



Neutral Citation Number:2023:DHC:4775-DB

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

+ **Date of Decision: 04.07.2023**

% **LPA 521/2023 and C.M. Nos. 33054/2023 & 33055/2023**

SANJAY SHARMA

..... Appellant

Through: Mrs. Avnish Ahlawat with Mr. Nitesh Kumar Singh, Advocates.

versus

STATE OF PUNJAB AND ORS

..... Respondent

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. The present LPA is arising out of an judgment dated 11.04.2023 passed by the Learned Single Judge in W.P.(C.) No. 3766/2007 titled *Sanjay Sharma Vs. State of Punjab and Ors.*

2. The facts of the case reveal that the appellant herein started his career by joining the post of Reception-cum-Hospitality Officer at Punjab Bhawan, New Delhi in the year 1984. He was appointed in the pay scale of Rs. 7,880/-13,500/- with initial start of Rs. 8,000/-.

3. The appellant continued to work up to 2002, and an order was passed on 15.04.2002 by the Principal Secretary, Government of Punjab,

LPA 521/2023

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Department of General Administration, posting the petitioner to the post of General Manager in his existing pay scale of Rs. 7,880/- -13,500/-.

4. In order dated 15.04.2002, it was mentioned that the appellant shall continue as General Manager till an Officer of Indian Administrative Officer (IAS)/ Punjab Civil Service (PCS) is posted on regular basis of General Manager. The Respondent by an order dated 21.05.2002 deleted the stipulation from the order dated 15.04.2002 that “*the appellant is being promoted till an IAS/ PCS Officer is appointed to the post of General Manager*”.

5. The contention of the appellant is that by an order dated 13.11.2002, the State of Punjab accorded the sanction of creation of one post of General Manager, Punjab Bhawan, New Delhi. The Appellant thus started functioning on a sanctioned post.

6. The appellant has further contended that he was working on the post of General Manager in pay scale of Rs. 7,880/- -13500/-, and as the post was sanctioned and was carrying a pay scale of Rs. 12,000/- -16,350/-, the appellant submitted a representation for grant of higher pay scale to the Resident Commissioner, Punjab Bhawan. The representation was submitted on 05.01.2005 and on 30.05.2005, a higher pay scale of Rs. 12,000/- – 16,350/- was granted to the appellant. The appellant has further stated that on account of some audit objection a letter dated 23.02.2006 was sent to the Secretary, Government of Punjab, Department of Finance by the Deputy Resident Commission with request to grant ex-post facto approval in the



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matter of grant of pay scale of Rs. 12,000/- -16,350/- to the appellant. However, instead of grant of ex-post facto approval, a notice was issued on 13.04.2007 conveying a decision dated 26.02.2007 in respect of withdrawal of higher pay scale of Rs. 12,000/- - 16,350/-.

7. The appellant immediately submitted a reply to the notice dated 13.04.2007. However, on 26.04.2007, the higher pay scale granted to the appellant was withdrawn.

8. The appellant being aggrieved by the order of withdrawal of higher pay scale came up before this Court by filing a writ petition and the Learned Single Judge has dismissed the writ petition. The order dated 11.04.2023 passed by the Learned Single Judge in Paragraph Nos. 34 to 39 read as under:

“34. In the present case, when the illegality was discovered, requisite order for recovery of the excess payment was made by the respondents during the period when the petitioner was still working. Thus, there was no impediment in recovery of the amount from the petitioner, as the order of recovery was issued when the petitioner was still in service.

35. Hon’ble Supreme Court in the case of Chandi Prasad Uniyal (Supra) has categorically held as follows:

“13. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the



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peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.

14. We are concerned with the excess payment of public money which is often described as “taxpayers’ money” which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case [(2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] and in Col. B.J. Akkara case [(2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529] , the excess payment made due to wrong/irregular pay fixation can always be recovered.”

36. In view of the law laid down by the Hon’ble Supreme Court in the aforesaid case, Govt. of India, Ministry of Personnel,



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Public Grievances & Pensions, Department of Personnel & Training, has issued notification detailing the procedure to deal with the issue of wrongful/excess payments. Thus, the said notification reads as under:

“Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
Estt. (Pay-I) Section

Recovery / waiver of the wrongful / excess payments made to Government servants.

