IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-
The Hon'ble Justice Madhuresh Prasad
And
The Hon'ble Justice Supratim Bhattacharya

WPCT 17 OF 2023
The Chief General Manager,
Bharat Sanchar Nigam Limited and others
Versus
Bharati Saha and others

For the Appellants : Mr. Anil Kumar Gupta
Mr. Rahul Arya
Mr. Yogesh Kr. Sharma

For the Respondent No.1 : Mr. B. R. Das
Mr. K. K. Ghosh

Delivered On **:** 02.07.2025

Supratim Bhattacharya, J.:

1. The petitioners herein were the respondent before the Central Administrative Tribunal Calcutta Bench (hereinafter to be referred to as CAT) have preferred the present writ petition being aggrieved by and dissatisfied with the Order dated 22.04.2019 passed by the CAT whereby the Ld. Tribunal passed the following order:

> *"The claim of the applicant in regards to the pay fixation is dismissed but do not allow recovery of the excess payment we hereby direct the respondents to maintain the revised fixation as done by them but not recover the excess*

> *payment due to wrong fixation; and if any recovery has been done, the same shall be refunded to the applicant immediately on receipt of this order.*"

2. After the passing of the Order by the CAT, the applicant therein expired as such his wife namely Bharati Saha has been substituted as the sole respondent in the present writ petition.

3. The fact of the instant lis is that Makhan Lal Saha had joined as an employee of the then Indian Post and Telegraph Department later renamed as Department of Telecommunication as a Wireless Operator on or about 21.08.1978 in the Northeast Telecom Circle, wherefrom he got promoted as Junior Telecom Officer on or about 26.12.1991 and thereafter became Sub-Divisional Engineer (officating) with effect from 10.11.1999 and was promoted in the said post in substantive capacity with effect from 16.01.2002. Thereafter the said Department having become corporate office was renamed as Bharat Sanchar Nigam Limited (BSNL) wherein the Respondent/Petitioner was absorbed on 01/10/2000.

4. The pay scale of the Respondent/Petitioner from time to time got enhanced and during such period according to the said Department due to wrong fixation of pay scale the petitioner received some extra amount. It is the contention of the Appellants that the said amount which has been received in excess is to be refunded by the employee.

According to the Calcutta Telephones, Kolkata there was overdrawal of Rs. 3,29,224/- which has been found by the said authority on revised fixation and had been directed to be recovered from the salary on and from the month of

July 2012 in equal instalments. The aforementioned sum has been recovered from the Respondent. This recovery has given rise to the present lis.

5. The Petitioners being represented by Anil Kumar Gupta and assisted by Rahul Arya and Yogesh Kumar Sharma during submission has categorically submitted that the excess amount which has been paid to the Petitioner has been made out of mistake and the said money being public money is required to be obtained by the authority from the Respondent/Petitioner.

The Learned Counsel has relied upon a judgment of the Hon'ble Apex Court in the case between Chandi Prasad Uniyal and ors. Vs. State of Uttarakhand and ors. reported in *(2012) 8 SCC 417*. Relying upon the said judgment, the ld. Counsel has submitted that amount paid/received by the respondent has been without authority of law and can always be recovered barring few exceptions of extreme hardship but not as a matter of right.

He has further submitted that no law has been laid down through any judgment of the Hon'ble Apex Court that only if there is misrepresentation or fraud on the part of the recipients of excess amount of money, then only the excess amount paid to the concerned person can be recovered.

6. Per contra, Mr. B. R, Das being assisted by Mr. K.K . Ghosh representing the Respondent No.1 namely Bharati Saha the wife of late Makhanlal Saha has vehemently opposed the submission of the learned counsels representing the petitioners.

He has submitted that the Tribunal has arrived at the correct finding and the judgment passed by the learned Tribunal is in consonance with the view of the Hon'ble Apex Court which has been laid down through several judgments. The Hon'ble Apex Court has time and again reiterated the fact that if excess amount has been paid to an employee because of no fault of the said employee on the contrary because of misinterpretation of the facts by the employer then the employee cannot be compelled to refund the excess amount received by him, that also after several years.

The learned Counsel banking upon the aforementioned submissions, has reiterated that the present writ petition is devoid of any merit and the judgment passed by the learned Tribunal is to be upheld.

7. Considered the submission of the learned counsels representing the parties and on perusal of the records it transpires that the present writ application has been preferred by the Bharat Sanchar Nigam Ltd. against the respondent namely Bharati Saha who is the wife of the deceased employee who has been said to be paid remuneration in excess of the actual amount of money which the said employee was entitled to.

