

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CWP-1821-2016 (O&M)
Date of decision: 19.01.2017**

Davinder Kumar

....Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Balraj Singh Dhull, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the present writ petition, the petitioner has questioned the show cause notice dated 19.01.2015 vide Annexure P1.

2. Learned counsel for the petitioner submitted that petitioner is in the cadre of Helper Tyreman in the respondents-Haryana Roadways. Perusal of the notice it is evident that there is presumption for recovery of Rs.101520.00/- which is paid in excess to the petitioner during the period from 01.10.2006 to 30.10.2014. Contents of the notice do not disclose under what circumstances, the excess payment has been made and proposal for recovery. In the absence of effective show cause notice, the petitioner is not in a position to submit his reply. Even though, petitioner has submitted his reply on 28.01.2015. The respondents have not

considered and passed an order. On the other hand, they are deducting the amount from the petitioner.

3. Learned counsel for the petitioner submitted that petitioner is a Class IV employee. Insofar as excess payment and any recovery is concerned, matter is covered by decision of the Apex Court passed in the case titled as *State of Punjab versus Rafiq Masih reported in* 2015(1) RSJ 177 vide Annexure P7.

4. On the other hand, learned counsel for the respondents has no instructions relating to passing of a final order pursuant to the show cause notice dated 19.01.2015 read with reply to show cause notice dated 28.01.2015. That apart, even if a decision has been taken by the respondents-Haryana Roadways, the same has not been communicated to the petitioner. Having regard to the contents of the notice as well as in not analysing the reply to the show cause notice read with decision of the Apex Court, the respondents are not entitled to take any action insofar as recovery is concerned. Accordingly, show cause notice is set aside. The respondents are directed to refund the recovered amount to the petitioner within a period of 3 months from today.

5. CWP stands allowed.

19.01.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No