

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

**CWP No.17660 of 2017
Date of Decision.04.10.2017**

Union of India and others

.....Petitioners

Vs

Central Administrative Tribunal and another

.....Respondents

Present: Mr. Sunil Kumar Sharma, Advocate
for the petitioners.

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

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AMIT RAWAL J.(ORAL)

The Union of India has filed the present writ petition against the decision dated 05.04.2017 rendered by the Central Administrative Tribunal (hereinafter called as "CAT") in OA No.060/00242/2016 whereby while quashing the impugned orders dated 22.08.2015 (Annexure A-4) and 15.01.2016 (Annexure A-9), the petitioners have been directed to release the entire amount already recovered within a period of three months from the date of receipt of certified copy of the order.

The facts leading to the filing of the aforementioned OA at the instance of respondent No.2-applicant were that vide order dated 22.08.2015 (Annexure A-4) and 15.01.2016 (Annexure A-9), the department had reduced his pay and pension on the basis of revised pay fixation and recovered the amount from the retiral benefits. Respondent No.2-applicant had joined the service of the petitioner-department on 04.03.1980 as Technician. From 01.01.1994 to 05.05.1996, he was granted officiating promotion as Telecommunication Technical Assistant in the pay scale of ₹1320-2040. Vide letter dated 28.04.1998 (Annexure A-2), owing

to the revision of the pay scale w.e.f. 1.1.1996, pay of respondent No.2-applicant was fixed in the pay scale of ₹4500-7000 @₹4750/- and he was also granted one increment on account of One Time Bound Promotion (OTBP) by fixing his pay @₹4875/- w.e.f. 09.05.1996. In addition to that on successful completion of TTA Training from 27.11.1995 to 01.11.1996, he was granted an advance increment by fixing his pay @₹5000/- w.e.f. 02.11.1996 and due arrears of salary w.e.f. 1.1.1996 were released. On 20.04.2015, keeping in view his seniority in the cadre of TTA and unblemished service records, respondent No.2-applicant was further promoted to the post of Junior Telecom Officer.

After rendering more than 35 years of unblemished service career, the respondent No.2-applicant retired from the post of Jr. Telecom Officer on 31.07.2015 on attaining the age of superannuation while getting basic pay of ₹29530/- in the pay scale of ₹16400-40500. Vide order dated 26.05.2015 (Annexure A-3), on the basis of last pay drawn of ₹29530/-, the pension of ₹14765/- and other retiral benefits w.e.f. 01.08.2015 were sanctioned by respondent No.3.

Owing to the passing of the impugned orders dated 22.08.2015 (Annexure A-4) and 24.08.2015, Office of Principal General Manager, Telecom, Chandigarh-respondent No.3 reduced the pay of the respondent No.2-applicant as ₹4750/-w.e.f. 09.05.1996 and also issued a show cause notice upon him intimating refixation of the pay and sought explanation as to why the excess payment made from 09.05.1996 to 31.07.2015 be not recovered from him. The respondent No.2-applicant submitted a reply dated 26.09.2015 (Annexure A-6) refuting the averments made in the aforementioned notice. As per the averments in the original petition vide

order dated 15.01.2016, Principal General Manager, Telecom, Chandigarh reduced/refixed the pension of respondent No.2-applicant at the stage of ₹14255/- w.e.f. 01.08.2015 and other benefits like commutation of pension, leave encashment and gratuity were also sanctioned at lower side and excess amount of ₹2,60,514/- drawn by him from 09.05.1996 to 31.07.2015 was deducted from the amount of gratuity. It is in this backdrop of the matter, respondent No.2-applicant preferred the OA.

The petitioners refuted the claim of respondent No.2-applicant that if owing to some bona fide mistake, the Government has taken a decision, it can certainly revise its decision at a subsequent stage when a mistake came to its notice. The mistake can always be corrected by administrative authority and such power to correct the mistake is inherent and inbuilt in the administrative law.

In fact, pay of respondent No.2-applicant was irregularly fixed on every occasion of promotion/upgradation. The factum of fixation of pension on the basis of last pay drawn as per order (Annexure A-3) was not disputed but was clarified that mistake in his pay was corrected by refixing and reducing the pension and also recovery of amount of ₹2,60,514/- made from his retiral benefits.

It was further argued that there was no violation of principles of natural justice as no injustice, to respondent No.2-applicant in refixing of the pay, had been caused. In fact, the same is permissible in law. Benefit of wrong fixation of pay was already given to respondent No.2-applicant w.e.f. 09.05.1996 and the same had to be recovered by following the instructions dated 02.03.2016 issued by DoPT, New Delhi.

We have heard learned counsel for the petitioners, appraised

the paper book and of the view that there is no force and merit in the submissions of Mr. Sharma. The law of recovery of arrears due to mistake of employer in view of the decision rendered by Hon'ble Supreme Court in **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) 2015(4) SCC 334** wherein following principles were laid down in paragraph 12 is no longer *res integra*. It has been laid down as under:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few 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.*

13. We are informed by the learned counsel representing the appellant- State of Punjab, that all the cases in this bunch of appeals, would undisputedly fall within the first four categories delineated hereinabove. In the appeals referred to above, therefore, the impugned orders passed by the High Court of Punjab and Haryana (quashing the order of recovery), shall be deemed to have been upheld, for the reasons recorded above.

14. The appeals are disposed of in the above terms.”

The aforementioned principles leaves no manner of doubt that recovery of the employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service) is impermissible in law in case the payments have been made mistakenly by the employer in excess of their entitlement. The instant case is of the same nature. Admittedly, respondent No.2-applicant was working on Group 'C' post at the relevant time when he was stated to have been given the benefit wrongly w.e.f. 2.11.1996. The entire written statement does not reveal any allegation against respondent No.-2 applicant being responsible for any misrepresentation of facts or playing mischief.

The CAT on the aforesaid premise had allowed the OA preferred by respondent No.2-applicant. The impugned order passed by the CAT is legal and justified and cannot be faulted with. The same is upheld and the writ petition stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

October 04, 2017

Pankaj*

Whether speaking/reasoned

Yes

Whether reportable

Yes