

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Order: February 16, 2018

+ W.P.(C) 7320/2003

FCI EXECUTIVE STAFF UNION (REGD.) Petitioner
Through: Mr. Naresh Kaushik & Mr. Devik
Singh, Advocates

Versus

UOI & ANR. Respondents
Through: Mr. Ajit Pudussery & Mr. Ajeet
Singh Verma, Advocates for respondent No.2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Learned counsel for petitioner submits that this petition has been filed on behalf of Central Dearness Allowance (CDA) pattern employees who seek to exercise the option to switch over to Industrial Dearness Allowance (IDA) pattern of pay scales in view of Supreme Court's decision in *Jute Corporation of India Officers' Association Vs. Jute Corporation of India Ltd. & Anr.* 1990 (3) SCC 436. It is brought to the notice of this Court that the aforesaid decision of Supreme Court has been subsequently modified vide order of 25th January, 1993 (*Annexure R-2 to the counter affidavit*) to the effect that the option to switch over was kept alive for a period of another six months from the date of the order.

2. It is submitted on behalf of respondents that in pursuance to aforesaid modified order of 25th January, 1993 (*Annexure R-2*) of the Supreme Court, Circular No.4 of 1993 was issued. It is submitted by respondents' counsel that the relief sought in this petition relates to

individual employees. On this aspect, vide order of 7th September, 2017, petitioner's counsel was given time to obtain instructions.

3. Learned counsel for petitioner submits that against impugned order of 27th August, 2003 (*Annexure P-9*) seeking recovery of conveyance allowance from all category of CDA pattern employees in pursuance to audit objection raised by CAG, individual employees would be making their respective Representations to second respondent to seek switch over from CDA to IDA pattern of pay scales.

4. Since the relief claimed in this petition is confined to impugned order of 27th August, 2003 (*Annexure P-9*), therefore, both the sides have been heard on impugned order and on its perusal, this Court finds that conveyance allowance to CDA pattern employees of petitioner-Union was granted from 1st December, 1988 till 12th June, 1990 and it is not disputed that the employees under the CDA pattern of pay scale belong to Category – III and IV employees. Supreme Court in *State of Punjab & Ors. Vs. Rafiq Masih (White Washer) and Ors.* (2015) 4 SCC 334 has categorically declared that it would not be permissible to recover allowances mistakenly paid to Category-III & IV service employees.

5. In the instant case also, though the Conveyance Allowance was mistakenly paid to Category-III & IV employees of petitioner-Union, who were governed by CDA pattern scales of pay, but in view of dictum of Supreme Court in *Rafiq Masih (Supra)*, respondents are precluded from making recoveries from such employees.

6. In view of aforesaid, impugned order of 27th August, 2003 (*Annexure P-9*), so far as it seeks to recover conveyance allowance from CDA pattern of employees, it is set aside, with liberty to such employees

of petitioner-Union to exercise their option in terms of Supreme Court decision in *Jute Corporation of India Officers' Association (Supra)*, as modified on 25th January, 1993, by making a concise Representation to respondents. If such a Representation is received by respondents, it be promptly considered and decided by passing a speaking order in accordance with the law.

7. With aforesaid directions, this petition is disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 16, 2018

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