



\$~59

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

+ **W.P.(C) 4976/2025 & CM APPLs. 22847-49/2025**

VIRENDER KUMAR SHASTRI

.....Petitioner

Through: Mr. Tahir Ashraf Siddiqui, Mr.
Kartikey Saha, Advocates with
petitioner.

versus

BSES YAMUNA POWER LIMITED

.....Respondent

Through: Mr. Sandeep Prabhakar, Sr. Adv.
with Mr. Vikas Mehta, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

21.04.2025

1. By way of this petition under Article 226 of the Constitution, the petitioner assails an order dated 04.04.2025 issued by the respondent – BSES Yamuna Power Limited, by which, petitioner's emoluments and salary have been reduced along with his pay level, with effect from March 2025. The respondent has further directed him to deposit an alleged excess amount of Rs. 26,75,738.86/- paid to him from 01.03.2017 to February 2025, failing which the same would be recovered from his monthly salary.

2. The petitioner was initially employed in the erstwhile Delhi Vidyut Board ["DVB"] with effect from 07.03.2000 as a Sub-Station Attendant Grade- II. Pursuant to a Tripartite Agreement dated 28.10.2000 between Government of National Capital Territory of Delhi ["GNCTD"], DVB and the workers' union, the petitioner's services were placed at the disposal of the respondent – BSES Yamuna Power Limited. He was



thereafter promoted to the post of Technical Assistant with effect from 28.02.2004 and then to Shift In-Charge with effect from 01.03.2009.

3. The petitioner's grievance is that with effect from March 2025, the salary credited to his account was unilaterally reduced from Rs.2,39,644/- to Rs.2,08,916/-, and his pay slip reflected that he was placed at Pay Level 10 (A) instead of Pay Level 12.

4. Mr. Tahir Ashraf Siddiqui, learned counsel for the petitioner, submits that the petitioner had been drawing salary of Rs.2,39,644/- per month for the last five years. His salary had been fixed at that stage pursuant to his representation dated 04.08.2020, in which he had referred to the salary drawn by one Shri Sushil Chand, who according to him, had joined the Department on the same post after him. The petitioner has also placed on record several instances wherein, according to him, similarly placed employees have been treated at par with Shri Sushil Chand.

5. The respondent has, however, rejected petitioner's representation by the impugned communication dated 04.04.2025, referring to a representation of another employee - Shri Pitamber, who had apparently raised an anomaly on the analogy on the petitioner's case. The respondent claims to have found that the petitioner's case was wrongly decided, as there was no anomaly *vis-à-vis* case of Shri Sushil Chand. According to the respondent, this is neither a penalty nor a demotion, but a revision of pay withdrawing the earlier rectification of the anomaly on the basis of Shri Sushil Chand's case.

6. After hearing learned counsel for the parties, I am of the view that, the least that was required before initiating an action of this nature, was for the petitioner to be given an opportunity to make a representation. His



earlier representation, on the basis of Shri Sushil Chand's salary, had been accepted five years ago, and the petitioner's salary had been fixed accordingly. If, in the course of considering another employee's representation, an error has been found in the processing of the petitioner's case five years earlier, he ought to have been notified of the same before effecting an approximately 15% reduction in his pay.

7. Further, even if it is found that the petitioner's pay was wrongly fixed, the question of recovery must be independently considered in the light of the judgments of the Supreme Court in *State of Punjab v. Rafiq Masih* [dated 18.12.2014, (2015) 4 SCC 334], *Thomas Daniel v. State of Kerala*, [dated 02.05.2022, 2022 SCC OnLine SC 536], and *Jogeshwar Sahoo and Ors v. The District Judge, Cuttak and Ors* [dated 04.04.2025, SLP (C) No. 5918/2024]

8. These judgments clearly identify the circumstances under which recovery of excess payment can be effected from an employee, including the period during which the error can be rectified, and the requirement of a finding of fraud or misrepresentation on the part of the concerned employee.

9. Having regard to the aforesaid, the writ petition is disposed of with the following directions: -

- a) The writ petition will be treated as a representation made by the petitioner to the respondent, with regard to the proposed reduction of his salary from Rs.2,39,644/- to Rs.2,08,916/- with effect from March 2025.
- b) It is the petitioner's contention that even if the removal of anomaly was erroneously allowed at the time of his earlier representation in



the year 2020, the current re-fixation of his pay at Pay Level 10 (A) is erroneous. The respondent will consider all these aspects while disposing of the petitioner's representation.

- c) The said representation will be decided within a period of four weeks from today.
 - d) The petitioner's salary for March 2025 has already been paid at the reduced rate of Rs.2,08,916/-. His salary for the month of April 2025 will also be paid at the same rate. However, in the event his representation is allowed, the arrears for the months of March and April 2025 will be paid to him by 31.05.2025.
 - e) In the event the petitioner's representation is rejected, the respondent will consider the question of recovery of the alleged excess amount paid from 01.03.2017 to February 2025 independently and in accordance with law, including the aforesaid judgments of the Supreme Court.
 - f) No order of recovery will be given effect to for a period of six weeks after it is passed.
 - g) All rights and contentions of the parties on the merits of the matter remain reserved.
10. All pending applications also stand disposed of.

PRATEEK JALAN, J

APRIL 21, 2025

"Bhupi/SD"/