Department of Personnel & Training has issued instructions from time to time regarding recovery of wrongful / excess payments made to Government servants. The essence of these instructions has been summarized in the following paras for guidance and better understanding.

I. Supreme Court Judgments on the matter of recovery of excess payments:

The issue of recovery of wrongful/excess payments made to Government servants was examined by the Department of Personnel & Training in consultation with the Department of Expenditure and the Department of Legal Affairs in the light of the following judgments of the Hon^{ble} Supreme Court:

(i) Chandi Prasad Uniyal and Ors Vs State Of Uttarakhand And Ors, 2012 AIR SCW 4742, (2012) 8 SCC 417, decided on 17th August, 2012

(ii) State of Punjab & Ors Vs Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (Arising out of SLP(C) No.11684 of 2012) decided on 18th December, 2014.”



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II Procedure to deal with the issue of wrongful/excess payments:

In view of the law declared by Courts and reiterated by the Hon''ble Supreme Court in the case of Chandi Prasad Uniyal and Ors Vs State of Uttarakhand and Ors, 2012 AIR SCW 4742, (2012) 8 SCC 417, the Ministries/Departments were advised to deal with the issue of wrongful/excess payments as follows:

- i. In all cases where the excess payments on account of wrong pay fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements etc. come to notice, immediate corrective action must be taken.*
- ii. In a case where the authorities decide to rectify an incorrect order, a showcause notice may be issued to the concerned employee informing him of the decision to rectify the order which has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee to represent against the same. Speaking orders may thereafter be passed after consideration of the representations, if any, made by the employee.*
- iii. Whenever any excess payment has been made on account of fraud, misrepresentation, collusion, favoritism, negligence or, carelessness, etc., roles of those responsible for overpayments in such cases, and the employees who benefitted from such actions should be identified, and departmental/criminal action should be considered in appropriate cases.*



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iv. *Recovery should be made in all cases of overpayment barring few exceptions of extreme hardships. No waiver of recovery may be allowed without the approval of Department of Expenditure.*

v. *While ordering recovery, all the circumstances of the case should be taken into account. In appropriate cases, the concerned employee may be allowed to refund the money in suitable installments with the approval of Secretary in the Ministry, in consultation with the Financial Adviser (FA).*

vi. *Wherever the relevant rules provide for payment of interest on amounts retained by the employee beyond the stipulated period etc. as in the case of Travelling Allowance (TA), interest would continue to be recovered from the employee as heretofore.*

[Para 3 of DoPT's OM No 18/26/2011-Estt (Pay-I) dated 06.02.2014]

II Situations wherein recoveries of wrongful/excess payments by the employers would be impermissible in law

Para II(iv) of the above instructions provides inter-alia that recovery should be made in all cases of overpayment barring few exceptions of extreme hardships. The issue was considered by the Hon''ble Supreme Court in the case of State of Punjab & Ors Vs Rafiq Masih (White Washer) etc. in CA No.11527 of 2014 {arising out of SLP(C) No.11684 of 2012}. In this case, the Hon''ble Supreme Court observed that it is not possible to postulate all situations of hardship which would



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govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. The Hon''ble Supreme Court summarized 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.

IV Procedure to deal with wrongful/excess payments by the Administrative Ministry/ Departments

Ministries / Departments may deal with the issue of wrongful / excess payments made to Government



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servants accordingly. Wherever waiver of recovery in the abovementioned situations is considered, administrative Ministries/ Departments may process the same with the express approval of Department of Expenditure in terms of DoPT's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014.

[DoPT's OM No. 18/03/2015-Estt (Pay-I) dated 02.03.2016]"

37. Perusal of the aforesaid clearly shows that it is in cases such as where the employees belong to Class III or Class IV service; or where recovery is sought to be made from retired employees or employees who are due to retire within one year or where the recovery from employees is sought to be made in cases where excess payment has been made for a period in excess of 5 years, that recovery shall not be made. However, in the present case, the petitioner was working to a Class II post and recovery was made during the course of his employment. Further, in the peculiar facts and circumstances of the present case, it is clear that the petitioner was appointed to a specially created temporary post in his own pay scale. Thus, it is clear that the petitioner was not entitled to any higher pay scale and recoveries have rightly been made from the petitioner. 38. Even otherwise, the due amounts have already been recovered by the respondent from the petitioner. 39. In view of the aforesaid, the present writ petition is dismissed along with all the pending applications."

