



2025:DHC:405-DB



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

Date of decision: 23.01.2025

+ W.P.(C) 9519/2019

SANJAY KUMAR

.....Petitioner

Through: Ms. Saahila Lamba, Adv.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Jitesh Kumar Srivastava,
SPC with Mr. Dipanshu
Sharma, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioner, praying for a direction to the respondents to refund the sum of Rs.1,30,143/- recovered from the salary of the petitioner, along with interest @ 9% per annum.

2. The respondents have recovered the above amount from the petitioner based on the Order dated 07.08.2018 passed by the Officiating Commandant of the 111th Bn., Border Security Force ("BSF"), stating that the petitioner had been dispatched to the SHQ BSF CI (OPS) Manipur on 22.01.2012 in connection with Assembly Election duty, post which, he was temporarily attached with Accounts



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Branch of SHQ BSF CI(OPS) Manipur, and later with the SHQ BSF CI (OPS) Manipur *vide* Ftr HQ BSF M&C Order No. Estt-III/739/P&T/M&C/Ftr/BSF/15/12478-81 dated 16.07.2015. It was observed that during his stay at SHQ BSF CI (OPS) Manipur with effect from 22.01.2012 to 30.06.2018, the petitioner had drawn the following amounts towards Risk & Hardship Allowances (“RHA”) and House Rent Allowances (“HRA”), which were not admissible to him while being posted at SHQ BSF CI(OPS) Manipur, for which the petitioner was to be partially blamed:

RHA -	Rs.65,664/-
HRA -	<u>Rs.64,489/-</u>
Total -	<u>Rs.1,30,153/-</u>

3. The learned counsel for the petitioner, while placing reliance on the Judgment of the Supreme Court in ***State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc.***, (2014) 8 SCC 883, submits that where any payment has been mistakenly made by the employer in excess of the entitlement, in terms of the said Judgment, there is a complete bar/prohibition on making any recovery from a Group ‘C’ or Group ‘D’ employee. She submits that in the present case, though the recovery has already been made, the respondents ought to refund the amount so recovered along with interest. In support, she places reliance on the following judgments:

- i. ***Prasad Vinayak Sohoni vs. The Treasury Officer, Thane and Anr.***, 2022 SCC OnLine Bom 1933; and



ii. ***Chairman, Delhi Transport Corporation vs. Ramji Lal,***
2023 SCC Online Del 2908

4. On the other hand, the learned counsel for the respondents submits that in the Court of Inquiry proceedings, the petitioner had, in fact, himself admitted to have withdrawn inadmissible amounts and offered to return the same. He submits that, therefore, the recovery made cannot be faulted.

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

6. It is not denied that the petitioner is a Group 'C' employee. Though vaguely contended by the respondents that the petitioner was to be partially blamed for having withdrawn the RHA and the HRA, no reason has been supplied for placing this blame, even partially, on the petitioner. It is only in the Counter Affidavit that it has been asserted that the petitioner had volunteered to refund the excess amount received by him under the above heads of payment. There is no document filed in support of this assertion. Therefore, we have to proceed on the basis that it was the respondents themselves who were to blame for having paid the subject amount to the petitioner though he was not entitled to the same.

7. In ***Rafiq Masih*** (supra), the Supreme Court considering the question whether an employee who has been paid excess amounts not due to any fault attributed to such employee but to a fault of the employer itself, can be directed by the employer to reimburse the same, held that it is only in cases where such recovery would result in



a hardship of a nature which would far outweigh the equitable balance of the employer's right to recover, that the Court would interfere in such recovery being made. However, the Court gave certain situations which would warrant the setting aside of orders by which the employer seeks recovery of the amounts paid by its own mistake, one of them being where the employee is in Group 'C' service. The Court held that in such a situation recovery by the employer would be "impermissible in law".

8. Applying the above Judgment, in **Ramji Lal** (supra), a Division Bench of this Court dismissed the writ petition challenging an Order of the learned Central Administrative Tribunal which had directed refund of the amount recovered from the employee in violation of the principles laid down by the Supreme Court in **Rafiq Masih** (supra). The Court held that as the recovery could not have been made from the employee, the learned Tribunal was justified in ordering the refund of the recovered amount.

9. In **Prasad Vinayak Sohoni** (supra), the High Court of Bombay, also directed refund of the amount already recovered from the employee in violation of the law laid down by the Supreme Court in **Rafiq Masih** (supra).

10. As noted hereinabove, the petitioner is a Group 'C' employee and in terms of the Judgment of **Rafiq Masih** (supra), even assuming that the amount of RHA and HRA had been wrongly paid to him by the respondents, the same could not have been ordered to be recovered from him.

11. In view of the above, we direct the respondents to refund the



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amount of Rs.1,30,143/-, which has been illegally recovered from the petitioner, within a period of 12 weeks from today.

12. The petition is allowed in the above terms. There shall be no orders as to costs.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

JANUARY 23, 2025/ab/sg/IK

Click here to check corrigendum, if any