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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3232/2019**

DILSHAD ALI

..... Petitioner

Through: Mr Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Bhagwan Swarup Shukla, CGSC
with Mr Sarvan Kumar Shukla, Mr
Mohit Bhardwaj and Mr Mukesh
Pandey, Advocates.

CORAM:

JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
01.10.2019

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Dr. S. Muralidhar, J.:

1.This writ petition challenges an order dated 27th July, 2018, issued by the Deputy Inspector General of Police (‘DIGP’), Central Reserve Police Force (‘CRPF’), Hyderabad, *inter alia*, directing a deduction of a sum of Rs.2,80,275/- from the Petitioner.

2. The Petitioner also challenges the proposal dated 8th March, 2018, for revision of the Petitioner’s pension consequent upon the recommendations of the Seventh Central Pay Commission (‘CPC’), which reflects the deductions of the aforementioned sum, while calculating the revised pension payable to the Petitioner. The Petitioner consequently prays for a mandamus to the Respondents to refund the aforementioned sum that has been deducted

from his account.

3. The background facts are that the Petitioner was appointed as an Head Constable/General Duty ('HC/GD') in the CRPF on 26th September, 1981. He was promoted as Sub Inspector ('SI') on 1st April, 1988 and thereafter as Inspector in October, 1994. He was promoted as Assistant Commandant ('AC') in October, 2003 and lastly as Deputy Commandant in November, 2008.

4. In 2011, the Petitioner was posted to the Group Centre ('GC'), Hyderabad, during which time, for a brief period of around two months, he was given additional charge of Accounts Officer, since the incumbent had proceeded on leave. On 29th June, 2012, the Petitioner was posted with the 5th Battalion in New Delhi, which was his last leg posting.

5. On 19th August, 2013, while serving in the 5th Battalion, a Court of Inquiry ('COI') was instituted to inquire into the circumstances under which dues pertaining to 21 personnel in the sum of Rs.53,78,627/- were deposited into an account of one Smt. U. Sarada at the State Bank of India ('SBI'), Barkas Branch. The said Smt. U. Sarada was the wife of Ex. Constable (GD) U. Durga Prasad Rao of the Group Centre, Hyderabad.

6. The COI, in which the Petitioner did not participate, came to the conclusion that various final payment dues/TA/DA in the sum of Rs. 66,79,155/- received from Pay and Accounts Office for payment of 21 personnel of affiliated units of GC, who proceeded on voluntary

retirement/superannuation and death cases, were fraudulently diverted into the aforementioned savings account of Smt. U. Sarada intentionally by Ex. Constable (GD) U. Durga Prasad Rao, who was attached with the Cash Section of the GC for assisting the cashier. The COI found Ex. Constable (GD) U. Durga Prasad Rao solely responsible for the misappropriation of the entire amount. It found no other staff or officer to be involved in the embezzlement.

7. On 29th December, 2015, based on the report of the COI, the Respondents issued an order that C. T. Venkatesh, DIG be issued an advisory letter and major penalty proceedings should be initiated against the five officers who had worked as Accounts Officer during the said relevant period.

8. The Petitioner superannuated on 30th June, 2016, and was paid all his retirement dues and pension.

9. After the Petitioner learnt of the aforementioned order dated 29th December, 2015, he made a representation dated 24th August, 2016, seeking recall of the order dated 29th December, 2015.

10. In the meanwhile, it appears that on 26th March, 2016, a show cause notice ('SCN') was issued to the Petitioner, consequent upon the report of the COI and proposing recovery of the aforementioned sum of Rs.2,80,275/- from him. Enclosed with the counter affidavit of the Respondents in the present petition is a copy of the said SCN, and the Petitioner's reply dated 16th April, 2016, as Annexure-R2. *Inter alia*, he pointed out in this reply that

he had taken the charge of Additional Accounts Officer for a short period, and even during this period, he had been graded as 'very good/outstanding'. He pointed out that recovery of such a huge sum at the fag end of his career, with his date of superannuation being 30th June, 2016, would affect him adversely.

