.M.M.C. & Safdarjung Hospital,  
New Delhi-110029.
4. V.M.M.C. & Safdarjung Hospital,  
Through Head of Department  
Department of Forensic Science,  
V.M.M.C. & Safdarjung Hospital,  
New Delhi-110029.

5. V.M.M.C. & Safdarjung Hospital,  
Through Principal,  
V.M.M.C. & Safdarjung Hospital,  
New Delhi-110029.

...Respondents

(By Advocate : Shri Subhash Gosain)

### **ORDER (ORAL)**

**Justice L. Narasimha Reddy, Chairman :-**

The applicant is working as Professor in the Department of Forensic Medicine at VMMC and Safdarjung Hospital, New Delhi. Through Office Order dated 17.10.2016, the respondents decided to deduct 1/3 of his salary, for recovery on an amount of Rs.19,47,332/-, which is said to have been over paid to him. This OA is filed challenging the order dated 17.10.2016.

2. The applicant contends that he was not issued a Show Cause Notice, nor any inquiry was conducted before liability was fixed upon him. It is stated that except referring to pay structure, nothing was indicated to disclose as to how Rs.19,47,332/- was arrived at, or how that amount is liable to be recovered.





3. Respondents filed counter affidavit opposing the OA. According to them, the applicant was unauthorisedly absent for quite a considerable period and by mistake, salary was paid for that period also. It is stated that disciplinary proceedings were also initiated and no exception can be taken to that.

4. We heard Shri Depender Hooda, learned counsel for applicant and Shri Subhash Gosain, learned counsel for respondents.

5. The applicant is working as a Professor in the respondent Hospital. Though it is stated that disciplinary proceedings were initiated against him, we are not concerned with the same, since they are not the subject matter of this OA. The basis for proposing to recover 1/3 of salary of the applicant is mentioned in the Office Order dated 17.10.2016. It reads as under :-

**“OFFICE ORDER**

In pursuance of MOHFW letter no.A-24011/1/2016-CHS.III, dated 30/09/2016, the salary of Dr. G.V. Jain, Professor, Deptt. of Forensic Medicine, VMMC is hereby released w.e.f. 09/08/2016. The pay is revised accordingly to 7<sup>th</sup> CPC here under.

Pre-	Pre-	Grad	NPA	Basic	Pay in	NPA	Revised
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revised Pay Band & Grade Pay	revised Pay (in Rs.) as on 31/01/2014	Basic Pay (in Rs.)	(in Rs.)	Pay (in Rs.)	Pay Matrix (in Rs.)	(in Rs.)	Pay + NPA (in Rs.) as on (09/08/2016)
37400 - 67000 + 8700 G.P.	38790	8700	11873	47490	137500	11873	137500 + 11873

This issues with the approval of the  
Medical Superintendent.”

6. Neither it is mentioned that any Show Cause Notice was issued to the applicant, nor any explanation or otherwise sought. Before any recovery can be affected from an employee, the amount has to be determined, duly issuing notice to the concerned employee. The question of recovery would arise only thereafter. The impugned order does not disclose as to how the figure of Rs.19,47,332/- was arrived at. Respondents have not enclosed any proceedings along with counter affidavit. The only mention to that amount was, in a Memorandum dated 17.07.2015 issued by the Principal, VMMC, requiring the applicant to resume duties. Here again, it was not stated as to what the said amount represented.

7. In the Charge Memo dated 04.01.2017, issued to the applicant, the article is about over payment of



Rs.19,47,332/-, said to have been made to him. It is a different matter that Inquiry Officer submitted report dated 22.03.2018, holding that the charges were not proved and the Disciplinary Authority said to have issued a disagreement note. The impugned order was passed much before the Charge Memo was issued.

8. Viewed from any angle, the action of the respondents cannot be sustained in law. We, therefore, allow the OA setting aside the impugned order. It is, however, left open to the respondents to take necessary steps for recovery of an amount, if any, has been paid to the applicant, in excess of his entitlement, duly following the procedure prescribed by law.

Pending MAs, if any, shall stand disposed of.

There shall be no orders as to costs.

(Mohd. Jamshed)  
Member (A)

(Justice L. Narasimha Reddy)  
Chairman

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