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

+ W.P.(C) 7424/2016

% ***Judgment dated 22<sup>nd</sup> August, 2016***

DELHI TRANSPORT CORPORATION ..... Petitioner

Through : Mr.Sarfaraz Khan and Mr.Ataur  
Rahman, Advs.

versus

BALCHAND

..... Respondent

Through : Mr.Jatan Singh, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MR. JUSTICE I.S. MEHTA**

**G.S.SISTANI, J (ORAL)**

**CAV.PET. 740/2016**

1. Mr.Jatan Singh, Advocate, enters appearance on behalf of the caveator.  
Accordingly, caveat petition stands disposed of.

**CM APPL.NOS. 30479-80/2016**

2. Exemptions are allowed subject to all just exceptions.
3. Applications stand disposed of.

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4. Present writ petition has been filed by the petitioner under Article 226 of the Constitution of India against the order dated 7.3.2016 passed by Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') by which OA No.1408/2014 filed by the respondent herein was allowed.
5. The necessary facts, which are required to be noticed for disposal of the present writ petition, are that the respondent was appointed as a

Retainer Crew Conductor on 5.4.1978. Thereafter on 5.10.1978, the petitioner appointed the respondent as Conductor on the monthly rate of pay. The respondent completed his probation period on 4.10.1979. The respondent was then appointed as a Ticket Tally Clerk (TTC) with effect from 2.12.1987 and he resumed his duties on 4.12.1987. Since the respondent was involved in a neighbourhood brawl, a Criminal case bearing FIR No.579/2001 under Sections 323/308/34 of the Indian Penal Code at Police Station Nand Nagri, was registered against him. The respondent was placed under suspension with effect from 26.12.2001. The suspension of the respondent was revoked vide order dated 13.2.2002 and he was taken back on duty w.e.f 13.2.2002 while the criminal case was still pending against him. The petitioner issued a Charge Memo against the respondent on 27.2.2002 but the charges were dropped by the Appellate Authority (Regional Manager) vide order dated 26.8.2008 with a direction to the respondent to keep the petitioner informed about the developments in the criminal case from time to time. The respondent was granted benefit of first ACP on 20.4.2009. The respondent was also granted benefit of MACP on 16.3.2010. The respondent was promoted to the post of Senior Clerk on 8.9.2011. Pursuant to an objection raised in the internal audit held for the year 2010-2011, the benefits of ACP, MACP and promotion to the post of Senior Clerk granted to the respondent were withdrawn on account of the fact that the respondent was suspended earlier in a criminal case, which was pending. Further vide order dated 8.10.2012, the respondent was reverted back to the post of TTC, consequent upon which the benefits of ACP/MACP were also withdrawn and his pay was re-fixed. Upon re-fixation of pay of the respondent, necessary recovery was made from the gratuity of the respondent vide Memo

dated 18.2.2013. In the meanwhile, the respondent superannuated on 28.2.2013. Thereafter, the petitioner issued the order dated 04.04.2013 thereby directing deduction of Rs.46,461/-, as excess amount of CP Fund, with interest. The order dated 4.04.2013 reads as under:

*“Shri Bal Chand S/o Shri Rimal Singh , Ex-T.T.C., Pay Token No.23461 was appointed on 05/04/1978 and retired from the services of this Corporation w.e.f 28.02.2013 vide this office memo no.NOD/PFC(C&S)/Retired/2012/5390 dated 17/10/2012. Since he has not opted for DTC Pension Scheme. Accordingly, his own share as well as Corporation share towards C.P Fund(both share) in favour of the above said ex-employee may be arranged to send his account No.91302180000123, Micro No.110025120. The photocopy of the cheque is enclosed for ready reference.*

*The amount of Rs.46,461/- being C.P Fund deducted in excess on account of excess salary of Rs.4,47,921/-(Basic Pay Rs.2,75,750/- + D.A. Rs.1,11,422/- +HRA Rs.60,740/-) paid in the month of 12.08.2002 to 31.08.2012 may also be adjusted.*

*As per clearance certificate of this unit, a sum of Rs.Nil- is recoverable towards loan against C.P fund from the ex-employee.*

*The provident fund settlement Committee has accorded approval for the above in its meeting held on 18.03.2013.*

*It is also certified that 90% C.P fund share has not been drawn by the ex-employee as per record maintained.*