9. The aforesaid order passed by the Learned Single Judge makes it very clear that the appellant before this Court was appointed as Reception-cum-Hospitality Officer at Punjab Bhawan in the year 1984 in the pay scale of Rs. 7,880/- - 13,500/-. At the relevant point of time he was posted/appointed as General Manager, Punjab Bhawan with a clear stipulation in the appointment order 15.04.2002 that he will be granted the same pay scale



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of Rs. 7,880/- - 13,500/-, and he is being posted against the temporary post of General Manager.

10. The Learned Single Judge has arrived at a conclusion that once the order posting the petitioner General Manager contains the clear stipulation that he will be entitled for a pay scale of Rs. 7,880/- - 13,500/-, the question of granting him higher pay scale does not arise.

11. The Learned Single Judge has also arrived at a conclusion that the appointment of the appellant as General Manager was made as matter of administrative exigency so that the work of the Punjab Bhawan did not suffer, and once he was appointed in the pay scale of Rs. 7,880 – Rs. 13,500/- the question of granting him a higher pay scale does not arise.

12. The Learned Single Judge has relied upon a judgment delivered in the case of **Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others**, (2012) 8 SCC 417. The Learned Single Judge has held that pursuant to the judgment delivered by the Hon'ble Supreme Court in the aforesaid case, the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, has issued a Office Memorandum No. 18/03/2015-Estt (Pay-I) dated 02.03.2016, and the action has rightly been initiated against the petitioner for recovery of the excess amount paid to him. The Learned Single Judge has dismissed the writ petition after upholding the action of the employer.



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13. Learned counsel for the appellant has vehemently argued before this Court that the judgment delivered by the Learned Single Judge is contrary to the facts and law, and the appellant is entitled for the salary of the post of General Manager as he has worked as General Manager.

14. Learned counsel for the appellant has also vehemently argued before this Court that the Learned Single Judge has failed to consider the fact that the appellant was holding the post of General Manager which was carrying a pay scale of Rs. 12,000/- – 16,350/- and the temporary post later on became permanent post on 25.01.2002, and, therefore, once the appellant was working on a permanent post of General Manager, he is certainly entitled for higher pay scale and the same could not have been withdrawn.

15. Learned counsel for the appellant has argued before this Court that the question of recovery from the petitioner does not arise as he has worked on the post of General Manager, and the petitioner, though was posted against the temporary post, the post later on became a permanent post, and, therefore, the order passed by the Learned Single Judge deserves to be set-aside.

16. Learned Counsel for the appellant has also argued before this Court that the order directing recovery is bad in law and recovery against the appellant amounts to violation of fundamental rights granted to the appellant under Article 14 and 16 of the Constitution of India.



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17. Learned counsel for the appellant has vehemently argued before this Court that by no stretch of imagination, recovery could not have been ordered in the peculiar facts and circumstances of the case especially in light of the fact that the appellant has worked on the post of General Manger.

18. Learned counsel has placed reliance upon judgments delivered by the Hon'ble Supreme Court in the following cases:

- “i) K.I. Shephard and Others Vs. Union of India and Others, (1987) 4 SCC 431*
- ii) Shekhar Ghosh Vs. Union of India and Another, (2007) 1 SCC 331*
- iii) Syed Abdul Qadir and Others Vs. State of Bihar and Others, (2009) 3 SCC 475*
- iv) State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334*
- v) Thomas Daniel Vs. State of Kerala & Ors., 2022 SCC OnLine SC 536.”*

19. Heard learned counsel for the appellant at length and perused the record. The undisputed facts of the case makes it very clear that the appellant was appointed in the year 1984 in the pay-scale of Rs. 825/- - 1,700/- as Reception-cum-Hospitality Officer in Punjab Bhawan, New Delhi and the pay scale of Rs. 825/- - 1700/- was revised to that of Rs. 7,220/- - 11,660/- vide notification dated 16.01.1998. Meaning thereby, the appellant was working at Punjab Bhawan on the post of Reception-cum-Hospitality Officer in the pay scale of Rs. 7,220/- - 11,660/-.



