



2025:DHC:7346-DB



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

Date of decision: 22.08.2025

+ W.P.(C) 3699/2019 & CM APPL. 17018/2019
RANBIR SINGHPetitioner

Through: Mr. Anil Singal, Adv.
versus

GOVT. OF NCT OF DELHI AND ORS.Respondents

Through: Mr. Amit Tiwari, CGSC with
Ms. Ayushi Srivastava, Mr.
Ayush Tanwar & Mr. Arpan
Narwal, Advocates for
respondent/Delhi Police along
with Pairvi Officer ASI Jagbir
Singh.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed, challenging the Order dated 16.11.2018 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in O.A. 4543/2015, titled ***Sh. Ranbir Singh v. Govt. Of NCT of Delhi & Ors.***, dismissing the OA filed by the petitioner herein.

2. To give a brief background of the facts in which the present petition arises, the petitioner had applied for the post of Constable in the Delhi Police in the year 1975 in the Scheduled Caste category. He was appointed to the said post on 22.10.1975, under the SC category. Thereafter, he qualified the Promotion List 'A' test and his name was



admitted to the said list with effect from 29.09.1979 and he was promoted to the rank of Head Constable on 01.09.1981. The petitioner was thereafter promoted to the rank of Assistant Sub Inspector on 28.12.1988, and further to the rank of Sub Inspector, on 17.09.1997. These promotions, however, were allegedly granted to the petitioner by the respondents by treating him as a Scheduled Tribe (ST) category candidate.

3. Subsequently, disciplinary proceedings were initiated against the petitioner, alleging that he had concealed the fact that he was granted the above promotions by treating him as a ST category candidate instead of a SC category candidate, and that he had tampered with his records. This resulted in an Order dated 08.06.2007, dismissing the petitioner from service.

4. Aggrieved thereby, the petitioner had challenged the same by way of O.A. 967/2008 before the learned Tribunal, which was allowed by the learned Tribunal by its Order dated 30.06.2009, and the order dismissing the petitioner from service was set aside, observing as under:

“11. The Applicant has never denied the fact that he belongs to SC Category. The documents show that he has consistently recorded his category of caste as SC, as has been discussed in the preceding paragraphs. When he acknowledged the receipt of his Original Caste Certificate in 1984, he stated clearly that he had received his original SC Certificate (page 50 of the paper book). On 5.01.2002 his Caste was recorded as SC in the Register No. 16 of Police Station Anand Parbat (page 99 of the paper book). As late as 30.03.2005 his Caste was recorded as SC in



the same register of 10th Battalion DAP. As stated by PW-1 before the enquiry officer, the Applicant had never seen his Fauzi Missal. The crucial documents — result of Constables examination, when the Applicant was selected as Constable and application form for promotion to Head Constable — are not available. There is nothing in the evidence of the prosecution witnesses, which would link him to the fact of fudging in the record. No logical argument has been given in the finding of the enquiry officer leading to the conclusion that the Applicant is responsible for manipulation in the record. Merely recording that facts proved the charges clearly that the Applicant has illegally availed the benefits of belonging to ST category in his induction in the Delhi Police as Constable and subsequent promotions, would not suffice. No basis for this has been given. **It has nowhere been shown that the Applicant was aware about his promotion under ST Category and yet the disciplinary authority has observed in his order that the Applicant managed to fudge his record and also kept silent about his promotion as ST candidate.** There is not a shred of evidence to this effect before the disciplinary authority. The disciplinary authority is absolutely unjustified in coming to the conclusion that there was preponderance of probability that the Applicant was responsible for manipulation of records. As we have already noted, there is actually a preponderance of improbability in this regard. The Respondents had lost the crucial documents adverted to in the preceding paragraphs, which would have established the Applicants guilt or innocence. The appellate authority has conceded that the Applicant has never officially claimed to belong to ST Category, yet he has never carried it to its logical conclusion. There are blatantly illogical orders without any evidence whatsoever.

(Emphasis Supplied)



5. The above order was not challenged and gained finality. The petitioner was, thereafter, reinstated in service *vide* Order dated 09.10.2009.
6. On 19.12.2013, a Show Cause Notice was issued to the petitioner asking him to show cause as to why he should not be reverted to the rank of Constable and his seniority be refixed from the rank of Head Constable and onwards in the SC category, as he was not entitled to these promotions under the ST category. The same was challenged by way of O.A. 8/2014, which was disposed of on 02.01.2014, giving liberty to the petitioner to submit a representation, which the petitioner submitted on 16.01.2014.
7. This resulted in an Order dated 20.02.2014, whereby the name of the petitioner was admitted to Promotion List 'B' with effect from 27.11.1980, and his promotion to the post of Head Constable and fixation of seniority against the ST category was cancelled. The dates of the promotion granted to the petitioner were also changed, promoting him to the rank of Head Constable with effect from 14.05.1982, to the rank of Assistant Sub Inspector from 14.11.1990, and to the rank of Sub Inspector with effect from 07.04.2003.
8. By an Order dated 09.07.2015, the pay of the petitioner was also accordingly revised. Thereafter, recovery was made from the petitioner of alleged excess amount paid to him during this entire period. Aggrieved thereby, the petitioner had filed the above O.A..
9. The learned Tribunal, in its Impugned Order, though admits that the case of the petitioner would fall in at least three circumstances



where recovery ought not to be permitted, as prescribed by the Supreme Court in ***State of Punjab & Ors v. Rafiq Masih & Ors.***, (2015) 4 SCC 334, nonetheless, stated that in the peculiar facts of the present case, the petitioner had taken advantage of the promotions granted to him under the ST category without bringing the said anomaly to the notice of the respondents, and refused to grant relief to the petitioner against the recovery of the alleged overpayment made to him. We quote from the Impugned Order of the learned Tribunal, as under:

*“20. Undoubtedly, the applicant is covered by the three parameters prescribed in the judgment of Hon'ble Supreme Court in the case of **Rafiq Masih** (supra). However, the facts of the present case are rather peculiar and cannot be over simplified. It is not disputed that the applicant was aware that he belonged to SC category and had declared as such, at the time of his entry in service. When the respondents, erroneously promoted him in ST category, along with other ST colleagues, he chose the convenient option of remaining silent. Though the applicant did not deliberately misrepresent the fact of his being an SC but he continued to derive the benefits of ST category by getting promoted/selected along with other ST candidates. Belonging to a Disciplined Force, he ought to have brought this to the notice of the concerned authorities (of the respondents department) that he actually belongs to SC category. Had he done so, at the initial stage, this entire mess could have been averted.*

21. I am not impressed by the arguments of the learned counsel for the applicant that since he actually functioned in the higher posts for a particular duration and discharged the duties assigned to that post, the pay and allowances so received by him can be legally retained by



him.

22. Though technically, there has been no misrepresentation of facts by the applicant in writing but the applicant kept enjoying the social and financial benefits for which he was not entitled by keeping mum. It is not possible to believe that the applicant did not know the mistake being (continuously) made by the respondents. To keep quiet and enjoy the benefits of incorrect orders of promotion/pay fixation, (undoubtedly the results of negligence of the respondents) can by no stretch of imagination be termed as innocent - ignorance. The applicant cannot be allowed to wriggle out of responsibility in the entire sequence of events. This, in my view, is akin to misrepresentation of facts and takes him out of the protection granted to certain situations by the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra). In view of the same, I feel that the excess pay and allowances drawn by the applicant amounting to Rs. 6,21,832/- are recoverable and may be recovered from him in easy installments. O.A. is dismissed. No costs."

10. The learned counsel for the petitioner submits that the petitioner was about to retire on 31.05.2016, and the alleged excess amounts had been paid to him over a period of three decades. He submits that even the earlier disciplinary proceedings that had been initiated against the petitioner, had culminated in his favour, and in the Order dated 30.06.2009 passed by the learned Tribunal in O.A. No. 967/2008, the learned Tribunal had categorically held that the petitioner was not aware that his promotions were being granted under the ST category. He submits that, therefore, the findings of the learned Tribunal in the Impugned Order are contradictory in nature. He submits that the case of the petitioner is fully covered within the parameters prescribed in



Rafiq Masih (supra), which holds that recovery of the amount paid in excess to an employee cannot be allowed.

11. On the other hand, the learned counsel for the respondents submits that admittedly, the petitioner had been appointed as a Constable in the Delhi Police under the SC category and that he gained promotions to the rank of Head Constable, Assistant Sub Inspector, and to the rank of Sub Inspector as a ST category candidate. He submits that the petitioner was well aware that these promotions were wrongly being granted to him by treating him to be a ST category candidate. He submits that though in the disciplinary proceedings, the respondents could not prove that the petitioner had fudged the records to claim such benefits, the fact remains that the petitioner, despite having the knowledge that he was not entitled to these promotions, continued to enjoy the benefits of the same. He submits that, therefore, in the present case, the learned Tribunal has rightly rejected the benefit of the judgment of **Rafiq Masih** (supra) to the petitioner. He also draws our attention to the Promotion Order dated 22.01.1997, to show that in the promotion list, it had clearly been mentioned that the petitioner was promoted in the ST category. He submits that the petitioner should have pointed out this discrepancy to the respondents at that stage itself, rather than continuing to avail the benefits thereof.

12. We have considered the submissions made by the learned counsels for the parties.

13. In the present case, it is not denied that the petitioner had been appointed to the post of Constable as a SC category candidate. It is



also established that he had been granted promotions by treating him to be a ST candidate. The disciplinary proceedings initiated against the petitioner by the respondents, alleging that the petitioner had a role in the same, have been dismissed by the learned Tribunal, *inter alia*, observing that the petitioner was not aware that he was getting these promotions by treating him to be a ST category candidate.

14. Be that as it may, the fact remains that the petitioner worked on these promotional posts and also discharged his duties. The fact also remains that the petitioner stands exonerated in the disciplinary proceedings initiated against him by the respondents, and that the recovery has been made after a period of almost three decades and just before the retirement of the petitioner. In our view, therefore, the case of the petitioner is fully covered by the exception carved out by the Supreme Court in **Rafiq Masih** (supra), which stipulates that any recovery of the alleged excess amount paid to an employee without any fault on his part, is impermissible in the circumstances given therein. We quote from the judgment, 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.

(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."

15. In our view, the learned Tribunal has erred in placing the burden on the petitioner to have informed the department that he was not entitled to the promotions that was being granted to him without any fault of his own. In any case, this issue stood settled by the Order dated 30.06.2009 passed by the learned Tribunal in O.A. No. 967/2008.

16. In the peculiar facts of the present case, therefore, in our opinion, the learned Tribunal has erred in dismissing the O.A. filed by the petitioner herein.

17. Accordingly, the present petition is allowed. The Impugned Order passed by the learned Tribunal is set aside.

18. The respondents are restrained from making any recovery of the alleged excess amount paid to the petitioner on the basis of ante-dating



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of the promotions of the petitioner. In case any such amount has already been recovered by the respondents from the petitioner, the same shall be refunded to the petitioner, along with interest at the rate of 6% per annum from the date of such recovery till the date of such payment, within a period of eight weeks from today.

19. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

AUGUST 22, 2025

ssc/P/SJ