8. The employee namely Makhanlal Saha since deceased has preferred the original application before the Central Administrative Tribunal Calcutta bench seeking the following reliefs:

> "8.i)*Rescind, recall and/or cancel the orders being Annexure Al & A2 for all intents and purpose.*
>
> *ii) Issue revised fixation of pay in IDA scale of Rs. 11,875-17-275/- with effect from his regular promotion on 16.01.2002 and as regulated and fixed at Rs. 8500.00 in CDA scale of Rs. 7500-250-12,000/-.*
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> *iii) Refund all the amount deducted as per Annexure-Al with suitable interests thereupon, forthwith.*

iv) Certify and transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof conscionable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) to (iii), above.

v) Pass such other order/orders and/or direction /directions as deemed fit and proper.

vi) Costs."

9. Before the learned Administrative Tribunal the employer authority has filed written statement to which reply was also filed on behalf of the respondent/petitioner. So there has been exchange of affidavits through which submission of the contesting parties have been placed. Considering the materials placed on record on behalf of the contending parties the learned Tribunal has arrived at the following findings:

> *"9. As regards to the recovery of excess payment as claimed by the respondents, it is matter of the principle of natural justice. It was ther department who actually had fixed the pay on the officiating pay scale of the applicatn. The role of the applicant in this fixation of pay in the wrong pay scale has not been specifically highlighted by the respondents. It is therefore, considered not fair to recover the excess payment particularlyt for a period which is of a very long duration. If it is found wrongly fixed, the department should have rectified it immediately. Therefore, recovering of excess payment running into more than Rs. 3 lakhs isconsidered not fair and would cause undue hardship to the applicant, keeping in view of the above, the O.A. is partly allowed.*
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> 10. *The claim of the applicant in regards to the pay fixation is dismissed but do not allow recovery of the excess payment we hereby direct the respondents to maintain the revised fixation as done by them but not recover the excess payment due to wrong fixation; and if any recovery has*

> *been done, the same shall be refunded to the applicant immediately on receipt of this order*"

10. It is admitted fact that initially the respondent/petitioner was an employee of the then Post and Telegraph department which thereafter became department of telecommunication in the capacity of a wireless operator. Therefrom the said employee was promoted as Junior Telecom Officer on 26.12.1991 and later on was promoted to Sub-Divisional Engineer (officiating) with effect from 10.11.1999 and promoted to the said post in substantive capacity on 16.01.2002 and thereafter the said department became corporate office and has been converted into Bharat Sanchar Nigam Ltd. (BSNL) wherein the respondent/petitioner stood absorbed in the said corporate. The dispute as regards to excess payment cropped up as the employee has sought for payment in IDA (Industrial DA) scale instead of CDA (Central DA) scale. The excess amount received by the employee during this changeover of pay scale is the issue for dispute. Ultimately during audit the pay fixation of the employee was objected to as the scale of pay was said to have been wrongly fixed in the scale of officiating post instead of the scale of regular post which the employee was holding. Rupees Three Lakhs has been already recovered out of the said excess payment.

11. The moot point for consideration is as to whether the excess payment which has been made to the employee can at all be recovered from the employee or not.

In this context this Court has gone through the following judgments passed by the Hon'ble Apex Court regarding the issue of recovery of excess payment.

12. In the case between *Sahib Ram Vs. State of Haryana and Ors. Reported in 1995 Supp (1) SCC 18*, the view of the Hon'ble Court has been expressed in Paragraph 5 of the said judgment which is as follows

> *"5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."*

In Paragraph-11 of the judgment passed by a three Judge Bench of the Hon'ble Apex Court in the case between *Shyam Babu Verma and Ors. Vs. Union of India and Ors.,* reported in *(1994) 2 SCC 521* the following has been laid:

> *"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the*

> *respondents, the petitioners being in no way responsible for the same."*

Another three Judge Bench of the Hon'ble Apex Court has also dealt with the same issue in the case between *Syed Abdul Qadir and ors. Vs. State of Bihar and Ors. Reported in (2009) 3 SCC 475* in Paragraphs 57 to 61 the following have been laid:

> *"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.*
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> *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] .

*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.*

*60**.** Learned counsel also submitted that prior to the interim order passed by this Court on 7-4-2003 in the special leave petitions, whereby the order of recovery passed by the Division Bench of the High Court was stayed, some instalments/amount had already been recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the appellant teachers and in order to maintain parity, it would be in the fitness of things that the amount that has been recovered from the teachers should be refunded to them..*

*61**.** In the result, the appeals are allowed in part; the impugned judgment so far as it relates to the direction given for recovery of the amount that has been paid in excess to the appellant teachers is set aside and that part of the impugned judgment whereby it has been held by the Division Bench*

> *that the amended provisions of FR 22-C would apply to the appellant teachers is upheld. We direct that no recovery of the excess amount, that has been paid to the teachers of secondary schools, be made, irrespective of the fact whether they have moved this Court or not. We also direct that the amount that has been recovered from some of the teachers, after the impugned judgment was passed by the High Court, irrespective of the fact whether they have moved this Court or not, be refunded to them within three months from the date of receipt of copy of this judgment."*