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20. The Appellant in the year 2002 was appointed to the post of General Manager which was a temporary post and the order of appointment was issued keeping in view the administrative exigency at the relevant point of time. It was categorically mentioned in the appointment order that the arrangement of appointing the appellant as a General Manager is till an IAS/ PCS Officer is appointed on regular post. It was also categorically mentioned that he will be entitled only for the pay scale for which he has withdrawn for the post of Reception-cum-Hospitality Officer i.e. pay scale of Rs. 7,200/- - 11660/-. The order dated 15.04.2002 is reproduced as under:

**“GOVERNMENT OF PUNJAB
DEPARTMENT OF GENERAL ADMINISTRATION
(SECRETARIAT ESTABLISHMENT –IV BRANCH)
ORDER**

Shri Sanjay Sharma, Reception-cum-Hospitality Officer, Punjab Bhawan, now Delhi is appointed as General Manager, Punjab Bhawan, now Delhi in his own pay scale against the vacant post of General Manager. This arrangement will continue till an IAS/PS Officer is appointed on regular basis. This order is being with the approval of the Chief Secretary.

*Dated. Chandigarh
10th April, 2002*

.....illegible.....

*Principal Secretary to Govt. PB
Department of General Administration
No. 12/16/2001 Botany(3)/5694 Dated Chandigarh the 16th
April, 2002*

A copy is forwarded to the following for information and necessary action:-



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1. *Principal Resident Commissioner, Punjab Bhawan, New Delhi with reference to the D.E. Letter No. PRC/PB/PF/27 dated the 22nd April, 2002.*
2. *Secretary/ Principal..... illegible.... Department of General Administration, Punjab.*
3. *P.S./ Secretary personal Personnel Department Punjab.*
4. *Shri Sanjay Sharma, Reception-cum-Hospitality Officer Punjab Bhawan, New Delhi.*
5. *General Manager, Punjab Bhawan, New Delhi.*

Under Secretary Secretariat Administration

1. *Superintendent Establishment –I/III Branch.*
2. *Superintendent, Account I to V Branch.*
3. *ADO-I/II Department of General Administration.*

*Dated Chandigarh
The 16th April, 2002.”*

21. On 21.05.2002, the appointment order of the petitioner was modified and only one sentence from the appointment order was deleted i.e “*this arrangement will continue till an IAS/PCS Officer is appointed on regular basis*”. The order dated 21.05.2002 is reproduced as under.

**“GOVERNMENT OF PUNJAB
DEPARTMENT OF GENERAL ADMINISTRATION
(SECRETARIAT ESTABLISHMENT –IV BRANCH)
ORDER**

In the order dated the 15th April, 2007 issued vide Endst. No. 17/16/2001-Estt.IV (3) 5694 Dated 16th April, 2022 by the Department of General Administration regarding appointment of Shri Sanjay Sharma as General Manager, Punjab Bhawan, New Delhi the words “This arrangement will continue till all IAS/ PCS Officer is appointed on regular basis are hereby deleted.

Dated Chandigarh

The 21st May, 2002

Y.S. Ratra



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Chief Secretary Govt. of Punjab

Endst. No. 12/16/2001-Estt-IV(3) 8200-04

A copy is forwarded to the following for information and necessary action:-

- 1. Principal Resident Commissioner, Punjab Bhawan, New Delhi*
- 2. Secretary/ Principal Secretary, Department of General Administration, Punjab.*
- 3. PS/ Secretary personnel, Personnel Department, Punjab, Chandigarh.*
- 4. Shri Sanjay Sharma General Manager, Punjab Bhawan, New Delhi.*
- 5. General Manager, Punjab Bhawan, New Delhi.*

s/d

Under Secretary Secretariat Administration.”

