

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.7835/2012**

% **12th September, 2013**

SHRI SHANKER PRASHAD MUKERJI Petitioner
Through: Mr. Manoj Chatterjee, Advocate with
Ms. K. Iyer, Advocate and Mr. Basab
Sengupta, Advocate.

versus

UNION OF INDIA AND ANR. Respondents
Through: Mr. Ravinder Agarwal, Advocate
with Mr. Girish Panda, Advocate for
respondent Nos.1 to 3.
Mr. Rajiv Kapur, Advocate with Ms.
Vatsala Rai, Advocate for respondent
Nos.4 and 5.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition, the petitioner who retired as a Vice Chairman of the Central Administrative Tribunal (CAT) impugns the letter dated 9.4.2012 issued by the respondent No.2 to the respondent No.4 whereby recovery was directed to be made from the pension being paid to the petitioner.

2. The reason for recovery being initiated by the respondent No.2 is because the pension paid to the petitioner was in excess of the amount provided under the proviso to Sub Rule 2 of Rule 8 of the Central Administrative Tribunal (Salaries & Allowances & Conditions of Service of Chairman, Vice Chairman and Members) Rules, 1985 (hereinafter referred to as the “subject Rules”). As per the proviso to Rule 8(2), pension which is granted to a Chairman or Vice Chairman or a Member of CAT cannot exceed the pension prescribed for a Judge of the High Court. Petitioner retired on 17.5.1993. Excess payment is said to have commenced from 1.1.1996 in violation to proviso to Rule 8(2). Respondent No.2 therefore seeks to recover the excess pension paid.

3. The issue with respect to recovery of excess payments which are made to government servants and whether the government can or cannot recover the same, although payments are made without anybody's fault or a fraud being played, has been the subject matter of the recent judgment of the Supreme Court in the case of *Chandi Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors. (2012) 8 SCC 417*. In this judgment, the Supreme Court has held that earlier judgments of the Supreme Court did not lay down the principle of law that if there is misrepresentation or fraud in recipient of the excess money, then, only the amount excess paid can be recovered.

W.P.(C) No.7835/2012 *Page 2 of 6*

Supreme Court has held that any amount which is paid even by a mistake i.e without fault of any person, can also be recovered because it is public money or tax payers' money which is in question. Para 14 of this judgment is relevant and the same reads as under:-

“14. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.” (underlining added)

4. In the present case it is an undisputed fact emerging on record that pension which was paid to the petitioner w.e.f 1.1.1996 was in excess of the pension payable to a Judge of the High Court. Once that is so, any amount paid to the petitioner would be in excess and in violation of the proviso to Rule 8(2) of subject Rules. I cannot agree with the contention as raised on behalf of the petitioner that proviso to Rule 8(2) only applies on

the date of fixation of pension and not subsequently. Nothing contained in the proviso to Rule 8(2) states that the said proviso will not continue to apply during the entire period in which pension is paid to a person such as the petitioner/Vice Chairman of the CAT.

5. Counsel for the petitioner also sought to rely upon Section 25(1) of the High Court Judges (Salaries and Conditions of Service) Act, 1954 to argue that the said provision deals with the fact that the salary/pension of a Judge will not be less than that which is payable to a Judge on the passing of the Act. In my opinion, reliance placed upon Section 25(1) is misconceived because the High Court Judges (Salaries and Conditions of Service) Act, 1954 was passed way back in the year 1954 and amendment thereto was made w.e.f 1958. The object was that so far a High Court Judge who retired prior to 1954 is concerned, merely because the 1954 Act was passed, the amount payable to a retired Judge should not be reduced adversely. In fact, the provision of Section 25(1) which is relied upon by the petitioner goes against the petitioner because there is no similar provision like Section 25(1) in the subject Rules as applicable to Chairman or Vice Chairman or Member of the CAT.

6. Counsel for the petitioner finally sought to rely upon Section 10 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act') to argue that the pension once fixed thereafter the same cannot be reduced. This Section 10 of Act reads as under:-

“Section 10. Salaries and allowances and other terms and conditions of service of Chairman, Vice-Chairman and other Members.-The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairman, and other Members shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairman, or other Member shall be varied to his disadvantage after his appointment:

Provided further that where a serving Government officer is appointed as a Member, he shall be deemed to have retired from the service to which he belonged on the date on which he assumed the charge of the Member but his subsequent service as Member shall, at his option, be reckoned as a post-retirement re-employment for pension and other retirement benefits in the service to which he belonged.”

7. In my opinion, the interpretation which is sought to be given by the petitioner upon Section 10 is misconceived for the reason that it pertains to payment of salary and allowances not being varied to the disadvantage after the appointment of the Chairman or Vice Chairman or other Members. This is specifically so provided in the proviso to Section 10. The expression “appointment” is extremely relevant because the object of Section 10 was not to allow change in the salary and allowances payable to a Chairman or

Vice Chairman or Member of CAT after his ‘appointment’ and not at the date of retirement. The first part of Section 10, and which also includes the expression “pension”, specifically states that amount will be such as prescribed by the Central Government, and therefore Section 10 will necessarily have to be read alongwith Rule 8 of the subject Rules. In case of any ambiguity in the language, Courts have regularly employed the principle of harmonious construction and which I adopt in the present case by taking language of Section 10 of the Act alongwith the language found in proviso to Rule 8(2), and when so done it is clear that pension to a Member or Vice Chairman or Chairman, CAT cannot at any time be in excess of the pension payable to a Judge of the High Court.

8. Therefore, I do not find any language at all in Section 10 that a pension once fixed, even if the same is in violation of proviso to Rule 8(2), the same cannot be re-fixed at the correct amount or that there cannot be any recovery of the excess payment made.

9. In view of the above, there is no merit in the petition which is therefore dismissed, leaving the parties to bear their own costs.

SEPTEMBER 12, 2013
Ne

VALMIKI J. MEHTA, J.