11. It appears that on 25th January, 2017, the DIG, Range Office, CRPF, issued a direction to the IGP, Southern Sector, CRPF, suggesting how the aforementioned sum could be recovered. It was *inter alia* suggested that a gazetted officer from the 5th Battalion be sent to the house of the Petitioner as a representative to collect the balance amount to be deposited in the government treasury, and if that was not possible, then the officers/ personnel issuing 'no dues certificate' should be investigated.

12. However, on 3rd February, 2017, an order was passed by the DG, CRPF, on the reply to the SCN submitted by the Petitioner, where *inter alia* in paragraph 3, it was ordered as under:

“3. Though the conduct on your part calls for stern disciplinary action, yet keeping in view your explanation during my personal interview on 15/01/2016 and considering your past record of service and length of service, I am inclined to take a lenient view and ADVISE you to be more careful while dealing with such sensitive cases.”

13. Thus the order dated 3rd February, 2017 effectively brought to a close the SCN dated 26th March, 2016, which itself had been issued on the basis of the report of the COI dated 29th December, 2015.

14. It appears that ignoring the above facts, on 27th July, 2018, another order was issued by the DIGP, CRPF at Hyderabad proposing the recovery of Rs. 2,80,275/- from the Petitioner. Strangely, this order makes no reference to the advisory dated 3rd February, 2017 issued by the DG. It noted how six of the eleven officers against whom such recoveries were contemplated, had approached the High Court of Andhra Pradesh and had an interim order in their favour staying such recovery.

15. The first time the Petitioner realized that there was a proposal for recovery was when pursuant to the 7th CPC's recommendations, his pension was proposed to be revised, and an order was issued to that effect on 8th March, 2018. This order reflected the deduction of the aforementioned sum of Rs. 2,80,275/- from the Petitioner's account.

16. The Court asked a pointed question to the learned counsel for the Respondents whether prior to such recovery of Rs. 2,80,275/- from the Petitioner's account, any SCN was issued to the Petitioner. Apart from pointing out the SCN dated 26th March, 2016, which is annexed as R-1 to the counter affidavit, which came to an end with the issuance of the advisory to the Petitioner on 3rd February, 2017, no other document was shown to the Court to indicate that any SCN was issued to the Petitioner proposing a recovery of the above sum.

17. In effect, therefore, the above recovery was made without any notice to the Petitioner. The recovery also appears to be contrary to the law explained by the Supreme Court in *State of Punjab and Ors. v. Rafiq Masih (White*

Washer) and Ors. (2015) 4 SCC 334, wherein the Supreme Court directed as under:

“18. 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.”

18. The documents that have been enclosed with the counter affidavit include the signals and messages sent by the Respondents, again without any notice to the Petitioner, on 6th August, 2018, 3rd October, 2018, and 10th October, 2018 to the Pay & Accounts Section, directing the recovery of the aforementioned amount from the Petitioner's account.

19. In the circumstances explained hereinbefore, the Court finds that the recovery of the aforementioned sum from the Petitioner's account was without following the due process of law and contrary to the law explained by the Supreme Court in *State of Punjab and Ors. v. Rafiq Masih (White Washer) and Ors.* (*supra*).

20. The Court accordingly sets aside the revised pension proposal dated 8th March, 2018 to the extent that it has proposed the recovery of the aforementioned sum of Rs .2,80,275/- from the Petitioner's account as well as the order dated 27th July, 2018 issued by the DIGP, CRPF, directing such recovery. The Court issues a mandamus to the Respondents to refund to the Petitioner the aforementioned sum of Rs. 2,80,275/- within a period of 4 weeks failing which simple interest at 6% per annum will be charged on the said sum for the period of delay.

21. The writ petition is allowed in the above terms. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 1, 2019
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