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

+ **W.P.(C) 5935/2003**

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*Judgment reserved on 11th August, 2015
Date pronounced on 28th September, 2015*

R.P.KALIA

..... Petitioner

Through : Mr. R.K. Saini, Advocate

versus

UNION OF INDIA AND ANR.

..... Respondents

Through : Ms. Natasha Thakur along with Ms. Shreya
Sinha and Ms. Noor Anand Advocates for
respondent no.2

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. By this petition filed under Articles 226/227 of the Constitution of India, the petitioner seeks a direction to quash the order dated 1st May, 2003 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi whereby, the learned has Tribunal dismissed the T.A. bearing No. 42/2002 filed by the petitioner.
2. To appreciate the controversy at hand, it would be necessary to give a brief gist of the case.
3. The Petitioner, after retirement from the Indian Air Force (IAF) as a combatant Clerk on 31.03.1987 was appointed as Upper Division Clerk (UDC) in the office of Respondent No. 2 / Central Tibetan Schools Administration (CTSA) on 04.04.1988. Subsequently, he was appointed to the post of Assistant in the same office on 24.12.1990. According to the

Petitioner, a letter dated 12.10.1988 was written by the Petitioner to his Pension Disbursing Authority i.e. State Bank of Patiala, Una, Himachal Pradesh about his re-employment in CTSA with effect from 04.04.1988. The Petitioner further informed that he was drawing a monthly pension through Saving Account No. 2728 from the Bank. Petitioner has also referred to another letter dated 08.12.1988 addressed to respondent No. 2 requesting them to re-fix his pay in the re-employed post of UDC. In the said letter, it was also mentioned that the Petitioner had not drawn dearness relief on pension. Petitioner has referred to the Government of India; Ministry of Finance Office Memorandum dated 26.03.1984.

4. Vide memo dated 15.11.1995, the respondents had issued charge-sheet against the Petitioner under Rule 14 of the CCS (CCA) Rules, 1965. The charges against Petitioner were that he had collected dearness relief illegally by not informing the Pension Disbursing Authority. Despite his undertaking vide letter dated 08.12.1988, petitioner did not surrender his Pension Payment order within three days of receipt of memorandum dated 20.04.1995 nor disclosed the excess amount drawn on account of dearness relief.
5. For the above acts, Petitioner was charged that he had misappropriated the Government Funds and violated the Government of India's order and thereby committed misconduct. The Petitioner denied all these allegations and an inquiry was conducted. The Inquiry Officer had submitted his report in June 1997 and held that the charges levelled against the Petitioner were proved. The Petitioner has submitted that the conclusion of the Inquiry Officer was erroneous. The disciplinary authority accepted the Inquiry officer's report and compulsorily retired the Petitioner vide Order dated 31.07.1997. In the impugned order passed by the disciplinary authority, it has been stated that all the charges framed against the

petitioner were proved. The Inquiry Officer had found that the Petitioner has been continuously withdrawing dearness relief on pension every month from 04.04.1988 to 28.02.1995 i.e. for more than six years through the State Bank of Patiala, Una, Himachal Pradesh and that the Petitioner had given false certificates every year that he was not employed in the CTSA. The disciplinary authority has observed thus:

“The offence becomes compoundable because Sh. R.P. Kalia (petitioner) had been cheating the Govt. and the bank for more than six years and had drawn a sum of Rs. 31,967/- fraudulently and misappropriated this amount. Such person requires deterrent punishment which should be a guide and example for other employees of the Central Tibetan Schools Administration (CTSA).....and an employee who lack these values (i.e. honesty and integrity) is certainly not only a fit person to be retained in an educational institution. Nonetheless a lenient view is being taken by the Disciplinary Authority and a penalty of compulsory retirement from the services of Central Tibetan Schools Administration (CTSA) is hereby imposed on Sh. R.P. Kalia with immediate effect which will meet the ends of justice”.

