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

\+ **W.P.(C) 4037/2019 and CM APPL. 54924/2019 (ADDL. Rejoinder)**

BACHITTAR SINGH ..... Petitioner
Through: Mr. S.N. Kaul, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents
Through: Ms. Archana Gaur and Ms. Ridhima Gaur, Advocates for UOI.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **10.01.2020**

1. The Petitioner has challenged the order of recovery of Rs.14,29,687/- from his pensionary benefits by filing the present writ petition.

2. In brief, the case of the Petitioner is that he was appointed as Constable in CISF in 1975 and the last higher rank held by him before retirement was Assistant Sub Inspector (Executive). In the year 2010, when he was posted at Raurkela Steel Plant, a Memorandum of Charge dated 24th March, 2010 was issued followed by departmental proceedings against him and he was awarded punishment of reduction of pay by two stages vide order dated 29th September, 2010. The Petitioner challenged the said punishment and filed statutory appeal before Appellate Authority but the same was rejected on 18th November, 2010. Thereafter, Petitioner filed a revision petition before

Inspector General CISF (Eastern Sector) and the said revisioning authority enhanced the punishment to that of compulsory retirement from service vide order dated 26th April, 2011. Petitioner made an appeal to Director General (CISF), New Delhi against the order of compulsory retirement on 17th May, 2011. Petitioner also filed a writ petition (Civil) no. 17519/2012 in Punjab and Haryana High Court to challenge the proceedings drawn against him and for release of his pensionary benefits.

3. When the writ petition was pending, Petitioner received the following:

(i)	Gratuity	Rs. 3,86,925/-
(ii)	Leave Encashment	Rs. 98,000/-
(iii)	Commuted Pension	Rs. 3,21,000/-

4. The appeal filed by the Petitioner was finally decided by DG (CISF) on 21st January, 2015 and by the said order, compulsory retirement of the Petitioner was set aside and order of the disciplinary authority was upheld. A show-cause notice was issued subsequently for treating the intervening period between the date of compulsory retirement to the date of re-instatement in service as "*DIES NON*". On 1st June, 2015, Petitioner submitted a representation against the said show-cause notice and to treat the said period as on duty but the representation was rejected. Thereafter the Petitioner retired on superannuation on completion of sixty years of age in December, 2016. He submitted his retirement papers to Pay and Accounts Office, CISF, New Delhi through his last CISF unit. Petitioner was required to be granted pension w.e.f. 1st January, 2017 along with other retiral benefits. The Pension Payment Order (PPO) was issued in October, 2017 mentioning the following pension related items:

(i)	Monthly Pension (before commutation)	Rs.	21,150/-
(ii)	Amount of Pension Commuted	Rs.	8,460/-
(iii)	Reduced Monthly pension	Rs.	12,690/-
(iv)	Amount of Retirement Gratuity	Rs.	7,11,909/-
(v)	Total Pension Commutation value	Rs.	8, 31,855/-

5. It was further informed by PAO (CISF) to Deputy Commandant (CISF) Unit at NTPC, KOLDAM (place of last posting of the Petitioner) that the Petitioner was required to repay Rs.14,23,039/- towards the payment already made to him and out of this he had to deposit Rs.7,11,130/- and remaining amount of Rs.7,11,909/- is to be treated as death cum retirement gratuity (DCRG) amount already paid to him. Petitioner made inquiries from PAO (CISF), New Delhi and he was informed the details of Rs.14,23,039/- as under:

> "1- Rs.386925/- has been recovered towards Gratuity upon order of compulsory retirement.
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> 2- Commutation Value of Rs.321546/- has been recovered.
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> 3- Rs.98099/- has been recovered towards unutilized EL/HPL.
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> 4- Rs.579711/- has been recovered towards the pension received during the period of compulsory retirement before reinstatement.
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> 5- Rs.36758/- has been recovered towards CGIS (Group Insurance).

6. On 16th January, 2019, Petitioner sent a legal notice to all the Respondents for refund of Rs.14,29,687/- which was wrongly recovered from him. On

20th February, 2019, Petitioner was informed that the amount of Rs.14,23,039/- has been adjusted as under:

> "1- DCRG (Gratuity) – Rs. 711909/-.
> 2- Commutation value – Rs.711130/-.

