



2025:DHC:256-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 535/2025 & CM APPL. 2465/2025, CM APPL. 2466/2025****UNION OF INDIA AND ORS**

.....Petitioners

Through: Mr. Sushil Kumar Pandey, SPC
with Mr. Hemant Kumar Mishra, Adv.

versus

SH HEERA LAL KUNDRA RETD CTI

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE AJAY DIGPAUL****JUDGMENT (ORAL)**

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16.01.2025**C. HARI SHANKAR, J.**

1. The respondent superannuated as Chief Ticket Inspector in the office of the Railways on 31 August 2016. He would ordinarily have been held entitled to pension by fixation of his basic pay on the date of his retirement as ₹ 66,000/- per month. However, on the ground that there had been an erroneous excess payment made to the respondent ten years prior thereto, the basic pay of the respondent was, on the date of his retirement, fixed as ₹ 64,100/- for the purposes of computation of his retiral dues.

2. Aggrieved thereby, the respondent approached the Central



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Administrative Tribunal¹ by way of OA 4202/2018, challenging both the refixation of his pay as well as the recoveries that were being effected from his pensionary benefits.

3. The Tribunal has, however, by the judgment under challenge, rendered on 4 April 2024, only dealt with the aspect of recovery. The Tribunal has held that, in view of the law laid down by the Supreme Court in para 18 of the decision in *State of Punjab v Rafiq Masih*², the recovery from the respondent was unjustified.

4. We have heard Mr. Pandey, learned Counsel for the petitioners, at length.

5. Apropos the judgment of the Supreme Court in *Rafiq Masih*, Mr. Pandey has sought to place reliance on a decision of a Division Bench of this Court in *Sanjay Sharma v State of Punjab*³.

6. He submits that, in *Sanjay Sharma*, *Rafiq Masih* was specifically cited and, despite reliance having been placed on *Rafiq Masih*, this Court upheld the recoveries which were made from the appellant in that case.

7. We have seen the decision in *Sanjay Sharma*, which is clearly distinguishable. In that case, the Division Bench of this Court has specifically observed, in paras 27 and 28, as under:

¹ “the learned Tribunal”, hereinafter

² (2015) 4 SCC 334

³ 2023 SCC OnLine Del 4130



“27. The most important aspect of the case is that he 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.”

8. As such, *Sanjay Sharma* was a case in which excess financial benefits have been availed by the appellant Sanjay Sharma by fraud, as he was the Drawing and Disbursing Officer who disbursed, to himself, the excess payment, in full knowledge of the fact that he was not entitled to the said payment. It is in this context that the Division Bench had gone on, in para 30, to note that, as the appellant before it had full knowledge that he was not entitled to excess payment which was drawn by him, he could not plead *Rafiq Masih* in his favour.

9. *Rafiq Masih* is clearly not applicable where the excess payment has been availed by the officer himself by fraud, or where the officer is himself complicit in drawing excess payment. This aspect is noted even in *Rafiq Masih* itself.



10. The only circumstance in which the Supreme Court has subsequently held the principle in *Rafiq Masih* not to be applicable is contained in paras 10 and 11 of *High Court of Punjab and Haryana v Jagdev Singh*⁴ which we may reproduce thus:

“10. In *State of Punjab v Rafiq Masih* this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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.

(emphasis supplied)

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made

⁴ (2016) 14 SCC 267



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in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

11. Thus, the rigour of para 18 of *Rafiq Masih* can be diluted in a situation in which the recovery is being sought to be made from a retired employee and, at the time when the excess payment was made to the employee concerned, he either subscribed to an undertaking that he was agreeable to recovery being made in the event of the payment having been found to have been made in excess or was placed on express notice of that possibility.

12. Neither of these circumstances apply in the present case.

13. We, therefore, find no reason to interfere with the judgment of the learned Tribunal.

14. We are constrained to note in passing that case after case, which is covered by *Rafiq Masih*, is brought before this Court, thereby burdening our docket to bursting point. Even today, we have more than 100 matters listed on Board.

15. It would be appropriate that administrative authorities take a call on whether the cases which are fully covered by *Rafiq Masih* – or, for that matter, by other binding judicial precedents – should be carried to this Court.



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16. With the aforesaid observations, this writ petition is dismissed *in limine*.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 16, 2025

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Click here to check corrigendum, if any