22. The State of Punjab issued another order on 20.09.2002 according sanction for creation of one temporary post of General Manager, Punjab Bhawan in the pay scale of Rs. 7,880/- - 13,500/-. The order dated 20.09.2002 is reproduced as under:

**“Government of Punjab
Department of General Administration (Secretariat
Establishment-I Br.)**

Orders of the Governor of Punjab

Sanction is hereby accorded to the creation of one temporary post of General Manager, Punjab Bhawan, New Delhi in the pay scale of Rs.7880-13500 (with initial start of Rs.8000/-) plus Rs.1000/- special allowance from 15.04.2022 to 28.02.2003 in the Secretariat Cadre after taking one post of PCS out of the PCS cadre. 2. The incumbent of the post will be entitled to such other allowances as may be admissible to him under the Rules framed from time to time. 3. The expenditure will be met from the Budget provisions under major Head “2052-Secretariat Genereal Service-091-attached offices” for the year 2002-2003.



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4. This issues with the concurrence of the Department of Finance conveyed vide their I.D. No.13/106/2002- 37EI/2665, dated 20.09.2002.”

23. The aforesaid order makes it very clear that it was issued to create a temporary post of General Manager so that the petitioner who has been appointed on the post of General Manager continues against the temporary post carrying pay scale of Rs. 7,880 – 13,500/-.

24. It is evident from the record that the appellant before this Court was appointed as General Manager in his own pay scale i.e. Rs. 7,880 – 13,500/- and subsequently a temporary post was created in the same pay scale. No order has been brought on record before the learned Single Judge nor before this Court to establish that the appellant, after following due process of law, was promoted to the post of General Manager. It was stop-gap arrange done by the Respondents and even in the appointment order the pay scale mentioned was Rs. 7,880/- 13,500/-.

25. The undisputed facts of the case also reveal that it was the appellant who made a representation to the Resident Commissioner of Punjab Bhawan for grant of higher pay scale on Rs. 12,000 – Rs. 16,350/- and based upon the representation dated 05.01.2005, the Resident Commissioner obtained approval from the Minister in-charge to grant the higher pay scale.

26. In the considered opinion of this Court, such a practice of granting higher pay scale based upon representation without there being a promotion is unheard of. It is also an admitted fact that the Finance Department of the



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State of Punjab never accorded any approval in the matter of grant of higher pay scale, and it was on an audit objection, the mistake was detected and immediately a notice was issued on 26.02.2007. The appellant did submit a reply to the notice on 13.07.2007, and after considering the reply, the grant of pay scale was withdrawn vide order dated 24.01.2008.

27. The most important aspect of the case is that the appellant, who was holding the post of General Manager at the relevant point of time, was also the Drawing and Disbursing Officer for himself. He, in fact, misused his official position. Thus, he has misused his official position knowing fully well that at no point of time higher pay scale was granted to him while promoting him by way of stop-gap arrangement. In the appointment order it was categorically mentioned that he will be entitled for pay scale of Rs. 7,880/- - Rs. 13,500/-.

28. Therefore, in the considered opinion of this Court, the action of the respondents in recovering the amount is justified. Otherwise also, after creation of temporary post of General Manager, the appellant was entitled for the pay scale mentioned in the order creating temporary post dated 21.05.2002. The order dated 21.05.2002 makes it very clear that the temporary was being created in the pay scale of Rs. 7,880/- 13,500/- and the appellant, in fact, was appointed against this temporary post carrying the aforesaid pay scale. In the considered opinion of this Court, the respondents were justified in recovering the excess amount paid to the appellant.



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29. The Hon'ble Supreme Court in the case of **Col. B. J. Akkara (Retd.) V. Govt. of India, (2006) 11 SCC 709** in Paragraph Nos. 27 and 28 has held as under:

“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide 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] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652]):

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) 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.

28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had



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knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.”

30. In light of the aforesaid judgment, as the appellant had the knowledge that the payment received was in excess of what was due, cannot claim a relief of quashing the recovery done by the respondents. Once the appointment order of the appellant provided for a particular pay scale, he was entitled for the same, and, therefore, the question of quashing the recovery as prayed for does not arise.

31. Learned counsel for the appellant has placed reliance upon a judgment delivered the case of ***K.I. Shephard*** (Supra). The Paragraph Nos. 12, 13 and 15 of the aforesaid judgment read as under:

“12. *Mullan in Fairness: The New Natural Justice* has stated:

“Natural justice co-exists with, or reflected, a wider principle of fairness in decision-making and that all judicial and administrative decision-making and that all judicial and administrative decision-makers had a duty to act fairly.”