6. Learned counsel for the petitioner Mr. R.K. Saini submits that the findings of the disciplinary authorities are perverse and suffer from procedural lapses and thus liable to be quashed. The counsel for the petitioner submits that the learned tribunal has overlooked the difference between “misappropriation” and “over-withdrawal”. It is submitted that the case of the petitioner relates to the “over-withdrawal” and not “misappropriation”.
7. Learned counsel appearing on behalf of the petitioner further submits that as per the rules, it was also the duty of the respondent No. 2 to inform the Petitioner’s Pension Disbursing Authority about his re-employment with respondent No.2 however, the respondent failed to discharge its duty

which resulted in over- payment of dearness relief to the petitioner.

8. The counsel for the petitioner also submits that non-examination of the bank witness resulted in gross miscarriage of justice. The non-examination of the vital witness i.e. Manager, State Bank of Patiala, Una, H.P. fortifies the averment of the Petitioner that if dearness relief was paid to the Petitioner, the same was due to the negligence and lapse on the part of the bank.
9. The counsel for the petitioner further submits that the issue which has been raised is false and frivolous and raised after a gap of six years. The appointing authority of the petitioner is guilty of violating the rules and regulations of the Government of India by not informing the Pension Disbursing Authority of petitioner about his re-employment with them.
10. Mr.Saini further submits that during the said period there was confrontation with regard to payment of Dearness Allowance, which is evident from the fact that in some cases payment was paid upto 1987 but thereafter withdrawn and again allowed on 2.7.1999, and after the controversy was put at rest by the Supreme Court of India in the case of ***Union of India And Others v. G. Vasudevan Pillay And Others***, reported at (1995) 2 Supreme Court Cases 32, where the decision of Union of India not to allow Dearness Relief on pension to an ex-serviceman was taken up for consideration, it was held that denial of dearness allowance to ex-serviceman is legal and just. It is also brought to our notice that after the passing of the judgment by the Supreme Court, Office Memorandum dated 13.10.1995 was issued to the effect that in all cases where employees have been paid dearness relief on pension, the Department would be well within its right to recover the dearness relief and this memorandum would show that no penalty was to be imposed on the serviceman, who had received the dearness allowance.

11. Per contra, assailing the legality, validity and correctness of the order dated 01.05.2003, Ms. Natasha Thakur learned counsel appearing on behalf of the respondent No. 2 strenuously contended that the learned Tribunal has meticulously examined the facts and circumstances of the case of the petitioner and found that the petitioner had misappropriated the Government funds and violated the Government of India order. The counsel also submits that the petitioner has written a letter dated 09.12.1988 to Respondent No.2 i.e. CTSA that he will not draw dearness relief on pension during his re-employment.
12. Learned counsel appearing on behalf of the respondent further submits that the Petitioner had concealed his re-employment before the State bank of Patiala, Una, Himachal Pradesh, which is the Petitioner's Pension Disbursing Authority (PDA) and cheated them by giving false certificates that he was not employed anywhere. It is also submitted that the Petitioner was employed with CTSA with effect from 04.04.1988. The petitioner had intimated the bank about his re-employment in the CTSA only on 14.03.1995 which was after the initiation of investigation.
13. Counsel for the respondent strongly urged that the disciplinary proceedings initiated against the petitioner under Rule 14 of the CCS (CCA) Rules, 1965 were as per rules and are legally sustainable.
14. We have heard learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them. We have also perused the impugned order and the material placed on record.
15. The attention of this court has been drawn to Rule 11 of CCS (CCA) Rules wherein various penalties have been enumerated which could be imposed upon a Government servant. The said Rule 11 reads as under:

"11. Penalties

The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely:

Minor Penalties :

- (i) Censure;
- (ii) withholding of his promotion;
- (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iii) (a) reduction to a lower stage in the time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension.
- (iv) withholding of increments of pay;

Major Penalties :

- (v) save as provided for in Clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) reduction to lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post of service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;
- (vii) compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment under the Government."

16. On the basis of the penalty clause as mentioned above, the departmental inquiry as against the Petitioner declared the Petitioner guilty of withdrawing dearness relief on pension, although the Petitioner was not entitled to do so. Furthermore, a penalty in the form of compulsory retirement was imposed on the Petitioner and the same was challenged by the Petitioner as illegal and devoid of merit.

