

Pradnya Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5068 OF 2019

Ashok Kumar Jha

..Petitioner

vs.

Bharat Sanchar Nigam Ltd. and Ors.

..Respondents

.....

Mr. Sandeep Marne for Petitioner.

Ms. Neeta Masurkar for Respondents.

.....

**CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.**

DATE : 4 FEBRUARY 2020

P.C.:-

Heard learned counsel for the parties.

2. By this Petition, the Petitioner challenges the order passed by the Central Administrative Tribunal dated 2 April 2019 dismissing the Original Application No.714 of 2017 filed by the Petitioner. By this Original Application the Petitioner had sought to question the action of the Respondents of recovery of an amount of Rs.3,88,887/- for excess payment of Transport Allowance.

3. The Petitioner was appointed initially in the department of Telecommunication. Thereafter, he was posted with

Bharat Sanchar Nigam Limited and he was appointed as Senior Administrative Grade Officer and on regular basis posted as General Manager. The Petitioner, when posted as a Deputy General Manager, was drawing grade pay of Rs.8,700/-. After February 2012, he was provided with an official car and was paid Transport Allowance @ Rs.1,400/- was paid to him. On 20 July 2017, the Accounts Officer informed the Petitioner that an amount due to him regarding Transport Allowance has to be reduced and recovery will have to be made because the Petitioner's Transport Allowance was reduced from July 2017. The Petitioner made representations which were declined. Thereafter, the Petitioner approached the Central Administrative Tribunal, which has considered the Petitioner's case and found that the action of recovery from the Petitioner can not be said to be illegal nor it falls in any of the categories indicated by the Supreme Court in the case of *State of Punjab and others vs. Rafiq Masih and others*¹.

4. Learned counsel for the Petitioner submitted that in the case of *Rafiq Masih*, the Supreme Court has not laid down that it is only in the category stated therein the relief from recovery is to be granted but it is open for the Court to take into consideration equitable circumstances. He submitted that in case of similarly situated employees of the Respondent, the Central

1 (2015) 4 SCC 334

Administrative Tribunal, Delhi has given relief against the recovery and the said decision is confirmed by the Delhi High Court by decision dated 3 September 2014 in the case of *Radhacharan Shakiya (Director/SE) and Ors. Vs. Union of India and Ors.*² He submitted that the attempt of Respondent to distinguish the case of the Petitioner that the Petitioner initially pressed for higher Transport Allowance is incorrect as the Petitioner never specified to what should be the higher Transport Allowance and merely requested for parity with other similarly situated employees. Learned counsel for the Respondents supported the impugned order contending that no equitable consideration be extended to the Petitioner as the Petitioner was clearly getting higher Transport Allowance even though he was aware that he was not entitled of the same.

5. That the Petitioner was not entitled to the higher Transport Allowance at Rs.7,000/- at the relevant period, is not in dispute. The Petitioner is also right in contending that the Supreme Court in the decision of *Rafiq Masih* more particularly in Para 18(v) has laid down that apart from the cases indicated in Para 18(i) to (iv), it is open to the Court to set aside the order of recovery if it is inequitable or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover. The question is whether the Petitioner would fall

2 WP (C) No. 3445 of 2014 and CM No.7065 of 2014

in this category. Learned counsel for the Respondent has pointed out that the employees which are covered by the decision of the Delhi High Court did not make any representation for higher Transport Allowance and they were granted by the department erroneously which was sought to be recovered. In the present case the Petitioner has made a representation. Though no specific amount has been stated in the said representation, there is a reference to the demand for higher Transport Allowance. The Transport Allowance pursuant to this representation which was granted was not what the Petitioner was entitled. It is now contended that the Petitioner was atleast entitled to Rs.3,200/-, but that was not amount specified in the representation. We have also to keep in mind the high post the Petitioner was holding, on which emphasis has been placed by the Tribunal. The Tribunal has also rightly noted that, considering that the Petitioner, as a senior responsible officer, himself should have refunded the excess payment on his own accord. We do not find that the case of the Petitioner falls in a category of equitable circumstances to hold that the view taken by the Tribunal is perverse.

6. Writ Petition is rejected.

(M.S.KARNIK, J.)

(NITIN JAMDAR, J.)