In the case of State of Orissa v. Dr (Ms) Binapani Dei [AIR 1967 SC 1269 : (1967) 2 SCR 625 : (1967) 2 LLJ 266] this Court observed:

“It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after



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informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken: the High Court was, in our judgment, right in setting aside the order of the State.”

In A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : (1970) 1 SCR 457] a Constitution Bench quoted with approval the observations of Lord Parker in Re: (H) K (an infant) [(1969) 3 SCC 84 : (1970) 2 SCR 600 : 38 FJR 1] . Hegde, J. speaking for the Court stated: (SCC p. 272, para 20)

“Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Oftentimes it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry.”

These observations in A.K. Kraipak case [(1969) 2 SCC 262 : (1970) 1 SCR 457] were followed by another Constitution Bench of this Court in Chandra Bhavan Boarding and Lodging,



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Bangalore v. State of Mysore [(1969) 3 SCC 84 : (1970) 2 SCR 600 : 38 FJR 1] . In Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664 : AIR 1981 SC 818 : (1981) 2 SCR 533 : (1981) 51 Com Cas 210] a three Judge Bench of this Court examined this aspect of natural justice. Sarkaria, J. who spoke for the court, stated: (SCC pp. 683-84, para 28)

“During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lords in Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66 (HL)] it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for the purpose, whenever a breach of the rule of natural justice was alleged, courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was the position before the decision dated February 7, 1967, of this Court in Dr Binapani Dei case [AIR 1967 SC 1269 : (1967) 2 SCR 625 : (1967) 2 LLJ 266] ; wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and administrative decisions, which was perceptibly mitigated in Binapani Dei case [AIR 1967 SC 1269 : (1967) 2 SCR 625 : (1967) 2 LLJ 266] was further rubbed out to a vanishing point in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : (1970) 1 SCR 457]”

On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a)



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to make representations on their own behalf; (b) or to appear at a hearing or enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet.

13. Natural justice has various facets and acting fairly is one of them. RBI which monitored the three amalgamations was required to act fairly in the facts of the case. The situation necessitated a participatory enquiry in regard to the excluded employees. Since the decision to exclude them from service under the transferee banks is grounded upon a set of facts the correctness whereof they deny, if an opportunity to know the allegations and to have their say had been afforded, they could have no grievance on this score. The action deprives them of their livelihood and brings adverse civil consequences and could obviously not be taken on the ipse dixit of RBI officers without verification of facts. It is quite possible that a manoeuvring officer of the banking company adversely disposed of towards a particular employee of such bank could make a report against such employee and have him excluded from further service under the transferee bank. The possibility of exclusion on the basis of some mistake such as to identity cannot also be ruled out. There is all the more apprehension of this type as the process has to be completed quickly and very often the records of a large number of employees have to be scrutinised. We are of the view that rules of natural justice apply to administrative action and in the instant cases the decision to exclude a section of the employees without complying with requirements of natural justice was bad.

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15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of



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civilisation and Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded employees before the scheme is finalised so that a hearing commensurate to the situation is afforded before a section of the employees is thrown out of employment.”

32. This Court has carefully gone through the aforesaid judgment, and in the present case a notice was certainly issued to the appellant before withdrawing the higher pay scale and before rectifying the mistake. The appellant did file a reply in the matter and, therefore, in light of the aforesaid judgment as principles of natural justice and fairplay have not been excluded at all, the question of setting aside the recovery based upon the aforesaid judgment does not arise.

33. Learned counsel for the appellant has also placed reliance upon a judgment in the case of **Shekhar Ghosh** (Supra) . The said case also deals with issue of natural justice and Paragraph Nos. 11 and 17 of the aforesaid judgment read as under:

“11. The mistake was said to have been detected on the basis of the complaint made by four employees. Serious allegations had been made against the appellant therein. If the allegations made therein were correct, then not only the appellant but also



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other officers of the department, whom he had allegedly paid bribe for forging the documents, were guilty of misconduct.

