

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-11136-2015

Deepak Chhabra & others

... Petitioners

Versus

Union of India & others

... Respondents

(2)

CWP-5728-2016

Shri Kishan and another

... Petitioners

Versus

Union of India & others

... Respondents

Decided on : 21.11.2022

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Aalok Jagga, Advocate for the petitioners.

Mr. Ashish Rawal, Advocate for
respondents-UOI.

G.S. Sandhawalia, J. (Oral)

The present order shall dispose off two writ petitions i.e. CWP-11136-2015 & CWP-5728-2016, wherein challenge has been made to the order dated 03.07.2014 whereby OA No.846/CH/2013 & OA No.060/00014/2014 were decided in terms of the decision of the Principal Bench passed in OA No.3593 of 2013 'DRDO Technical Association

through its General Secretary Vs. Union of India and others' dated 21.03.2014 (Annexure R-5).

The Tribunal on the concession as such keeping in mind the fact that the dispute was similar and ordered it to be put in rest by the Principal Bench, dismissed the OAs.

Mr. Jagga submits that on merits he is not contesting the said issue, but only challenging the factum that the issue of recovery and refund of the excess payment made from the petitioners be not effected. It is submitted that on account of the merger of the post of the Senior Technical Assistant 'C' (STA 'C') which was re-designated as Technical Officer 'A' (TO 'A') and the petitioners having thereafter earned their promotions are no longer affected by the merger, so only the issue of recovery remains. An argument is, accordingly, sought to be raised that before the Principal Bench as such about the legality of the order withdrawing the Grade Pay of Rs.4800, which was earlier granted but was not challenged and therefore, the earlier decision is sought to be distinguished.

We have perused the earlier **OA No.3593 of 2013 (supra)**, which was dismissed and find that in the said case orders dated 10.05.2013, 13.05.2013, 30.05.2013 and 09.09.2013 were challenged. In the present OA also, out of which the proceedings arise, challenge had been made to the first three orders and an additional order dated 05.06.2013 (Annexure A-4). It is, thus, apparent that on a concession of the counsel himself the OA was disposed off in the same terms being covered by the decision of the Principal Bench.

It is pertinent to notice that even on an earlier occasion no

benefit was granted by the Tribunal regarding the issue of the recovery of

the excess amounts, keeping in view the law laid down by the Apex Court at that point of time in **Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others, 2012 (4) SCT 277**, while noticing that if any amount which is paid/received without authority of law can always be recovered barring few exceptions of extreme hardships. It was also noticed that applicants were holders of Group 'B' Gazetted posts and they will not face extreme hardship, in the event of recovery of the excess payment. Resultantly, the recovery was ordered to be made in 12 equal monthly installments. Challenge had been raised to the said order of the Tribunal before the High Court of Delhi and the Writ Petition No.4110 of 2014 was dismissed as withdrawn on 08.07.2014 (Annexure R-1/7). Keeping in view the fact that the counter affidavit had been filed and that the applicants had already been promoted to the post of (TO 'B') and their promotions had been regularized from the review of the earlier assessment results, resultantly, the writ petition was dismissed as withdrawn. Liberty was given to approach the Tribunal for the stay of the recovery, which was sought to be effected in view of the merger of the posts as per the order dated 30.05.2013 (Annexure A-3).

Mr. Rawal on instructions received from Mr. A.K. Vashista, Technical Officer 'B' has brought to the notice of the Court that Review Application No.30 of 2015 was also dismissed on 25.02.2015.

Mr. Jagga in his usual vehement style has tried to convince us that in view of the subsequent order of the Apex Court in **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015 (1) SCT 195** has laid down the principle that under Clause (iv) of para 12 of the judgment that where an employee has wrongfully been required to discharge duties

of a higher post and has been paid accordingly, the recovery should not be effected, though he was rightfully required to work against an inferior post.

We are not convinced by the said argument though the counsel has referred to Rule 7 of Defence Research and Development Organization Technical Cadre Recruitment Rules, 2000 to submit that earlier the issue was not examined from this angle and that there should be a different look, since the posts were held by the individual and he has been granted promotion from one grade to the next grade and there has been up-gradation and it was personal to the individual. Merely because on earlier occasion an argument was not raised does not entitle the counsel to raise another argument to submit that the earlier decision was incorrect. It is settled principle that it cannot be contended that on an earlier occasion the Tribunal did not examine all the aspects. The Apex Court in **Ambika Prasad Mishra VS. State of U.P. and others, (1980) 3SCC 719** has held that every new discovery or the argument cannot reopen a binding precedent and merely because earlier decision was badly argued, the same would not lose its authority. Relevant portion of the said judgment reads as under:-

“5....That decision binds, on the simple score of stare decisions and the constitutional ground of Article 141. Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. In this view, other submissions sparkling with creative ingenuity and presented with high-pressure advocacy, cannot persuade us to reopen, what was laid down for the guidance of the nation as a solemn preposition by the epic Fundamental Rights case, (1973) 4 SCC 225.

6. It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose

its authority "merely because it was badly argued, inadequately considered and fallaciously reasoned". {Salmond: Jurisprudence, p 215 (11th Edition). And none of these misfortunes can be imputed to **Kesavanand Bharti VS. State of Kerala, (1973) 4 SCC 225.**

Therefore, it does lie in the mouth of the counsel for the petitioners that there were certain issues, which were not addressed on an earlier occasion. It is a matter of principle that all the employees are to be treated at par and certain set of litigants/employees cannot be put at a different footing and get the benefit which the original litigants could not get. It would be a violation of Article 14 of the Constitution of India also that certain set of litigants agitating for same set of grievance are allowed to be placed at a better pedestal.

In such circumstances, we are of the considered opinion that reliance as such placed upon the judgment of the Apex Court in **Rafiq Masih (supra)** in the peculiar facts and circumstances is misplaced, as the petitioners were sailing on the same boat and are challenging the same set of orders, apart from one and the basic grouse is regarding the merging of post of Technical Officers 'A' with feeder cadre post of Senior Technical Assistant 'C'.

It has also been brought to our notice by Mr. Rawal on instructions received from Mr. A.K. Vashista, Technical Officer 'B' that balance recovery is only of Rs.4,08,974/- from 16 petitioners and the highest amount of recovery from one individual which is to be effected is Rs.1,12,908/-, whereas the least recovery amount is only Rs.7,260/- from one individual.

Resultantly, keeping in view the above, no case is made out directing the respondents not to effect any recovery from the petitioners. Accordingly, the writ petitions are dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

21.11.2022
Naveen

Whether speaking/reasoned :	Yes/No
Whether Reportable :	Yes/No