7. The Petitioner has challenged the said recoveries as the pension received during the period of compulsory retirement cannot be recovered as per DOPT guidelines hence amount of Rs.5,79,711/- paid to the Petitioner as pension was not required to be recovered. There was no fraud or representation made by the Petitioner hence as per the law settled by the Apex Court, the said amount cannot be recovered from the Petitioner. Since the Petitioner has no other legal remedy hence, he filed the present petition.

8. Notice was issued and counter affidavit was filed by the Respondents. The factual matrix was admitted by the Respondents. It was submitted that at the time of retirement there were old dues which were to be recovered from the Petitioner with interest. Same were related to the time of compulsory retirement. The said amount was quantified as Rs.14,23,039/- and it was advised to be recovered by the PAO, New Delhi from his retirement gratuity being Rs.7,11,909/- and the balance amount of Rs.7,11,130/- was required to be deposited by Petitioner. Hence, Petitioner was advised on 4th August, 2017 and 12th August, 2017 to deposit the said amount so as to enable the department to finalise his pension and pensionary benefits. No response was received hence another letter dated 21st August, 2017 was sent through Special Messenger to the native place of the Petitioner. The Petitioner expressed his inability to deposit the said amount and this fact was brought to the notice of PAO (CISF), New Delhi and

further advice was sought for effecting recovery through alternative mode. The PPO was issued by PAO, CISF, New Delhi on 5th October, 2017 and the concerned unit was advised to adjust the over payment made to the Petitioner at its own level and deposit the balance amount in the government treasury. Petitioner was asked to sign a 'No objection certificate' but he denied to do so. PAO was informed accordingly; however, there was an undertaking signed by the Petitioner at the time of his superannuation mentioning therein that if he was not in a position to refund the amount of Rs.14,23,039/- then the said amount can be recovered from the gratuity and other pensionary benefits. Hence the deduction was rightly made from the amount released to the Petitioner.

9. The Petitioner has filed the rejoinder to the said counter affidavit reiterating his contentions and again submitting that the amount of Rs.5,79,771/- received as pension by the Petitioner during the period from 26th April, 2011 to 21st January, 2015, i.e., from the date of his compulsory retirement to the date of his re-instatement, cannot be recovered. Apart from this, the Petitioner has claimed further recovery of Rs.3,24,984/- being the excess payment recovered through gratuity and Rs.61,890/- being the amount of commutation value of pension being the difference of commutation value due and paid earlier. So, the total claimed in rejoinder has been made for Rs.9,66,585/-.

10. An Additional rejoinder was also placed on record wherein the recovery has been shown at Rs.12,94,279/-. As per the Petitioner, he was entitled to DCRG of Rs.7,11,909/- and against the said amount he was paid Rs.3,86,925/- at the stage of compulsory retirement so difference amount of

Rs. 3,24,984/-, which was payable to him has not been paid till date. The commutation value of pension was Rs.8,31,855/- as per the PPO issued by Respondent no.4 but Petitioner was only paid Rs.3,21,546/- at the time of his compulsory retirement and thereafter he was paid Rs.1,20,725/- on 26th April, 2018. So, Respondents were required to pay the balance of Rs.3,89,584/-, which was not been paid till that date.

11. We have heard arguments. As far as the question regarding recovery of the pension amount paid to the Petitioner during the period from the date of his compulsory retirement to date of his re-instatement is concerned, the said period has been considered as "*DIES NON*" and the rules are quite clear in this regard. OM dated 30th March, 1978 provides as under:

> **"(B).** – 'A' above lays down instructions for recovery in twelve instalments of death-cum-retirement gratuity paid to the Government servants who were prematurely retired under FR 56 (j) and subsequently reinstated in service. The orders also provided for refund of the G.P.F. amounts in suitable instalments. The aforesaid orders were issued in pursuance of a Staff Side demand made in the National Council (J.C.M.) and decision taken in the meeting held on the 30th and 31st July, 1976. A number of representations have been received in the meantime inviting Government's attention to the hardship caused to the reinstated individuals on account of the refund of gratuity, pension, etc. The matter had also been raised in the National Council meeting held in August, 1977. The whole question has been reconsidered and in partial modification of the orders contained in the O.M., dated the 24th December, 1976, it has been decided as follows:
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> (i) The amount of death-cum-retirement gratuity may be allowed to be retained by the Government servant concerned on payment of simple interest as prescribed for the G.P.F. for the corresponding period. The amount so retained will be adjusted

against the final death-cum-retirement gratuity becoming due on final retirement and the balance, if any, will be paid to him.