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17. It is not denied or disputed that even when a mistake is sought to be rectified, if by reason thereof, an employee has to suffer civil consequences ordinarily the principles of natural justice are required to be complied with. It was so held in Ram Ujarey v. Union of India [(1999) 1 SCC 685 : 1999 SCC (L&S) 374] in the following terms: (SCC pp. 691-92, para 17)

“17. There is yet another infirmity in the impugned order of reversion. The appellant had been allowed the benefit of service rendered by him as Coal Khalasi in the Loco Department from 1964 to 1972 as that period was counted towards his seniority and it was on that basis that he was called for the trade tests which the appellant had passed and was, thereafter, promoted to the posts of Semi-skilled Fitter and Skilled Fitter. If the benefit of service rendered by him from 1964 to 1972 was intended to be withdrawn and promotion orders were to be cancelled as having been passed on account of mistake, the respondents ought to have first given an opportunity of hearing to the appellant. The appellant having earned two promotions after having passed the trade tests, could not have been legally reverted two steps below and brought back to the post of khalasi without being informed that the period of service rendered by him from 1964 to 1972 could not be counted towards his seniority and, therefore, the promotion orders would be cancelled. In a situation of this nature, it was not open to the respondents to have made up their mind unilaterally on facts which could have been shown by the appellant to be not correct but this chance never came as the appellant, at no stage, was informed of the action which the respondents intended to take against him.”



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34. This Court has carefully gone through the aforesaid judgment, and the fact remain that the mistake committed in the past has been rectified by following principles of natural justice and fairplay. Opportunity was certainly granted to the appellant and, therefore, the judgment delivered in the case of **Shekhar Ghosh** (Supra) also does not help the appellant in any manner.

35. Learned counsel has place reliance on another judgment delivered in the case of **Syed Abdul Qadir** (Supra). Paragraph Nos. 58 and 59 of the aforesaid judgment read as under:

“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



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SEB v. Bijay Bhadur [(2000) 10 SCC 99 : 2000 SCC (L&S) 394] .

59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

36. This Court has carefully gone through the aforesaid judgment and the facts of the present case reveal that the appellant himself was Drawing and Disbursing Officer while working as a General Manger. He was fully aware of the fact that he was not entitled for the higher pay scale and in spite of that he submitted a representation for grant of high pay scale. The appellant, as he was not entitled for the higher pay scale, keeping in view the order by which he was appointed on the post of General Manager, the aforesaid judgment relied upon also does not help the appellant at all in any manner.



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37. The learned Single Judge while dismissing the writ petition has relied upon a judgment delivered in the case of ***Chandi Prasad Uniyal*** (Supra). The Office Memorandum subsequently issued by the Department of Personnel and Training provides for recovery in the matter of erroneous pay fixation.

38. The Office Memorandum issued by the Department of Personnel and Training empowers the employer to recover the excess payment and the same can be recovered keeping in view the judgment delivered in the case ***State of Punjab Vs. Rafiq Masih (White Washer) and Others.***

39. The Hon'ble Supreme Court in the case of ***Rafiq Masih*** (Supra), after taking into account the earlier judgment, in Paragraph No 18 has summarized the issue of recovery. The Paragraph 18 of the aforesaid judgment reads as under:

“18. 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 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 the employees belonging to Class III and Class IV service (or Group C and Group D service).

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

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



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(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."

40. In the considered opinion of this Court, the present case is not a case of Class III or Class IV employee. It is not a case of retired employee, and it is also not a case of old and stale recovery which is being done from the appellant. On the contrary, it is the case of the recovery of amount which has been erroneously paid to the appellant without sanction of the Finance Department and the same was recovered promptly by the Department, and, therefore, the question of granting any relief to the appellant in the peculiar facts and circumstances does not arise.

41. The Hon'ble Supreme Court in a recent case titled ***Thomas Daniel Vs. State of Kerala & Ors***, 2022 SCC OnLine SC 536 has reiterated the law laid down in the case of ***Rafiq Masih*** (Supra).

42. The excess amount received by the appellant is not anybody's private money, but it has come from the coffer of public exchequer. It is the money contributed by the tax payers, and hard earned money of public at large. The wrongful payment made to the petitioner by the employer is being rightly recovered and as the principles of natural justice and fairplay have



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been followed, the question of interference by this Court with the recovery and the order passed by the learned Single Judge does not arise.

43. With the aforesaid, the present LPA stands dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

JULY 04, 2023

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