

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) CWP-19228-2021 (O&M)

UNION OF INDIA AND OTHERS ... Petitioners

Versus

VINOD KUMAR AND OTHERS ... Respondents

(2) CWP-19305-2021 (O&M)

UNION OF INDIA AND OTHERS ... Petitioners

Versus

MES WORKERS UNION AND OTHERS ... Respondents

(3) CWP-19306-2021 (O&M)

UNION OF INDIA AND OTHERS ... Petitioners

Versus

BALJEET SINGH AND OTHERS ... Respondents

(4) CWP-19309-2021 (O&M)

UNION OF INDIA AND OTHERS ... Petitioners

Versus

MES WORKERS UNION, AREA COMMITTEE, AMBALA (REGD.) AND
ORS ... Respondents

(5) CWP-19311-2021 (O&M)

UNION OF INDIA AND OTHERS ... Petitioners

Versus

VINOD KUMAR AND OTHERS ... Respondents

(6)	CWP-19315-2021 (O&M)
UNION OF INDIA AND OTHERS	... Petitioners
Versus	
HARBANS SINGH AND OTHERS	... Respondents
(7)	CWP-19317-2021 (O&M)
UNION OF INDIA AND OTHERS	... Petitioners
Versus	
GURMIT SINGH AND ORS	... Respondents
(8)	CWP-19318-2021 (O&M)
UNION OF INDIA AND OTHERS	... Petitioners
Versus	
JASPREET SINGH AND OTHERS	... Respondents
(9)	CWP-19319-2021 (O&M)
UNION OF INDIA AND OTHERS	... Petitioners
Versus	
MES CIVILIAN WORKERS AND EMPLOYEES UNION AND ORS	... Respondents
(10)	CWP-19320-2021 (O&M)
UNION OF INDIA AND OTHERS	... Petitioners
Versus	
RAJIV KUMAR AND ORS	... Respondents

- (11) **CWP-19321-2021 (O&M)**
- UNION OF INDIA AND OTHERS ... Petitioners
- Versus
- SWAROOP SINGH AND OTHERS ... Respondents
- (12) **CWP-19322-2021 (O&M)**
- UNION OF INDIA AND OTHERS ... Petitioners
- Versus
- SATISH KUMAR AND OTHERS ... Respondents
- (13) **CWP-19328-2021 (O&M)**
- UNION OF INDIA AND OTHERS ... Petitioners
- Versus
- KAMAL CHUGH AND OTHERS ... Respondents
- (14) **CWP-19331-2021 (O&M)**
- UNION OF INDIA AND OTHERS ... Petitioners
- Versus
- HARVINDER SINGH AND OTHERS ... Respondents

Date of Decision:-**04.10.2021**

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Pankaj Gupta, Senior Panel Counsel
Union of India for the petitioners.

KARAMJIT SINGH, J.

This order shall dispose of a bunch of fourteen writ petitions, as these involve identical questions of facts and law.

All these writ petitions are filed by the petitioners to challenge the orders dated 5.6.2020 and 29.7.2020 (in **CWP-19309-2021**) passed by respondent No.3-Central Administrative Tribunal, Chandigarh Bench ('the Tribunal' in short) whereby the original applications filed by the private respondents who were working in the Military Engineer Services ('MES' in short) on various posts like Fitter General Mechanic, Mate, Carpenter, Master Crafts Man etc. were allowed and they were held entitled to grant of dress allowance. The Tribunal also held that no recovery could be effected from the said private respondents.

For reference, the facts are being taken from O.A. No.060/01362/2019 titled as MES Workers Union another vs. Union of India and others.

In the original applications, the private respondents challenged letters dated 15.11.2019 and 18.11.2019 whereby the Department had decided to recover the amount of dress allowance paid to them by the Government during the period from 2017-2018 to 2019-2020. It was the case of the private respondents that they were rightly given the benefit of dress allowance in terms of office memorandum dated 31.8.2017 issued by Department of Personnel & Training (DoP&T) and letter dated 2.8.2018 issued by Ministry of Defence, Department of Expenditure, New Delhi.

The claim of the private respondents was contested by the authorities, who filed written statements to the original applications.

After hearing the counsel for the parties, the Tribunal allowed the original applications vide impugned orders dated 5.6.2020 & 29.7.2020 (in **CWP-19309-2021**).

The petitioners being not satisfied, have filed these writ petitions challenging the impugned orders passed by the Tribunal.

We have heard the counsel for the petitioners and gone through the record.