(ii) Where the intervening period between premature retirement and date of reinstatement is treated as duty, the amount of pension drawn by the individual should be adjusted against the salary payable.

(iii) Where the period is treated as leave due and admissible, the pension amount shall be adjusted against the leave salary. In cases where leave salary due and admissible is not enough to cover the entire period and extraordinary leave has to be granted, the reinstated employee may be given the option to retain pension if it is more advantageous. If this option is exercised, the period for which pension is retained, shall not count finally for qualifying service.

(iv) Where the period prior to reinstatement is neither treated as duty not leave but *dies non,* pension already drawn shall be allowed to be retained by the employee".

12. In view of the above OM, the pension amount received by the Petitioner amounting to Rs.5,79,711/- cannot be recovered back from him and he is entitled to retain the same. The other amounts claimed by Petitioner pertain to the amount of gratuity and commuted value of pension due and paid. The PPO issued by the Respondents show that the amount of retirement gratuity calculated was Rs.7,11,909/- and commuted value of the pension has been shown at Rs.8,31,855/-. The amount earlier released to him as per the counter affidavit is detailed as under:

Nature of benefits	**Amount**	**Date of payment**
CVP	321546	10.04.2012
Gratuity	386925	26.09.2011
CGEGIS	36758	26.09.2011
Leave Encashment	98099	29.09.2011

Monthly pension	579711	05.05.11 to 28.04.15
Total	**14,23,039/-**	

13. It clearly shows that the gratuity paid to him was Rs.3,86,925/- and commuted value of pension at that time was Rs.3,21,546/-. Hence, Petitioner is entitled to recover the difference amount on these two counts. It is to be further noticed that apart from the commuted value of pension, gratuity, leave encashment and monthly pension, the Petitioner was also paid Rs.36,758/- as his contribution towards CGEGIS at the time of his compulsory retirement and in the calculation under the said head at the time of his retirement at the age of 60, he was entitled to Rs.37,306/- on this account. So, recovery of Rs. 548/- is to be made under this head. The net result of the above discussion is as under:

S.No.	**Type of retiral benefit**	**Due on superannuation (in Rs.)**	**Paid at the time of compulsory retirement (in Rs.)**	**Net due (in Rs.)**
1.	Commutation value of pension	8,31,855/-	3,21,546/-	5,10,309/-
2.	Gratuity due at the time of retirement	7,11,909/-	3,86,925/-	3,24,984/-
3.	CGEGIS	37,306/-	36,758/-	548/-
	Total	**15,81,070/-**	**7,45,229/-**	**8,35,841/-**

14. As per the Petitioner, he was paid Rs. 1,20,725/- on 26th April, 2018 on

account of commuted value of pension as the residual amount. This amount is to be deducted from the amount stated to be due as above. Hence the net amount payable to Petitioner comes to Rs.7,15,116/-. It is reiterated that the pension amount released to the Petitioner from the date of his compulsory retirement to the date of his reinstatement is not to be recovered or adjusted against any amount due to him.

15. It is made clear that in case any other payment had been made by the Respondents to the Petitioner on account of commuted value of pension, gratuity and CGEGIS etc. after his retirement on superannuation, then they are entitled to adjust the same from the amount stated to be due as above and pay him the remaining amount within twelve weeks from the date of this order, failing which simple interest of 6 % per annum will be payable to the Petitioner for the period of delay. If the Petitioner is not satisfied with the amount so released by the Respondents or any other deduction made by the Respondents, he has a right to seek appropriate remedy as per law.

16. Writ petition along with the pending applications is disposed of in these terms.

S. MURALIDHAR, J

TALWANT SINGH, J

JANUARY 10, 2020
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