



2025:DHC:9254-DB



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

Date of decision: 14th October, 2025

IN THE MATTER OF:

+ **W.P.(C) 9037/2019, CM APPL. 37291/2019, CM APPL. 44797/2019 & CM APPL. 72958/2024**

HC CHANDRA PAL SINGH

.....Petitioner

Through: Mr. Gaurav Serawat, Mr. M.K. Gaur,
Mr. Anoop Kumar and Mr. U
Srivastava, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Ajay Kumar Pandey, SPC.
Mr. Sohan Lal (DHC/CISF), Manju
Nath SI.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT (ORAL)

SUBRAMONIUM PRASAD, J.

1. The Petitioner has approached this Court challenging the actions of the Respondents effecting recovery of Rs. 2,38,000/- out of Rs.2,56,000/- (Rs.18,000/- adjusted as income tax) *vide* Orders dated 03.07.2019 and 05.07.2019.

2. According to the Petitioner, the said amounts were granted to the Petitioner while implementing the decisions of the government and the decisions taken in the implementation of CCS (Revised) Pay Rules, 2008.

3. It is stated that apart from the fact that the said recovery is contrary to law laid down by the Apex Court in various judgments, recoveries have



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been made without giving the Petitioner any kind of notice which is in violation of Article 14 of the Constitution of India.

4. Shorn of unnecessary details, the facts of the case reveal that in compliance of the orders of this Court, the CISF Directorate decided to implement the Office Memorandum being O.M. No.8-23/2017-E.IIIA dated 28.09.2018 issued by the Ministry of Finance, Department of Expenditure. The said O.M. reads as under:-

*"No. 8-23/2017-E.IIIA
Government of India
Ministry of Finance
Department of Expenditure*

*North Block, New Delhi
28th September, 2018*

Office Memorandum

Subject: Central Civil Services (Revised Pay) Rules, 2008- Section II of the Part 'A' of the First Schedule thereto- entry pay for direct recruits appointed on or after 1.1.2006 and pay fixation in the case of persons other than such direct recruits.

The undersigned is directed to invite the attention to the provisions contained in Section-2 of Part 'A' of the First Schedule of the Central Civil Services (Revised Pay) Rules, 2008 which provides for entry pay in the revised pay structure (pay structure effective from 1.1.2006 up to 31.12.2015) for direct recruits appointed on or after 1.1.2006 on a post and to say that pay in respect of persons appointed to the same posts before 1.1.2006 is required to be fixed as on 1.1.2006 under Rule 7 (1)(A)(i) and pay in respect persons appointed on the same post on promotion on or after 1.1.2006 is required to be fixed under Rule 13 thereof.



2. A number of references were received in Ministry of Finance, Department of Expenditure, stating that the pay of seniors of a post was fixed at a stage lower than the entry pay applicable to the persons appointed on direct recruitment basis on that post on or after 1.1.2006. In such cases, stepping of pay was allowed to the senior employee at par with the entry pay of direct recruits of those posts, subject to the conditions, inter-alia, that stepping up of pay of seniors is applicable only in those cases which have an element of direct recruitment and where a directly recruited junior is actually drawing more basic pay than the seniors. Thus, the stepping up of pay of senior employees was admissible from the date a junior direct recruit joined on or after 1.1.2006.

3. The matter was also considered in the meeting of the National Anomaly Committee (NAC) held on 17.7.2012 based on a demand raised by the Staff Side under the JCM. NAC had recommended that in cases where Recruitment Rules provide for direct recruitment then the stepping up of pay of senior may be considered, even if no actual direct recruitment takes place or no direct recruit has actually joined. However. It was decided that stepping up of the pay of seniors can be claimed only in the case of those cadres which have an element of direct recruitment and in cases where a directly recruited junior is actually drawing more basic pay than the seniors. Thus stepping up of pay was dependent upon actual joining of a direct recruit.

4. Trained Graduate Teachers (TGTs) of the Government of National Capital Territories of Delhi (GNCTD) filed an OA No. 3217/2014 before the Hon'ble Principal Bench of CAT. The 13 petitioners of the post of Trained Graduate Teachers (TGT) comprised those who were appointed as TGT before 1.1.2006 as also those who were promoted to the post of TGT on or after 1.1.2006. The pay of these 13 employees had been fixed as per the relevant



provisions of the CCS (RP) Rules, 2008 and the same happened to be lower than the entry pay as applicable to direct recruits of the post of TGT appointed on or after 1.1.2006. These petitioners prayed for re-fixing their pay as applicable to direct recruits appointed on or after 1.1.2006.

