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

Date of decision: 19.08.2025

+ W.P.(C) 7742/2022 & CM APPL. 23673/2022, CM APPL.
23674/2022

SANJAY UPADHAYAYA AND ORS.Petitioners

Through: Mr. Siddharth Dias, Mr.
Mayank F. Dias and Ms.
Kefira, Advs.

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr. Farman Ali, Sr. PC.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed, challenging the Order dated 02.02.2021 passed by the learned Central Administrative Tribunal, Principal Bench, (hereinafter referred to as the 'Tribunal') New Delhi, in a batch of applications, including O.A. No. 3061/2017, titled ***A.K. Chauhan & 78 Ors. v. Union of India and Ors.*** and O.A. No. 100/242/2016, titled ***S.K. Verma & Ors. v. Union of India & Ors.***, dismissing the O.A. filed by the petitioners herein.

2. The facts, in brief, giving rise to the present petition are that the petitioners were granted the benefit of transport allowance in terms of



the OM Nos. 21(l)/97/E.II(B) dated 03.10.1997. The Internal Audit Wing (IAW), Ministry of Labour & Employment, however, pointed out that the special dispensation extended with respect to HRA/CCA is not applicable to transport allowance. Based on this, the respondent sought to make recoveries in the year 2022 of the amounts that had been paid to the petitioners since 1997. The same was challenged by the petitioners before the learned Tribunal, and as noted hereinabove, the learned Tribunal by way of its Impugned Order has rejected the O.A.s filed by the petitioners herein, upholding the decision of the respondent that the transport allowance was not payable to the petitioners.

3. The limited grievance of the petitioners in the present petition is that the learned Tribunal has not considered the plea of the petitioners that recovery of the amount already paid to the petitioners could not have been made in terms of the Judgment of the Supreme Court in ***State of Punjab v. Rafiq Masih***, (2015) 4 SCC 334.

4. On the other hand, the learned counsel for the respondent has submitted that the Transport Allowance was erroneously paid to the petitioners and on the same being pointed out by the Internal Audit Wing, *vide* OM dated 07.03.2014, it had been decided that transport allowance to the Central Government employees posted in offices located at Faridabad, Ghaziabad, Gurgaon and Noida should be regulated as per rates applicable to 'other places' in terms of OM dated 29.08.2008 issued by the Ministry of Finance. Further, the respondent no. 2, *vide* letter dated 08.01.2016, had instructed the respondent no. 3 to strictly follow the directions of the Ministry of



Finance and in order to abide by the said decision, it was decided to recover the excess amount paid to the employees of the respondent no. 3 Institute.

5. He submits that therefore, no fault can be found in the decision of the respondent to seek recovery of the amount paid to the petitioners, which was not due to them in terms of the OM dated 03.10.1997.

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

7. At the outset, we would note that the learned counsel for the petitioners has not contended that the petitioners were entitled to the Transport Allowance. The decision of the learned Tribunal to this effect, therefore, is not in challenge before us. The only limited prayer made by the petitioner is for a restraint against the respondents from recovering the amount already paid to the petitioners.

8. In **Rafiq Masih** (supra), the Supreme Court while giving illustration of circumstances where payments made mistakenly by the employer in excess of the entitlement of the employee, without any fault or connivance of the employee, may not be allowed to be made, has laid down the following:

“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. ”

9. Reference in this regard may also be made to the OM dated 02.03.2016 issued by the Ministry of Personnel, Public Grievances & Pensions, which seeks to implement the Judgment of the Supreme Court in **Rafiq Masih** (supra).

10. In the present case, we are informed that some of the petitioners belong to Group ‘C’/Class III and Class IV, they have also retired. The payments in question had been made for a period in excess of five years before the order of recovery was issued. The case of the petitioners would, therefore, fall within the circumstances enumerated by the Supreme Court wherein recovery ought not to be allowed to be made from the petitioners.

11. Accordingly, the present petition, along with pending



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applications, is disposed of with a direction restraining the respondent from recovering any amount paid in excess to the petitioners as transport allowance. It is, however, clarified that this shall not entitle the petitioners to receive the same in future or make any claim for the amount not already paid to them.

NAVIN CHAWLA, J

MADHU JAIN, J

AUGUST 19, 2025/ys/bs/P/ik