

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

CWP-17509-2017

Date of decision: - 22.08.2019

Chander Singh

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: - Mr. Inder Pal Goyat, Advocate
for the petitioner.

Ms. Safia Gupta, Assistant Advocate General, Haryana.

Mr. Arvind Rajotia, Advocate
for respondent No.6.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the challenge is to the order dated 24.03.2017 (Annexure P-3) vide which a sum of ₹87,442/ has been recovered from the petitioner on the ground that an excess payment has been made.

The factual narration as given in the present writ petition is that the petitioner, who was initially serving in the Indian Army, joined as a Peon with respondent No.3 on 12.02.1975 and superannuated after rendering more than 29 years of service on 30.06.2004.

After the retirement, pension was granted to the petitioner and the said pension was being deposited by the Bank in the account, which the petitioner had with respondent No.6-Bank. On 24.03.2017, respondent No.6-Bank passed an order asking the petitioner to deposit a sum of ₹87,442/- on account of excess payment made for the period from January, 2006 till February, 2017. In the said order, no reason was given as to how the petitioner was paid an excess amount, which the petitioner was directed to deposit back with the respondent-Bank.

The grievance, which is being raised in the present writ petition is that without issuing any show cause notice to the petitioner in respect of the so called excess amount paid to the petitioner and without following any due procedure, an order of recovery was passed by the Bank and the amount was also recovered.

Counsel for the petitioner argues that no order, which causes prejudice to an employee, can be passed without following the rules of natural justice and without affording an opportunity to present his/her case in respect of the subject matter in question.

Upon notice of motion, respondent No.6 has filed the reply.

In the reply, it was mentioned that pension of the petitioner was wrongly fixed @ ₹4,121/- month instead of ₹3,711/- month w.e.f. 01.01.2006 and keeping in view the above, a sum of ₹87,442/- was paid in excess, which is liable to be recovered and the petitioner has already given an undertaking (Annexure R-6/1) at the time of his retirement that the respondent-Bank is within its jurisdiction to recover the amount in case any excess amount has been paid.

Counsel for respondent No.6-Bank states that once it was found that excess amount was paid to the petitioner, there was no need to serve a show cause notice keeping in view the undertaking given by the petitioner and prays that the writ petition is liable to be dismissed.

I have heard counsel for the parties and have gone through the record with their able assistance.

Keeping in view the narration given hereinbefore, it is clear that before effecting the recovery of ₹87,442/-, no show cause notice whatsoever has been given. Rather, no order has been attached by the respondents according to which petitioner has been found liable to pay the amount, except the impugned order, where the petitioner has been directed to deposit the excess amount of ₹87,442/-.

It is a settled principle of law that where any order is passed, which causes prejudice to an employee, an opportunity of hearing is must and no order causing prejudice to an employee can be passed unilaterally. Division Bench of this Court in **Lekhu Singh Vs. The Punjab SC Land Development & Finance Corporation, Chandigarh, 1994(1) S.C.T. 748**, held that rules of natural justice must be obeyed before taking an decision and the concept of opportunity of being heard is a basic requirement in respect of any action, which has adverse or civil/penal consequences. The relevant paragraph of the judgment is as under: -

“One of the basic principles of natural justice is 'hear the other side'. Initially judicial opinion was that grant of an opportunity was required only while passing a judicial order or quasi-judicial order and that in a purely administrative function/order, opportunity had no role to play. However, with the efflux of time, the grant of an opportunity has

become a requirement of law even for a purely administrative act. Still further the concept of opportunity being a basic requirement has been extended to every action which has adverse civil or penal consequences. Alteration of seniority and reversion have been held to have civil consequences and consequently, alteration of seniority or reversion from a given rank without the grant of an opportunity have been held to be vitiated, being violative of basic principles of natural justice."

Once, it is admitted by the respondents that no opportunity of hearing was granted to the petitioner before effecting the recovery, the same action is contrary to the settled principle of law and cannot be sustained.

The argument raised by counsel for respondent No.6-Bank that once an undertaking was given by the petitioner that excess amount can be recovered, no opportunity of hearing is required, cannot be accepted.

The undertaking can give a right to the Bank to recover the excess amount, but that does not give a right to the Bank to recover the amount without giving any opportunity to the concerned person from whom the recovery is to be made. The employee is entitled to know the reasons on which the recovery is proposed to be effected. In the absence of any show-cause notice to the said effect or without affording an opportunity of hearing, the employee is unable to know the reason for effecting recovery or to defend himself/herself against the proposal of recovery. Undertaking submitted by the employee does not give a right to the Bank to pass the order of recovery straightway unilaterally. Therefore, serving the show cause notice is must, in case an order, which is being passed against employee, causes prejudice to him/her.

As in the present case, no opportunity of hearing was granted, the action of the respondents in recovering the amount of ₹87,442/- is held to be bad and set aside. However, respondent No.6-Bank will be at liberty to issue a show cause notice to the petitioner giving the reasons for the recovery and after considering the reply, if any, filed by the petitioner and passing an appropriate order in that regard, the Bank will be entitled to recover in case it is found that any amount has been paid to the petitioner in excess of his entitlement.

Present writ petition is allowed in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

August 22, 2019
naresh.k

Whether reasoned/speaking?	Yes
Whether reportable?	Yes