*Nothing else is due from the ex-employee concerned.”*

6. Aggrieved by the orders dated 18.2.2013 and 4.4.2013, the respondent filed OA No.1408/2014 before the Tribunal. The said OA was partly allowed by the Tribunal vide order dated 7.3.2016 whereby the Tribunal quashed the decision taken by the petitioner herein for recovery from the retirement dues/C.P. Fund of the respondent. The

petitioner herein was also directed by the Tribunal to refund the respondent the amount already recovered from him within three months. Aggrieved by the impugned order dated 7.3.2016 passed by the Tribunal, the present writ petition has been filed by the petitioner.

7. Learned counsel for the petitioner submits that the Tribunal has erred on facts as also on law while passing the impugned judgment. Counsel further submits that the Tribunal has failed to correctly apply the law laid down in the case of *State of Punjab And Others etc. v. Rafiq Masih (White Washer)*, Civil Appeal No.15527/2014, to the facts of the present case. It is further submitted that the Tribunal has erred and has failed to consider that the respondent did not challenge the orders dated 29.8.2012 and 8.10.2012. It is also contended that the Tribunal has exceeded its jurisdiction as the respondent had not challenged the order of his reversion and re-fixation of pay before the Tribunal. Counsel also submits that on account of the pendency of a criminal case, the respondent could not have derived any benefit of ACP, MACP and promotional benefits.
8. Learned counsel for the respondent submits that there is no infirmity or impropriety in the impugned order passed by the Tribunal which would require interference by the Court under Article 226 of the Constitution of India. Counsel for the respondent submits that the suspension of the respondent was revoked by the petitioner vide order dated 13.2.2002 and he was taken back on duty w.e.f 13.2.2002 although the criminal case was still pending against him. The charge memo against the respondent was dropped by the Appellate Authority vide order dated 26/08/2008. Counsel for respondent further contended that the financial upgradations under the ACP and MACP schemes as well as promotion to the post of Senior Clerk were granted to the respondent by the

petitioner as per rules.

9. We have heard learned counsel for the parties, considered their rival submissions and also perused the documents placed on record. The basic facts of the case are not in dispute.
10. It may be noticed that the respondent herein had challenged the order of conviction dated 28.1.2005 and order on sentence dated 1.2.2005 passed by the trial court in the criminal case by filing Criminal Appeal No.133/2015 before the Delhi High Court. The said criminal appeal was disposed of on account of an amicable settlement arrived at between the parties.
11. It may also be noticed that while passing the impugned order, by which the Tribunal has directed to refund the amount already recovered from the respondent, the Tribunal has taken note of the decision rendered by the Supreme Court of India in the case of *State of Punjab & Others etc.* (supra) wherein the Apex Court had summarized the following five 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.”*

12. In our view, the Tribunal has correctly applied the law laid down in the case of *State of Punjab & Others etc.* (supra) to the facts of the present case. The respondent has retired on 28.2.2013 and a few months prior to his retirement the recovery was made from him. Thus, the case of the respondent would be fully covered under the case of *State of Punjab & Others etc.* (supra).
13. Even otherwise, the registration of criminal case against the respondent would not pose a hurdle, as the suspension of the respondent was revoked by the petitioner vide order dated 13/2/2002. The charge memo against the respondent was dropped by the Appellate Authority vide order dated 26/08/2008.
14. We have also asked learned counsel for the petitioner that assuming for the sake of argument that the pendency of the criminal proceedings against the respondent had not been overlooked after the criminal case was resolved, the respondent would have not been entitled to promotion as also the benefits of ACP and MACP schemes, to which there is no denial by the counsel for the petitioner.
15. The impugned judgment rendered by the learned Tribunal is a well-reasoned judgment. The Tribunal has taken into consideration and dealt with all the grounds, which have been urged. Resultantly, we find no ground to entertain the present writ petition. Thus, there is no infirmity in the impugned judgment, which would require interference by this Court in proceedings under Article 226 of the Constitution of India.
16. Accordingly, the writ petition stands dismissed.

**CM APPL. 30481/2016**

17. Application stands dismissed in view of the order passed in the writ petition.

**G.S.SISTANI, J**

**AUGUST 22, 2016**  
msr

**I.S. MEHTA, J**

