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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11015/2020**

UNION OF INDIA & ANR. Petitioners

Through: Mr. Arun Bhardwaj, CGSC.

versus

GULSHAN RAJ & ORS. Respondents

Through: Mr.M.K. Bhardwaj, Advocate.

% Date of Decision: 06th January, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging the order dated 30th November, 2018 passed by the Central Administrative Tribunal (hereinafter referred to as the 'CAT') in O.A.No.1502/2018. The relevant portion of the said order is reproduced hereinbelow:- 3, 8

"3. The applicants relied upon a judgment in OA No.497/2015 delivered on 01.08.2017 on exactly similar matter wherein the recoveries were quashed. The judgment in this OA has also relied upon another judgment in the case of Shri J.S. Sharma and others Vs. Union of India and another, OA No.363/2012, decided on 05.02.2013, wherein also exactly similar issue was raised and the Tribunal, vide order dated 05.02.2013, held that no recovery can be made towards the transport allowance already paid. This judgment was challenged by the respondents in the Hon'ble High Court in Writ Petition (Civil) No.5555/2013 decided on 04.09.2013. The order of the Tribunal was upheld by the Hon'ble High

Court. Thus recovery of transport allowance was not permitted.

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8. I find that the applicants have not misrepresented any fact, nor was it in their knowledge that they were drawing transport allowance in excess of their entitlement as it was sanctioned by the respondents only. Hence, I am of the view that their case is fully covered by the judgment of the Hon'ble High Court in *J.S. Sharma* (para 3 supra)."

2. After hearing the parties at some length, this Court finds that the issue involved in the present writ petition is no longer *res integra* as admittedly, an identical issue has been decided by this Court against the appellant on 04th September, 2013 in ***Union of India & Anr. Vs. JS Sharma & Ors. W.P.(C) No.5555/2013***. The relevant portion of the said order is reproduced hereinbelow:-

"2. The facts in which the present issue arose are that for commuting between office and residence. Officers of the level of Joint Secretary and above are provided with the facility of staff car on prescribed payment basis (under Office Memorandum No. 20(5)- E.II(A)/93 dated 28th January, 1994). They have the option to switch over to payment of transport allowance, at applicable rates subject to the facility of staff car being withdrawn. The respondents who were Group A Officers, were drawing pay at par with an officer of the post of Joint Secretary. However, the respondents reached that level of pay scale on the grant of non-functional upgrade (under Officer Order No. 30/26/2010-EC-EW-1 dated 3rd February, 2011). This upgrade was in pursuance of Office Memorandum (OM) No. AB.14017/64/ 2008-Estt.(RR) dated 24th April, 2009 of the DoPT, which recommended / directed such non-functional upgrade. Since the pay grade of the respondents was at par with that of officers of the level of Joint

Secretary – as a consequence of the grant of the non functional upgrade – they were being allowed transport allowances at the rate of Rs.7,000/- + D.A. from the dates from which they were conferred the upgrade.

3. The said allowances were sought to be withdrawn by the petitioners (by OM dated 23rd September, 2011) on the ground that it was not payable to officers who were granted grade pay of Rs.10,000/- under Non-Functional Upgradation Scheme and that the facility of official car was available only to those who were covered by OM dated 28th January, 1994. The over-payment of the transport allowance was sought to be recovered from the said officers / respondents herein by way of individual notices dated 5th October, 2011.

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9. Furthermore, this court is of the opinion that the case of the grade pay officers falls in the exceptional category – which exception even the Chandi Prasad Uniyal case recognized the existence of – that would have the benefit of the ratio of Syed Abdul Qadir (supra):

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

“58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases

where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] , V. Gangaram v. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652] , Col. B.J. Akkara (Retd.) v. Govt. of India [(2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] , Purshottam Lal Das v. State of Bihar (2006) 11 SCC 492 : (2007) 1 SCC (L&S) 508] , Punjab National Bank v. Manjeet Singh [(2006) 8 SCC 647 : (2007) 1 SCC (L&S) 16] and Bihar SEB v. Bijay Bhadur [(2000) 10 SCC 99 : 2000 SCC (L&S) 394].”

10. Having considered the arguments and the facts of the case and the ratio of Syed Abdul Kadir case, this Court finds no reason to interfere with the impugned order. The petition is without merit and is accordingly dismissed.”

3. Consequently, following the earlier Division Bench judgment of this Court in **Union of India & Anr. vs. JS Sharma & Ors. (supra)**, the present writ petition is also dismissed.

4. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

**JANUARY 06, 2021
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