

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4202-2014 (O&M).
Decided on: August 1, 2022.

Kuldip Prakash Vindlas

. Petitioner

VERSUS

Union of India and others

. Respondents

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CORAM: HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI

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PRESENT Mr.Rajesh Punj, Advocate,
for the petitioner.

Mr.Bharat Bhushan, Sr. Panel Counsel,
for respondent Nos.1 to 4.

Mr.Ravindra Jain, Advocate, and
Mr.Sunil Gupta, Advocate,
for respondent No.5.

G.S. SANDHAWALIA, J. (ORAL)

Challenge in the present writ petition by the petitioner-employee, is to the order dated 13.12.2012 (Annexure P-25) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, whereby the original application was dismissed by holding that the Railways was entitled to recover the amount keeping in view the law laid down by the

Hon'ble Apex Court in **Chandi Prasad Uniyal and others Vs. State of Uttarakhand and another, (2012) 8 SCC 417**. The Tribunal came to the conclusion that applicant was paid an amount of Rs.2,73,561/- in excess of the entitlement and therefore, the employer was entitled to recover the amount since over payment was inadvertently made. The reliance before the Tribunal had also been placed to a Full Bench judgment of this Court in **Budh Ram Vs. State of Haryana, 2009 (3) SCT 333**, but keeping in view the binding precedent of the Hon'ble Apex Court, the relief was declined.

While issuing notice of motion, the recovery was stayed on 1.4.2014 and a detailed order was passed by the Coordinate Bench of this Court on 27.8.2015, that a proper calculation of the minimum revised basic pension of the petitioner be made and an affidavit be filed disclosing the exact minimum basic pension which he is entitled to receive.

In compliance of the same, an affidavit of Ms.Dipti Sachdeva, Senior Divisional Finance Manager, Northern Railway, Ambala Cantt. has been filed. A perusal of the said affidavit would go on to show that it has been admitted that the amount payable as the revised basic pension fixed at 50% of the revised basic pay including pay band and grade pay would come to Rs.7215/- per month and as per the calculation Rs.93,387/- has been calculated which would be outstanding amount. It has also been averred that entitlement in pay scale of Rs.5000-9000 was wrongly done and it should have been in the pay scale of Rs.5000-8000 and due to the merger of two pay scales, by placing reliance on letter dated 18.11.2008, where these clubbing was done, it is in such circumstances,

held out that the claim of pension at Rs.7215/- is not justified and he was entitled to pension only at Rs.6750/- which is in the pay scale of Rs.5000-8000.

The relevant portions of the affidavit read as under:-

“5. That be it may be, in compliance of the orders dated 27 8.2015, thorough study of the case of the petitioner was conducted and calculation as per existing pay scale after 5th pay commission in the pay scale of Rs. 5500-9000 was done and total amount payable at the revised basic pension of pre-2006 pensioners fixed at 50% of revised basic pay which includes pay and in the pay Band (corresponding to minimum of pre-revised pay scale) plus grade pay which will come to Rs.7215/- p.m. has been done and as per calculation Rs.93387/- has been calculated. The calculation sheet is enclosed as Annexure R1-4/A.

6 (c) That Ministry of Railways / Railway Board on the persistent demands of the employee issued a letter No. Rly. Bd. RBE No. 181/2008 dated 18.11.2008 giving reference to the OM No. 38/37/08-P&PW (A) PT1 dated 3rd October, 2008 pay scales of Rs. 1400-2600 and Rs. 1600-2660 were clubbed and granted corresponding pay scale of 5000-8000 w.e.f. 1.1.2006. It is relevant to mention here that in both the cases even after the above said modification, (ie., from pay scale of 5500-9000 to 5000-8000) the pension of the petitioner remained the same at Rs. 6750/- p.m. as they fall within the PB-2 of 6th pay commission, i.e. 9300-34800 in view of 6th pay commission w.e.f. 1.1.2006. Under these circumstances, the revised PPO was issued placing the petitioner in the PB-2 9300-34800 with Grade Pay of Rs. 4200/-,

however, erroneously the pay scale was mentioned as 5500-9000 whereas it has to be revised to 5000-8000 due to merger of two pay scales. True photocopy of the letter dated 18.11.2008 along with its annexures showing the clubbing of the two pay scales and placing the same in the scale of 5000-8000 are being annexed along with as Annexure R 1-4/E & R1-4/F.

7. That above said circumstances clearly shows that petitioner was himself well aware of the fact that he is getting pension as per scale of Rs. 5000-8000, however, he took undue advantage of the inadvertent mistake by which he has been shown to be in the pay scale of Rs. 5500-9000. Thus, his claim that he is entitled to the pension @ Rs. 7215/- cannot be accepted as it is baseless and is based on misrepresentation of facts taking advantage of inadvertent mistakes which has crept in due to frequent change in the government instructions / policies and also due to various litigations in almost all parts of India but when in compliance with the orders of this Hon'ble Court a thorough scrutiny of the documents was made it was found that petitioner is not entitled to any pension more than Rs. 6750/- as he is actually in the pay scale of 5000-8000. Therefore, even looking from the table given at page 60 of the paper-book Annexure P-15 the pension of the petitioner will remain at Rs.6750/- p.m. and there is no scope of any revision."

It is not disputed that the petitioner retired on 31.7.1986, as Travelling Ticket Inspector and at this stage, he is stated to be enjoying the ripe old age of 94 years.

Counsel for the petitioner, at the outset, has submitted

that he does not press his case regarding the re-fixation aspect and is only contesting regarding the recoveries which is covered under the principles laid down by the subsequent judgment by the Hon'ble Apex Court in **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334**. The same was decided on 18.12.2014 and then the Tribunal did not have the benefit of the same since it was pronounced a year later. It is also submitted that the judgment relied upon of the Hon'ble Apex Court in **Chandi Prasad Uniyal and others** (supra) was also subject matter of consideration in the subsequent order. It is not disputed that the principle has been laid down that recovery from persons who have retired is not permissible and it would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employers right to recover. It is a matter of record that on an earlier occasion also, the petitioner had approached the Tribunal wherein the recovery was being effected of Rs.7,000/- per month vide order dated 28.6.2012.

A perusal of the above said affidavit of the official also would go on to show that the clubbing was done on 18.11.2008 and therefore, apparently for a period of 4 years from 2008 to 2012, the employee was drawing the said amount which was on account of an error which has been admitted by the respondents Railways. In such circumstances, the principles laid down in **Rafiq Masih** (supra) would directly come into play which reads as under:-

“12. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by

an employer, in the following situations, a recovery by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

Accordingly, keeping in view the above, we are of the considered opinion that the order dated 13.12.2012 (Annexure P-25) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, requires to be modified to the extent that the recovery of the excess amount which has been paid to the retired employee is not permissible at this stage, keeping in view the petitioner is covered under Clauses (i), (ii) and (v). It is further clarified that the re-fixation, if done, has not been challenged by the writ petitioner. The writ petition is thus disposed of by modifying the order of the Tribunal accordingly.

(G.S. SANDHAWALIA)
JUDGE

August 1, 2022.	(VIKAS SURI)
raj arora	JUDGE
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No