



2025:DHC:689-DB



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

+ **W.P.(C) 1301/2025 and CM APPLs. 6465-6466/2025**

UNION OF INDIA AND ANR.

.....Petitioner

Through: Mr. Sushil Kumar Pandey, Sr.
Panel Counsel with Mr. Hemant Mishra, Ms.
Richa Pandey, Ms. Neha Yadav, Advocates
with Mr. Ashish Kumar, Legal Officer

versus

RANDHIR SINGH RETD. SSE/ HORT.

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

03.02.2025

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C. HARI SHANKAR, J.

1. By the following order dated 19 January 2018, issued by the Divisional Personnel Officer, Northern Railway, the pay of the respondent, who was serving as Senior Section Engineer, and was due to retire 12 days thereafter on 31 January 2018 was downwardly refixed with effect from 27 December 2007:

“Northern Railway

L.No-726-E/16/1396/P-4

DRM Office

Dated: 19.01.18

New Delhi

ADEN/Hort/NDLS

Signature Not Verified

Digitally Signed By: AWP(C) 1301/2025
KUMAR
Signing Date: 06.02.2025
20:47:00

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Sub: - Revised pay fixation of Sh. Randhir Singh S/o Sh. Surta Singh

SSE/Hort/DKZ retiring on 31.1.18

Ref: - DFM/NDLSL. No DFM/DII/Pension/MISC dt 17.1.18

Sh. Randhir Singh S/o Sh. Surta Singh SSE/Hort/DKZ retiring on 31.1.18. His pay was wrongly fixed w.e.f 27.12.07 after making the necessary rectification his pay is being revised in the following manner:

Grade	From	Pay Earlier Drawn (₹)	Pay now revised (₹)
9300-34800+4200	01.07.07	14930	14930
9300-34800+4600	27.12.07.	16690	15780
	01.07.08	17190	16260
	01.07.09	17710	16750
	01.07.10	18250	17260
	01.07.11	18800	17780
	01.07.12	19370	18320
	01.07.13	19960	18870
	01.07.14	20560	19440
	01.07.15	21180	20030
As per 7 th CPC	01.01.16	55200	52000
	01.07.16	56900	53600
	01.07.17	58600	55200

Please make the necessary recovery under advised to Settlement Section P-13 directly.

Sd/-

For. Divl. Personal Officer
New Delhi"

2. It is an acknowledged position that no show cause notice was issued to the respondent prior to the issuance of the aforesaid order.
3. Aggrieved by the aforesaid order, the moved Central



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Administrative Tribunal¹ by way of OA 4691/2018².

4. The Tribunal has, by judgment dated 11 September 2024, under challenge herein, allowed the OA and has quashed the decision to refix the respondent's pay as well as to effect recovery from him.

5. Aggrieved by the said decision, the Railways have approached this Court by means of the present writ petition.

6. We have heard Mr. Sushil Kumar Pandey, learned Senior Panel Counsel for the petitioner.

7. In our view, the judgment of the Tribunal is unexceptionable.

8. There can be no downward refixation of pay of a government servant without notice to him, even if it is by way of correction of an error which had occurred in the past. This position is no longer *res integra*. The Supreme Court has, in *Bhagwan Shukla v UOI*³, expounded the law thus:

“3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at ₹ 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to ₹ 181 p.m. from ₹ 190 p.m. in 1991 retrospectively w.e.f. 18-12-1970. *The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus,*

¹ “the Tribunal” hereinafter

² **Randhir Singh v UOI**

³ **(1994) 6 SCC 154**



been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25-7-1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17-9-1993 as well as the order (memorandum) impugned before the Tribunal dated 25-7-1991 reducing the basic pay of the appellant from Rs 190 to Rs 181 w.e.f. 18-12-1970.”

(Emphasis supplied)

9. Moreover, in the present case, the error that was being sought to be corrected was of 11 years’ vintage. If the petitioner had continued with the error for 11 years, the least that was expected was a notice to the respondent before the error was corrected and his pay was downwardly refixed.

10. We, therefore do not find any cause to interfere with the judgment of the Tribunal in so far as it sets aside the petitioner’s decision to refix the respondent’s pay.

11. On the aspect of recovery, the case is squarely covered by para 18 of the judgment of the Supreme Court in *State of Punjab v Rafiq Masih*⁴, specifically clauses (ii) and (iii) thereof. Para 18 of *Rafiq Masih* reads:

“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.”

***Thomas Daniel v. State of Kerala*⁵ and *Jagdish Prasad Singh v. State of Bihar*⁶ reiterate *Jagdish Singh*.**

12. Clause (ii), in para 18 of ***Rafiq Masih***, proscribes recovery from persons who have less than a year left to retire. Admittedly, the petitioner was due to retire within 12 days after the passing of the order of recovery. The only caveat to the applicability of clause (ii) in para 18 of ***Rafiq Masih*** is to be found in paras 9 and 11 of ***High Court of Punjab & Haryana v Jagdev Singh***⁷, which read:

⁵ AIR 2022 SC 2153

⁶ AIR 2024 SC 3950

⁷ (2016) 14 SCC 267



“9. The submission of the respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the State. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the respondent was clearly on notice of the fact that a future refixation or revision may warrant an adjustment of the excess payment, if any, made.

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 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.”

13. It is nobody’s case that, at the time when the pay of the respondent was allegedly erroneously fixed, he subscribed to any undertaking consenting to recovery at a later point of time, or was placed on notice that he would be bound to refund any amount which was later found to have been paid in excess.

14. The recovery from the respondent was, therefore, clearly impermissible in view of clause (ii) in para 18 of *Rafiq Masih*.

15. The recovery from the respondent would also be interdicted by clause (iii) in para 18 of *Rafiq Masih*, which proscribes recovery more than five years after the excess pay was made to the officer. In the present case, recovery was sought to be made more than 11 years after the allegedly excess payment was made.



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16. There is no caveat, in any later decision, to the applicability of clause (iii) in para 18 of ***Rafiq Masih***, except for the general caveat, in ***Thomas Daniel***, that ***Rafiq Masih*** would not apply where the officer was guilty of fraud or misstatement in securing higher payment, or accepted higher payment with full knowledge of the fact that he was not entitled to it.

17. The recovery made from the respondent in the present case was, therefore, rightly quashed by the Tribunal.

18. We, therefore, find no cause to interfere with the impugned judgment of the Tribunal which, therefore, stands affirmed.

19. The writ petition stands dismissed in the aforesaid terms.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 3, 2025/yg

Click here to check corrigendum, if any