5. The Hon'ble Principal Bench of CAT in their order dated 4.4.2016 in OA No.3217/2014 allowed the application and directed the Government to ensure that none of the applicant's pay is fixed at a stage lower than the pay which could be drawn by a direct recruit appointed on or after 1.1.2006. The order of Hon'ble CAT dated 4.4.2016 was upheld by the Hon'ble Delhi High Court in terms of their order dated 23.3.2017 in WP(C) No.2634/2017. The Hon'ble Delhi High Court in its order dated 23.3.2017 observed, inter-alia, that the plea of stepping up of pay, as mentioned in para 2 above, means that the direct recruits should have actually joined before any stepping up of pay can be granted and the date of joining would be different as filling up of direct recruit vacancies in the cadre would depend upon vacancy position, selection etc. The Hon'ble Delhi High Court held that this was unacceptable.

6. The matter arising out of the aforesaid order of Hon'ble Delhi High Court dated 23.3.2017 was heard by the Hon'ble Supreme Court as part of the SLP and in its order' dated 01.09.2017 (Dy. No. 23663/2017), the Hon'ble Supreme Court has observed that once the question, in principle, has been settled, it is only appropriate on the part of the Government to issue a Circular. The Hon'ble Supreme Court further observed that the present situation is that the stepping up is available 'only to those who have approached the Court, but since the issue otherwise became final the Hon'ble Supreme Court directed Government to immediately look into the matter and issue appropriate orders.



7. Accordingly, the matter has been considered in the light of the above background and in the context of the specific orders of Hon'ble Supreme Court dated 01.09.2017 as arising out of the original issue raised by the Trained Graduated Teachers of GNCTD in terms of their OA No. 3217 /2014. As mentioned above, the petitioners in that case were those who were appointed as TGT before 1.1.2006 and also promoted as TGT on or after 1.1.2006 and had occasion for grievance because their pay in the pay structure in vogue from 1.1.2006 had been fixed lower than the entry pay as prescribed for direct recruits appointed as TGT on or after 1.1.2006. Therefore, the principle of the benefit of pay fixation, as flowing from the aforesaid orders of Hon'ble CAT, Hon'ble Delhi High Court and the Hon'ble Supreme Court is that the pay of those who were appointed to the post prior to 1.1.2006 and those who were appointed to the post on promotion in the pay structure, effective from 1.1.2006 onwards, and where in respect of such posts entry pay for direct recruits appointed on or after 1.1.2006 has been prescribed giving rise to differential pay, may not be lower than the said entry pay. It is the case of differential pay in respect of employees of a post, as caused by the existence of entry pay applicable for direct recruits on that post appointed on or after 1.1.2006, that has been addressed in the aforesaid case of the post of TGTs. In case entry pay as per Section II of Part A of the First Schedule of the CCS (RP) Rules, 2008 is not applicable in case of a post, the same will not give rise to differential pay for holders of the post and, hence, not covered under the ratio of the case of TGT.

8. Accordingly the President is pleased to decide that in respect of those posts where entry pay for direct recruits appointed on or after 1.1.2006, as per Section II of Part A of the First Schedule of CCS (RP) Rules, 2008, becomes applicable by virtue of the provision of



the element of direct recruitment in the relevant recruitment rules, the pay of Central government employees who were appointed to such posts prior to 1.1.2006 and whose pay as fixed in the revised pay structure under Rule 7 thereof as on 1.1.2006 turns out to be lower than the prescribed entry pay for direct recruits of that post, shall not be less than such entry pay w.e.f. 1.1.2006. Likewise, the pay of Central Government employees who were appointed to such posts by way of promotion on or after 1.1.2006 and whose pay, as fixed under Rule 13 of CCS(RP) Rules, 2008, happens to be lower than the said entry pay, shall else not be less than such entry pay from the date of their promotion taking place on or after 1.1.2006.

9. In their application to the employees of office of Indian Audits and Accounts Department these orders issue after consultation with the Comptroller and Auditor General of India.

10. Hindi, version of these orders is attached. "
(emphasis supplied)

5. The CISF Directorate intimated that the benefit granted by the said O.M. would be extended to those personnel who were granted ACP/MACP after 01.01.2006 *vide* Letter No. E-27099/20/2018/Entitlement/H-482 dated 06.12.2018. The Petitioner who was working in the CISF Unit Taj Mahal, Agra was granted the benefit of Entry Pay under the above order.