The counsel for the petitioners while assailing the impugned orders submitted that the private respondents are not entitled to get any dress allowance as they do not wear any uniform. The counsel for the petitioners while referring to office memorandum dated 2.8.2017, submitted that the private respondents who were industrial employees and working in MES, are not covered under the said office memorandum. However, the authorities being under wrong impression, gave clarification dated 5.6.2018 (Annexure A-3) and further clarification dated 2.8.2018 (Annexure-4) to the effect that the benefit of dress allowance may be extended to civilians of MES including industrial personnel. The counsel for the petitioners further contended that it being a factual mistake, was later on rectified by the authorities and consequently impugned letters dated 15.11.2019 and 18.11.2019 were issued and the amount of dress allowance paid to the

private respondents was ordered to be recovered, as they were not entitled to get the same.

The counsel for the petitioners further argued that the reliance placed by the private respondents before the Tribunal on **State of Punjab and Others vs. Rafiq Masih, 2015(1) SCT 195**, was totally misplaced. It was further contended that the authorities are competent to recover the amount of dress allowance paid to the private respondents for the period from 2017-2018 to 2019-2020, which they were not entitled to get. The counsel for the petitioners further contended that in such a situation the payees are under obligation to return the said amount, otherwise it would amount to unjust enrichment.

We have considered the submissions made by the counsel for the petitioners.

Admittedly, the private respondents were working as Class-III and Class-IV employees in MES. They were considered as 'Industrial Employees'. In pursuance to the recommendations of the 7th Central Pay Commission, the Government of India issued office memorandum dated 2.8.2017 with regard to grant of dress allowance to different categories of Central Government employees. The said office memorandum was reproduced by the Tribunal in Para No.11 of the impugned order dated 5.6.2020. Pursuant to aforesaid office memorandum, the Government of India issued another office memorandum dated 31.8.2017 to the effect that, the dress allowance was to be payable at the rate of ₹5,000/- per year. Subsequently, vide letter dated 5.6.2018, the Principal Controller of Defence

Account (Western Command), Chandigarh (in short 'Principal Controller') gave clarification that aforesaid benefit of dress allowance may be extended to civilians of MES including industrial personnel. Further clarification dated 2.8.2018 was given by the aforesaid authority that dress allowance is payable to employees (industrial /non-industrial), who are wearing basic uniform and / or drawing washing allowance. On the basis of the aforesaid office memorandums coupled with the clarifications, the authorities gave benefit of dress allowance to the private respondents and accordingly payment was made to them.

It appears that subsequently, Principal Controller vide letter dated 15.11.2019 informed the concerned authorities that the entitlement of dress allowance to industrial employees of MES is yet to be decided and he further directed that amount of dress allowance paid if any to aforesaid employees during the period from 2017-2018 to 2019-2020 may be recovered immediately. On the basis of aforesaid order, the concerned authorities were directed to effect recovery of due amount from the concerned employees, vide letter dated 18.11.2019.

It is not the case of the petitioners that the private respondents got aforesaid benefit of dress allowance by committing fraud or by misrepresenting the facts. From the perusal of letters dated 5.6.2018 and 2.8.2018, it transpires that before grant of dress allowance to the private respondents and other similarly situated employees, the concerned authorities took conscious decision regarding the same. It being so the petitioners cannot now effect recovery of the amount of dress allowance

already paid to the private respondents in the light of the law laid down by Hon'ble Supreme Court in **Rafiq Masih's** case (supra) which clearly debars the Government from effecting recovery of any excess amount mistakenly paid to the Government employees belonging to Class-III and Class-IV service.

Undoubtedly it is settled proposition that in case there was any mistake on the part of the Government authorities, it can be corrected by following due process of law. In this context, it may be appropriate to refer to a decision of the Hon'ble Supreme Court of India in **Union of India and another vs. Narendra Singh (2008) 2 SCC 750** wherein it was held that if the respondent was erroneously promoted, though he was not eligible and qualified, the department can always rectify its mistake by following due process of law. It being so, if some benefit is given to the employees by the Government authorities under mistake, the said benefit would subsist till the mistake is corrected. In the instant case, it appears that the Government authorities had not taken any conscious decision as per law, to withdraw clarifications dated 5.6.2018 and 2.8.2018, or to withdraw the benefit of dress allowance.

In the light of the factual matrix and the settled position of law as discussed above, we do not find any illegality or perversity in the impugned orders passed by the Tribunal. Consequently, all the writ petitions are hereby dismissed being devoid of merits.

Pending applications (if any) also stand disposed of accordingly.

Copy of this order be placed on the files of connected writ petitions.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

04.10.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No