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

+ **W.P.(C) 23/2021 & CM APPLs. 70-72/2021**

UNION OF INDIA & ANR. Petitioners

Through: Mr. Arun Bhardwaj, CGSC.

versus

S P SINGH AND 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 28th September, 2018 passed by the Central Administrative Tribunal (hereinafter referred to as the 'CAT') in O.A.No.1882/2015. The relevant portion of the said order is reproduced hereinbelow:-

"4. Mr. M.K. Bhardwaj, learned counsel for applicants submits that the controversy involved in this O.A. is squarely covered by the order of this Tribunal dated 01.08.2017 in O.A. No.497/2015 (Dileep Kumar Jain & others v. Union of India & another) and this O.A. could also be disposed of in terms of the said order.

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6. *I have perused the ibid order of the Tribunal. The applicants therein were Chief Engineers working in Central Electricity Authority (CEA) – Government of*

India entity. They had also been paid TA @ Rs.7000/- + DA thereon, and in their context also, the CEA had ordered recovery. The Tribunal took a view that the applicants therein had not indulged into any act of misrepresentation in securing the TA at a higher rate. Accordingly, the Tribunal held that no recovery should be made from the applicants in respect of any excess payment made to them towards TA and that they could be paid TA @ Rs.3200/- + DA thereon from the date of issuance of the order by CEA in regard to their entitlement for TA.

7. I find that the issues involved in this O.A. are squarely covered by the aforementioned order of the Tribunal. The applicants herein are also working as Chief Engineers in CWC. They have also been paid excess TA and have been subsequently directed to refund the excess payment vide order dated 07.04.2014 (Annexure A-1)."

2. Mr.M.K.Bhardwaj, learned counsel for the respondents, who appears on advance notice, states that the writ petition filed by the Union of India challenging the judgment and order of the Tribunal dated 01st August, 2017 in O.A.No.497/2015 has been dismissed by this Court vide judgment and order dated 23rd October, 2019 in W.P.(C) No.7920/2018.

3. After hearing the parties at some length, this Court also 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.”

4. Consequently, following the earlier Division Bench judgment of this Court in ***Union of India & Anr. vs. J S Sharma & Ors. (supra)***, the present writ petition along with pending applications are also dismissed.

5. 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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