6. It is the case of the Respondent that the Petitioner, who was not promoted to the rank of Head Constable as on 01.01.2006, but was granted MACP on 28.07.2006, was granted the said benefit *vide* Part-II No.44/2019 dated 10.02.2019 and an amount of Rs.2,56,000/- was calculated as arrears and was paid to the Petitioner.

7. It is stated that the Respondent/CISF realised the said mistake which



came to their notice while scrutinizing the bills submitted by the Units under its jurisdiction. It is stated that in view of the same, it was decided to make recovery against the Petitioner for the amount which was paid to him.

8. The contention of the Petitioner is that the recovery proceedings is contrary to law laid down by the Apex Court in ***State of Punjab and Ors. vs. Rafiq Masih, (2014) 4 SCC 344.***

9. During the pendency of the writ petition, the Petitioner has taken voluntary retirement in the year 2020.

10. It is the case of the Petitioner that there was no misrepresentation on his part and he being a Class III employee, such recoveries which have been made without any notice cannot be made. It is also contended that the recoveries have been effected without giving any kind of show cause notice to the Petitioner and therefore the principles of natural justice have been violated.

11. The underlying principle in the judgment of ***State of Punjab and Ors. vs. Rafiq Masih, (2014) 4 SCC 344,*** is that an action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous and the action of recovery would be more unfair, more wrongful, improper and more unwarranted, than the corresponding right of the employer, to recover the amount. Paragraph 10 of the said Judgment reads as under:

“10. In view of the aforestated constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer,



to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.”

12. Paragraph 12 of the said Judgment which summarises the law, is also reproduced as under:

“12. Reference may first of all be made to the decision in Syed Abdul Qadir v. State of Bihar [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] , wherein this Court recorded the following observation in para 58 : (SCC p. 491)

“58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram v. State of Haryana [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], Shyam Babu Verma v. Union of India [Shyam Babu Verma v. Union of India, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121], Union of India v. M. Bhaskar [(1996) 4 SCC 416 : 1996 SCC (L&S) 967] , V.Gangaram v. Director [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652] , B.J. Akkara v. Govt. of India [B.J. Akkara v. Govt. of India, (2006) 11 SCC 709 : (2007) 1 SCC



(L&S) 529] , Purshottam Lal Das v. State of Bihar [(2006) 11 SCC 492 : (2007) 1 SCC (L&S) 508], Punjab National Bank v. Manjeet Singh [(2006) 8 SCC 647: (2007) 1 SCC (L&S) 16] and Bihar SEB v. Bijay Bhadur [(2000) 10 SCC 99 : 2000 SCC (L&S) 394] .”

13. Admittedly, there has been no misrepresentation on the part of the Petitioner to claim for such benefits and is therefore entitled to the benefit of the judgment of the Apex Court in **Rafiq Masih (supra)**. The Petitioner has since retired.

14. It is equally well settled that before passing an order of recovery, a show cause notice must be given to the concerned employee as to why the recovery should not be made. Admittedly, in this case, no show cause notice has been given. The Apex Court in **Bhagwan Shukla vs. Union of India & Ors., (1994) 6 SCC 154**, has held that any order of recovery has civil consequences, and if no opportunities is given to an employee as to why the recovery is being made, and recoveries are effective behind the back of the employee, then such a procedure is a violation of principle of natural justice.

The relevant portion of the said Judgment reads as under:-

" 3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs 181 p.m. from Rs 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, 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."

15. Similarly, the Apex Court in ***Thomas Daniel vs. State of Kerala, 2022 SCC OnLine SC 536***, has observed as under:-

“9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.

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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."

16. The material on record indicates that recoveries were effected from the Petitioner even after a stay order has been passed by this Court. Though an affidavit has been filed by Union of India stating that they had not been communicated the order, the order indicates that the Union of India was represented by a Counsel at the time the stay order was passed and therefore the Respondent cannot take a plea that the order was not communicated to them. The recovery was therefore, in violation of the orders of this Court. Recoveries have been effected without giving any notice to the Petitioner



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which is contrary to the law laid down by the Apex Court.

17. In view of the fact that the Petitioner has already attained superannuation, this Court is not inclined to remand the matter back to the department to afford an opportunity to the Petitioner and then take a decision, as in the opinion of this Court, the said procedure would be extremely harsh on a retired Head Constable. The amount already recovered from the Petitioner be returned to the Petitioner within six weeks from the date of uploading of this order.

18. The Writ Petition is allowed. Pending application(s), if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

OCTOBER 14, 2025

akc/hsk