



2025:DHC:1472-DB



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

+ W.P.(C) 13336/2023

DALIP KUMAR

.....Petitioner

Through: Mr. Anil Kumar Singal, Adv.

versus

GOVT OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Himanshu Pathak, SPC
with Mr. Amit Singh, Adv.**CORAM:****HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE AJAY DIGPAUL****JUDGMENT (ORAL)**

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03.03.2025**C. HARI SHANKAR, J.**

1. The petitioner approached the Central Administrative Tribunal¹ by way of OA 147/2017, challenging an order dated 30 May 2016, whereby the petitioner's pay was re-fixed with effect from 24 November 1997, as well as the recovery, on that basis, from the retiral benefits of the petitioner, of an amount of ₹ 2,21,036/-.

2. The Tribunal has allowed the OA in part, by quashing and setting aside the order dated 30 May 2016. However, the Tribunal has granted no relief with respect to the recovery of ₹ 2,21,036/- which was effected from the petitioner's retiral benefits.

3. The petitioner had, before the Tribunal, invoked para 18 of the



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judgment of the Supreme Court in *State of Punjab v Rafiq Masih*².

Apropos this judgment, the Tribunal holds in para 4.1 thus:

“4.1 On perusal of the record, we find that the applicant has himself admitted that consequent upon imposition of punishment of forfeiture of 2 years’ approved service permanently, his pay was correctly fixed by the respondents. However, he is aggrieved by recovery of Rs.2,21,036/- on account of alleged incorrect re-fixation of his pay on account of separate punishment of forfeiture of one year approved service temporarily for one year. It is noticed that the applicant has been awarded punishment twice in two different cases. When first punishment was awarded to the applicant, his pay was correctly fixed, as admitted by him. Alleged recovery has been effected on account of the subsequent punishment imposed upon the applicant in a separate disciplinary matter. Hence, the stand of the applicant that reduction in his pay could not have taken place and in terms of the decision of the Hon’ble Supreme Court in *Rafiq Masih case (supra)* recovery could not have been effected from his retiral benefits after five years, is not correct, as the recovery became due in 2015, vide order dated 10.09.2015 whereas the applicant retired from service on 31.05.2016. Moreover, reduction in his pay has been done only after imposition of second punishment of forfeiture of one year approved service temporarily for a period of one year entailing proportionate reduction in his pay, vide order dated 10.09.2015. His appeal was also rejected vide order dated 11.08.2016 and resultantly amount of Rs.2,21,036/- became due to be recovered from him, which, in our view, has been rightly ordered to be recovered from the pensionary benefits payable to the applicant.”

4. The view adopted by the Tribunal in para 4.1, with respect to the applicability of the judgment in *Rafiq Masih* is, in our considered opinion, flawed. The applicability of para 18 of *Rafiq Masih* does not depend on the date when recovery became due. It depends on the date when recovery is made. Not only that, *Rafiq Masih* absolutely proscribes recoveries from a person who is retiring within one year of his retirement. It also proscribes recovery from retiral benefits of an employee. Admittedly, the order of recovery was passed on 30 May



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2016 and the petitioner retired on 31 May 2016.

5. The only circumstance in which the rigour of this dispensation in para 18 of *Rafiq Masih* stands relaxed, as per *High Court of Punjab and Haryana v Jagdev Singh*³, is where there was an undertaking by the employee concerned to agree to recovery in the event of the fixation having found to be erroneous. It is nobody's case that the petitioner gave any such undertaking.

6. In that view of the matter, the recovery of the amount of ₹ 2,21,036/- from the petitioner's retiral benefit was clearly illegal and in the teeth of para 18 of *Rafiq Masih*.

7. We, therefore, modify the impugned order of the Tribunal and allow the OA of the petitioner to the extent it challenges recovery of ₹ 2,21,036/- effect from his retiral benefits.

8. The said amount shall forthwith be returned to the petitioner by the respondent within a period of six weeks from today. Failure to do so shall entail interest @ 12% p.a. till the date of actual payment.

9. The writ petition stands allowed accordingly.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 3, 2025/dsn

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