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

+ W.P.(C) 7805/2015 & CM No.15477/2015

VIPIN KUMAR TOMAR Petitioner
Through : Mr. Vishwa Pal Singh, Advocate

versus

UNION OF INDIA Respondent
Through : Ms.Manisha Aggarwal Narain, Adv.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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21.03.2016

1. The present petition has been filed by the petitioner praying *inter alia* for directing the respondent/Ministry of External Affairs, Government of India to restore the Office Order dated 6.8.2012, whereunder he was transferred as Second Secretary (Security) to the Embassy of India, Kathmandu.

2. Learned counsel for the petitioner submits that the petitioner, who was at that relevant point in time, working as a Deputy Commandant in the Central Industrial Security Force Unit (CISF), was issued a transfer order dated 06.8.2012, posting him as a Second Secretary (Security) in the Embassy of India, Kathmandu. The petitioner was informed that he would be entitled to draw pay as admissible to him in his parent department and foreign allowance, etc. It is the stand of the petitioner that the foreign allowance payable to him was @ US \$ 2921 per month and when he assumed the charge on transfer, he kept on receiving foreign allowance equivalent to USD 2921 per month till June, 2014. Subsequently, the

respondents issued a recovery notice dated 15.7.2014, proposing to recover amounts allegedly paid in excess to the petitioner towards the foreign allowance, which they said was actually payable @ USD 2491 per month.

3. Learned counsel for the respondent submits that after issuing the transfer order dated 6.8.2012 to the petitioner, the respondent/UOI had issued a subsequent order dated 11.9.2012, amending the previous transfer order and intimating him that compensatory allowance would be paid to him @USD 2491 per month. She submits that in view of the said amended transfer order, the impugned recovery notice was issued to the petitioner for recovering amounts paid in excess to him, by deducting the same from his salary on a monthly basis.

4. Learned counsel for the petitioner contends that before issuing the recovery notice and making recoveries from the petitioner's salary w.e.f. July, 2014, the respondent/UOI ought to have issued a notice to show cause to the petitioner, informing him of their decision to make recoveries from his salary on account of alleged over payment/excess payment made to him after affording an opportunity of hearing and only thereafter could they have passed a speaking order. In support of the said submission, he relies on the OM dated 6.2.2014, issued by the Ministry of Personnel, Government of India that lays down the guidelines required to be followed on the issue of wrongful excess payment.

5. Learned counsel for the respondent has produced the records that do not reveal that any notice to show cause was issued by them before the impugned recovery notice was issued to the petitioner. Quite clearly, the respondent/UOI has violated the principles of natural justice by failing to issue a notice to show cause to the petitioner. The entire object of issuing a

show cause notice by the employer is to inform the employee of the decision to rectify an order for recovery of overpayment and convey in advance the intention to recover the said excess payment. Had such a notice been issued to the petitioner, then he would have had an opportunity to put forward his defence/pleas and only after considering the same, could the respondent have issued a recovery notice.

6. Having failed to follow the procedure noted above, it is deemed appropriate to stay the hands of the respondent for making any further recoveries from the petitioner's salary in terms of the impugned recovery notice dated 15.7.2014. The respondent shall now proceed to issue a notice to show cause to the petitioner proposing to recover the foreign allowance allegedly paid in excess to him during the period of his transfer to the Embassy of India, Kathmandu. After receiving a reply from the petitioner, the respondent shall consider the same and pass a speaking order, under written intimation to him within six weeks from the date of receipt of such a reply.

7. If the petitioner is aggrieved by the decision that may be taken by the respondent, he shall be entitled to seek his remedy as per law.

8. The writ petition is disposed of along with the pending application.

HIMA KOHLI, J

SUNIL GAUR, J

MARCH 21, 2016

sk/ap