The judgment passed in the case between *Chandi Prasad Uniyal and ors. Vs. State of Uttarakhand and ors. Reported in (2012) 8 SCC 417*. A Division Bench of the Hon'ble Apex Court has taken into consideration theself same issue. While deciding the issue the Hon'ble Apex court has taken into consideration the aforementioned three cases and has come to the finding which has been laid down in Paragraphs 13, 14 and 15:

> *"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 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.*
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> *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."*

This Court also has gone through the well-known case decided by the Hon'ble Apex Court in the lis between *State of Punjab and Ors. Vs. Rafiq Masih (whitewasher) and Ors. Reported in (2015) 4 SCC 334*. While considering the issue of recovery the Hon'ble Apex Court has also taken into consideration the aforementioned judgements apart from other judgments and has laid down the circumstances wherein excess amount of money paid to the employee can be recovered. With the intention of not making the present judgment a lengthy one this Court refers only to the Paragraph No. 18 of the said judgment:

"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.

(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."

13. In the aforementioned judgments all the pros and cons have been taken into consideration. From the discussions it is clear that recovery of excess amount of payment made to the employee because of no fault or fraud played by the employee may result in hardship and normally not permissible from the employees belonging to Class III and Class IV service (Group-C and Group-D service).

Normally recovery can also not be made from a retired employee or from an employee who is due to retire within one year of the order of recovery. Recovery from an employee can also not normally be made when the excess payment has been made for a period in excess of 5 years before the order of recovery is issued.

Recovery can also not be made in cases where an employee has wrongly 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.

It has also been laid down that recovery cannot be made in cases 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 out way the equitable balance of the employer's right to recover.

14. In the present lis, the employee was a Group-B officer. The conversion of pay scale from Central DA pay scale (CDA) to industrial Da pay scale (IDA) took effect on and from 01.10.2000 vide office order dated 18.03.2004. In the said office order it has been categorically mentioned that *"errors and omissions occurred while calculating the arrears are subject to rectification and correction. Over payments made, if any, shall be recovered as per rules..*"

The employee retired on 31.07.2014 while the letter of the (A.O./ Cash/ Jadavpur) Calcutta telephones, Kolkata informed the said employee as regards to overdrawn amount of Rs. 3,29,224/- and the same to be recovered with effect from the salary of July 2012 in equal instalments, was dated 08.12.2011.

15. In the case in hand it is apparent that through the 'Revised Fixation Memo' dated 08.12.2011 issued by the SDE/staff/Jadavpur, BSNL/Calcutta Telephones the applicant, a Group-B employee was intimated that amount overdrawn may be recovered.

16. The Hon'ble Apex Court has dealt with the issue of recovery of excess payment made to employees in several judgments. On reading of the above quoted judgments of the Hon'ble Apex Court it transpires that the Hon'ble Apex Court has opined for non-recovery of the excess amount where there would be extreme hardship to the employees and considering the pros and cons the balance would be in favour of the employees then it would be harsh upon the employees if repayment is asked to be made.

In this case the employee was an officer of Group-B and he knew fully well that if there is any excess amount received by him it shall have to be returned as per rules if there is overdrawal. On the other hand it is also fact that the said employee has since expired and it is the widow the sole surviving heir of the employee who is to live her remaining life only on the retiral dues which has been left by her husband.

The claim of the applicant as regards the pay fixation has not been accepted by the Tribunal. The prayer in this regard has been dismissed. The Tribunal, however, taking note of the fact that the benefit on account of mistaken or wrong pay fixation received by the applicant for a considerable period of time and since no steps were taken diligently for recovering it, has directed that there should be no recovery made from the applicant. Insofar as such direction of the Tribunal is concerned, we find no infirmity in the Tribunal's order. Since the writ petition is now being pursued by the widow of the applicant, who is solely dependent upon the retiral dues for her sustenance, we are of the considered opinion that permitting any recovery now from the widow would be onerous and causing extreme hardship to her.

However, insofar as the recoveries already made from the applicant employee while he was still in service and which has already been recovered during the lifetime of the employee, the same would cause no undue or extreme hardship now to the widow of the employee.

We are, therefore, of the opinion that there was no occasion for the Tribunal to direct the writ petitioner (BSNL) to refund such excess amount received from the employee during his lifetime. The Tribunal's order insofar as it directs refund of the amounts by the employer recovered from the petitioner's husband is in our opinion unsustainable. We, therefore, set aside such direction of the Tribunal in the impugned order insofar as it directs refund by the employer to the applicant/respondent.

17. **WPCT 17** of **2023** stands accordingly **disposed of**.

18. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

19. Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)