17. It is the case of the Petitioner that he had duly informed the concerned Pension Disbursing Authority i.e. State Bank of Patiala, Una, Himachal Pradesh, regarding his re-employment vide letter dated 12.10.1988 (Annexure-B). However, due to negligence on the part of the Pension Disbursing Authority, the dearness relief on pension got credited in his Saving Account No. 2728. Learned counsel appearing on behalf of the Petitioner strongly urged that the letter dated 12.10.1988 is not in dispute. The attention of this Court has been drawn to the Petitioner's Examination-In-Chief dated 16.12.1996 during enquiry proceedings, which is reproduced as under:

*"Q.No.10 Please see exhibit No. DE-12 dated 12.10.1988 and tell that it has been signed by you and sent to the Manager, State Bank of Patiala, Una Branch (Himachal Pradesh).
DW: Yes."*

Learned counsel for the Petitioner has also brought to the notice of this court cross examination of the Petitioner dated 14.05.1997. The relevant part is as under:-

"P.O.12 Please tell under which rule you have drawn the Dearness Relief on Pension and Dearness Allowance simultaneously during the period of re-employment.

C.O. In this connection, please see exhibits marked DE-15, DE-16, DE-17 and DE-18. Once again I clarify that the amount of Dearness Relief on Pension has been drawn by State Bank of Patiala, Una, (H.P) as per their letter exhibit marked P-5 despite my intimation of my re-employment in CTSA vide exhibit marked DE-12. I may also add that I had also informed the fact of my being ex-servicemen pensioner as per Defence Exhibit DE-1 and Para-12 of enclosure to DE-20. The CTSA had never identified me as ex-servicemen as per exhibit marked DE-4 and DE-6."

In the light of the averments made above, we are of considered view that although there is no acknowledgement placed on record duly accepted by the Bank, reliance has been placed on the examination-in-chief and cross-examination of the Petitioner. However, since no question has been asked to the Petitioner or any suggestion put to him in cross-examination, this would amount to admission on the part of Respondent no.2. The letter dated 12.10.1988 satisfies the requirement/duty of the Petitioner to inform his Pension Disbursing Authority. After going to the matter in depth and the reasonable thought to the facts of the present case and also the contentions of both the parties, we are of the opinion that the Petitioner had duly intimated to the Pension Disbursing Authority. However, the amount credited in the account of the Petitioner is due to the negligence on the part of the respondent no.2.

18. It is the case of the respondent that the Petitioner has been re-employed with Central Tibetan Schools Administration and the Petitioner was under the legal obligation to inform the concerned Pension Disbursing Authority i.e. State Bank of Patiala, Una, Himachal Pradesh regarding his re-employment so that the dearness allowance of the Petitioner be fixed or altered as per the new employment rules. It is further contended by the respondent that the Petitioner has failed to discharge this legal obligation and illegally withdrawn dearness allowance. The respondent also submitted that it is only on 14.03.1995 when the petitioner for the first time informed his Pension Disbursing Authority about his re-employment when the investigation had already been initiated against the petitioner.
19. In reply to the above arguments, learned counsel appearing on behalf of the Petitioner submitted that a letter dated 12.10.1988 was written by the Petitioner informing the Pension Disbursing Authority about his re-employment. It is further contended by the learned counsel appearing on

behalf of the Petitioner that the Petitioner has duly informed Pension Disbursing Authority and cannot be termed as party in default. Moreover, the responsibility to inform the Pension Disbursing Authority was also cast on the respondents.

20. With regard to the recovery of the excess amount paid to the petitioner, we refer to the judgment of Hon'ble Supreme Court in ***Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18*** In this case, there was a mistake in the fixation of pay scale of the appellant. The appellant received his pay on higher pay scale than due, resulting in over-payments, which the State subsequently sought to recover. There, the Court made following observations:

"It is not on account of any misrepresentation made by the appellant that the benefit of higher pay scale was given to him but by wrong constructions made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant.

*This principle was reiterated in **Purshottam Lal Das v. State of Bihar, (2006) 11 SCC 492.***

21. In ***Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475*** the Hon'ble Supreme Court has held that:

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if:

(a) The excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and

(b) If such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered.

