

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

SWP No.647/2011

Kusum Badyal W/o Late Sh. Dewakar Sharma
R/o 492-A, Gandhi Nagar, Jammu

.....Petitioner/Appellant(s)

Through:- Mr. Surinder Kour, Sr. Advocate with
Mr. Manpreet Kour, Advocate

V/s

- 1. Union of India ,through Ministry Heavy Industries
And Public Enterprises, Government of India, New Delhi.**
- 2. General Manager(IC), Presently Executive Director,
Power Grid, NR-II, Jammu.**
- 3. Chief Manager(HR),Power Grid Corporation of India Limited,
Grid Bhawan, Rail Heal Complex, Jammu**
- 4. State of Jammu and Kashmir through commissioner/
Secretary, Revenue Department, Government of Jammu and
Kashmir, Civil Secretariat, Jammu.**

.....Respondent(s)

Through:- Mr. Monika Kohli, Sr. AAG
Ms. Garima Gupta, Advocate

CORAM :

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE
JUDGMENT

1. Petitioner, through the medium of the instant petition seeks the following reliefs:-

- (i) To quash Order No. N2JM/HR/2011/895 dated 02.02.2011 issued by the Chief Manager (HR) respondent No. 3 thereby effecting recovery to the tune of Rs. 1,93,680/-from the salary of the petitioner on account of excess payment released to the petitioner, by issuance of writ certiorari;
- (ii) To issue directions to the respondents to restore all the perks allowances and benefits due to the petitioner with immediate effect and stop recoveries which are being made from petitioner's salary and credit the amount which has already been deducted from petitioner's salary for the month of

December, 2010, January 2011 and February 2011, by issuance of writ of mandamus;

- (iii) to issue directions to the respondents restraining them to implement Order No. N2JM/HR/2011/895 dated 02.02.2011 issued by the Chief Manager (HR), respondent no. 3 thereby effecting recovery to the tune of Rs. 1,93,680/- from the salary of the petitioner on account of excess payment released to the petitioner and also restraining the respondents to effect recovery from the salary of the petitioner, by issuance of writ of prohibition;
- (iv) to declare Order No. N2JM/HR/2011/895 dated 02.02.2011 issued by the Chief Manager (HR), respondent no. 3 thereby effecting recovery to the tune of Rs. 1,93,680/- from the salary of the petitioner on account of excess payment released to the petitioner, as ultra virus, illegal, arbitrary, unconstitutional, unjust and contrary to the provisions of law and Rules and against the provisions of principles of natural justice, by issuance of writ of mandamus;

2. The facts of the case are that petitioner, a KAS 1999 Batch, was sent on deputation vide Govt. Order No. 175-Rev/C/2008 dated 23.06.2008 issued by Revenue Department, J&K, as Collector Land Acquisition in PGCI from 23.06.2008. Respondent No.3 Chief Manager (HR) PGCI, Rail Head Complex vide order No. N2JM/PGCI/CIA/2010/1340 dated 27.12.2010 directed to recover Rs. 1,93,680/- from the salary of petitioner in eight monthly installments from the month of December 2010 which is alleged to be the excess amount of perks paid to the petitioner.

3. The petitioner seeks the aforesaid reliefs precisely on the following grounds:

- (i) That the petitioner was sent on deputation on standard terms and conditions to deputation from Revenue Department and was given pay and

allowances and other benefits as were applicable and were even paid to her predecessors.

- (ii) That despite requests of petitioner made vide Letter dated 28.12.2010 and again on 15.01.2011, the copy of the circular on the basis of which recovery was effected was not supplied. Even a representation was made on 28.01.2011 and a letter was again sent on 02.02.2011;
- (iii) That no opportunity of being heard was provided before effecting recovery;
- (iv) That petitioner joined on deputation post on 15.07.2008 and was getting the salary as per the scales of her parent department and allowances as prevalent in PGCI and no subsequent change in terms of Order dated 26.11.2028 will apply to Government Officers already on deputation as on date till their tenure of deputation
- (v) That directives were issued by Department of Public Enterprises vide GO No. 2(70)/08-DPE (WC) dated 26.11.2008 directing that pay scales, perks and allowances of two different pattern should not be mixed and option available to Govt. officers on deputation was withdrawn, but the anomaly was removed vide OM dated 08.06.2009 and Para 2(a) of the same states that ***“The Government Officers already on deputation with CPSEs as on 26-11-2008 will continue to avail the option already available and exercised by them till the end of their deputation tenure. The extension, if any, given after 26.11.2008 will not qualify for this dispensation.”***

4. Objections have been filed by the respondents 2 and 3, wherein it is stated that initially, the petitioner was paid Basic pay as per CDA (Central Dearness Allowance) pattern of pay structure of her parent department i.e., Govt. of J & K and allowances as per IDA (Industrial Dearness Allowance) pattern of pay structure prevalent in PGCI but after issuance of GO dated 26.11.2008 and OM dated 08.06.2009, petitioner was held entitled to perks and allowances as per CDA pattern of pay structure in parent department as per Clause 2(c) of Circular dated 08.06.2009. The respondents have denied that the petitioner was not informed prior to recover rather the petitioner was informed in a meeting with Head of Finance of Respondent's Corporation Regional Office, Jammu on 27.12.2010 about the GO dated 26.11.2008 and 08.06.2009 on the basis of which recovery was made.