But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. (Sahib Ram v. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma v. Union of India, [1994] 2 SCC 521)”

22. The attention of this court has been drawn to the recent judgment of the Hon'ble Supreme Court in *State of Punjab and others vs. Rafiq Masih (white washer) and others* (2015) 4 SCC 334 wherein the court has referred to the judgment of *Col. (Retd.) B.J. Akkara v. The Govt. of India and Ors.* (2006)11 SCC 70. The relevant para is reproduced as under:-

“28. Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it.”

14. In this context, reference may also be made to the decision rendered by the Apex court in *Shyam Babu Verma v. Union of India* (1994) 2 SCC 521, wherein this Court observed as under:

“11. Although we have held that the Petitioners were entitled only to the pay scale of Rs. 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs. 330-560 but as they have received the scale of Rs. 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the Petitioners due to the fault of the Respondents, the Petitioners being in no way responsible for the same.”
(Emphasis is ours)

17. Last of all, reference may be made to the decision in **Sahib Ram Verma v. Union of India (1995) Supp. 1 SCC 18**, wherein it was concluded as under:

“4. Mr. Prem Malhotra, learned Counsel for the Appellant, contended that the previous scale of Rs. 220-550 to which the Appellant was entitled became Rs. 700-1600 since the Appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs. 700-1600 but they insisted upon the minimum educational qualification of first or second class M.A., M. Sc., M. Com. plus a first or second class B. Lib. Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the Appellant does not possess the required educational qualifications. Under the circumstances the Appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the

date of relaxation the Appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the Appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the Appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the Appellant.”

23. Learned counsel for the respondent no. 2 submits that the Petitioner has misrepresented and played a fraud on respondent no.2 by stating that the Petitioner is not withdrawing dearness allowance. This contention of the respondent is not supported by any documentary evidence so in that case it is hard for this Court to believe that the petitioner had represented the respondent No. 2.
24. In view of the facts of the case, it is an admitted position that Respondent no.2 did not inform Pension Disbursing Authority regarding the re-employment of the Petitioner and failed miserably to discharge its official duty. Due to the dereliction of their official duty on the part of Respondent, the dearness relief of the Petitioner could not accordingly be changed by Pension Disbursing Authority and got credited in the Petitioner's account which resulted in over-payment to the Petitioner.
25. After perusal of the above judgments of the Hon'ble Supreme Court, this court is of the considered view that the petitioner in the aforesaid matter was unaware about the dearness relief being over-paid to him by the concerned authorities. Secondly, from the facts mentioned above, no malice, fraud and misrepresentation can be imputed on the behalf of the petitioner. In fact, in the present matter, the petitioner bonafidely performed his duty and informed the Pension Disbursing Authority immediately vide letter dated 12.10.1988 about his re-employment with the CTSA after he retired from the job of Indian Air Force on 31.3.1987.

Therefore, it can be said that there was no delay on the part of the petitioner informing about his re-employment to the Pension Disbursing Authority can be concluded thereof. On the contrary, the respondents in the present matter have failed on its part by not intimating the Pension Disbursing Authority about the petitioner's re-employment with them.

26. We are of the considered view that the penalty imposed on the petitioner pursuant to the departmental inquiry and is also approved by the learned Tribunal is hard and excessive. The Tribunal has lost sight of the fact that no monetary loss was caused to the respondent herein. The Court can also not lose track of the fact that even after the judgment was passed by the Supreme Court of India in the case of *Union of India* (supra), an Office Memorandum dated 13.12.1995 was issued to the effect that in all cases where employees have been paid dearness relief on pension the Department would be well within its right to recover the amount but no penalty would be imposed. The apparent reason for this seems to be that in some cases dearness relief on pension paid on the matter was only put at rest by the judgment of the Supreme Court of India in the case of *Union of India* (supra).
27. During the course of hearing, Mr.Saini had fairly conceded that in case the Court is inclined to allow the writ petition, the petitioner would be satisfied if 50% back wages are paid.
28. Accordingly, the present petition is allowed with the direction to respondent no.2 to pay 50% back wages in favour of the petitioner from the date of his compulsory retirement i.e. 31.07.1997 till the date of his natural date of retirement, with consequential relief whatsoever.

29. The writ petition is disposed of accordingly.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 28, 2015
sc/msr