5. Heard learned counsel for the parties and perused the material on record.

6. The conditions and terms of deputation are defined in Regulation 52-C of the Jammu and Kashmir Civil Service Regulations, 1956. It reads as under:-

“52-C.Conditions and terms of deputation.

All deputation cases involving deputation of Government servants to non-Government Organisations, including Corporations, Companies, Autonomous Bodies etc. within or outside the State or to Central Government or other State Governments shall be decided by the concerned Administrative Department on the standard terms and conditions of deputation

contained in Schedule XVIII. Any relaxation of the said terms will require prior consultation of the General Department and the Finance Department.

In addition to the standard terms the following conditions shall be observed by the competent authorities in regulating cases of deputation:-

(i) The period of deputation in any case should not exceed three years. It may, however, be extended further by one year on the request of the borrowing agency but in any case the total period of deputation shall not exceed a period of 4 years at a time.

*ii) [****]

iii) An Employee appointed on deputation may elect to draw either the pay in the scale of pay of deputation position or the Basic Pay and pay scale of the Parent cadre plus Personal Pay if any;

The borrowing agency should obtain the option of the employee within one month from the date of joining the deputation post unless the employee has himself/herself furnished the said option.

The option once exercised shall be final; however, the employee may reverse his/her option under the following circumstances which shall be effective from the date of occurrence of the same.

- a. When he/she receives a proforma promotion or is appointed to any non-functional selection grade/any insitu promotion in his Parent cadre.
- b. When he/she is reverted to a lower grade/post/scale in his Parent cadre.
- c. When the scale of pay of the parent post on the basis of which his/her emoluments are regulated during deputation (or of the ex-cadre post) held by the employee on the deputation is either revised prospectively or from a retrospective date.
- d. If the pay scale of the employee in his cadre post undergoes a downward revision, the pay in the deputation post is automatically liable to be re-fixed, on the basis of the revised pay and in accordance with the revised option.

Note. The revision in the rates of DA, HRA, CCA, Monthly Medical Allowance, Ration Allowance, Washing Allowance, Non-Practicing Allowance or any other Allowances shall not be any occasion for revision of the earlier option.”

7. The petitioner was sent on deputation on 23.06.2008.

The guidelines/Govt. Orders were issued on 26.11.2008 and 08.06.2009 i.e., after the joining of the petitioner on deputation and as per the Office Memorandum dated 08.06.2009, Government Officers already on deputation

before 26.11.2008 are entitled to continue with the option exercised until the end of their deputation tenure.

8. In the instant case, the impugned recovery order is based on a subsequent Government Order intended to regularize pay scales and allowances, but does not apply retrospectively to officers, like the petitioner, who were already on deputation and exercising a different option. The attempt to recover amounts on this basis without procedural fairness is arbitrary and unlawful.

9. Regulation 52-C of the Jammu and Kashmir Civil Service Regulations, 1956, and Office Memorandum dated 08.06.2009 clearly provide that officers on deputation as on 26.11.2008 shall continue to enjoy the pay and allowances option exercised at the time of joining deputation till the end of their tenure. Further, the respondents failed to provide the petitioner with the copy of the circular or Government Order on which recovery was based, despite repeated requests. No formal opportunity of hearing was granted before the recovery order was issued, violating the principles of natural justice enshrined under Article 14 and Article 311 of the Constitution of India. The impugned recovery order is, therefore, arbitrary and illegal.

10. The impugned Order No. N2JM/HR/2011/895 dated 02.02.2011 is hereby **quashed**. The respondents are directed to restore all perks, allowances, and benefits to the

petitioner as per the pay and allowances option exercised at the time of deputation. The respondents shall refund all amounts already deducted from the petitioner's salary for the months of December 2010, January 2011, and February 2011, within six weeks from the date of this order with interest at the rate of 6% per annum from the respective dates of deduction till the date of actual payment.

11. The petition stands disposed of accordingly.

(VINOD CHATTERJI KOUL)
Judge

JAMMU
17.09.2025
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