2025:DHC:5630-DB

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

Date of decision: 15.07.2025

\+ W.P.(C) 9911/2025 & CM APPL. 41314/2025

UNION OF INDIA & ANR. .....Petitioners

Through: Mr.Satya Ranjan Swain, SPC, Mr.Kautilya Birat, Mr.Vikash Kumar, Advs.

versus

SANJAY KUMAR .....Respondent

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the Order dated 11.03.2025 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in OA 2634/2023 titled ***Sanjay Kumar v. Union of India & Anr.***, allowing the said OA filed by the respondent herein with the following directions:

> *"5. We further observe that the re-fixation was carried out through the impugned order dated 16.08.2023, which is more than twelve years after the actual fixation and in the month of retirement.*
> *6. In view of the aforesaid facts and circumstances, we hereby quash and set aside the impugned order dated 16.08.2023. The respondents are directed to restore the earlier*

> *pay fixation order and release the gratuity so withheld within a period of three months from the date of receipt of a certified copy of this Order. The applicant shall be entitled for interest at the GPF rate on the delayed payments."*

2. To give a brief background of the facts in which the present petition arises, the respondent was appointed to the post of Senior Clerk in the commercial department of the Northern Railways in the pay scale of Rs. 2,800/-. Thereafter, the respondent joined the accounts department as a Junior Account Assistant in the Grade Pay of Rs.2,800/-. He was promoted to the post of Account Assistant in the Grade Pay of Rs.4200/- in the Northern Railways, *vide* Order dated 03.10.1992. In the year 2008, he was granted the benefit of Modified Assured Career Progression (in short, 'MACP') Scheme in the Grade Pay of Rs.4600/-.

3. At the time of grant of MACP, the respondent had submitted an undertaking dated 10.09.2008, stating that if any excess payment was found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently, it will be refunded by him to the Government either by adjustment against future payments due to him or otherwise.

4. On 06.07.2009, the respondent was promoted as Inspector in the Store Accounts Department, however, erroneously the Accounts Department granted him another benefit by fixing his Grade Pay as Rs.4800/-, by granting him 3% of his basic pay plus difference of the Grade Pay.

5. The respondent was due for superannuation on 31.08.2023. At

the time of finalizing the account, he became aware that the petitioners were intending to recover the excess amount paid to him and therefore, he submitted a representation dated 04.08.2023 to the petitioners stating that the recovery just before his superannuation would cause grave prejudice to him.

6. The representation of the respondent, however, was rejected by the petitioners *vide* Order dated 16.08.2023, and by an Order dated 29/31.08.2023, a recovery of Rs.4,27,793/- was sought to be made from the respondent.

7. Aggrieved thereby, the respondent filed the above OA. The learned Tribunal, by placing reliance on the Judgments of the Supreme Court in ***State of Punjab & Ors v. Rafiq Masih (White Washer) & Ors.,*** (2015) 4 SCC 334, and ***Thomas Daniel v. State of Kerala & Ors.***, 2022 SCC OnLine SC 536, has set aside the impugned recovery notice dated 29/31.08.2023.

8. The learned counsel for the petitioners submits that the respondent has admitted that his pay has been wrongly fixed on his promotion to the post of Inspector. The respondent himself made a representation dated 04.08.2023 against the proposed recovery, and therefore, cannot claim that a Show Cause Notice should have been first issued to him in that regard. He further submits that the representation of the respondent had been duly considered and rejected *vide* a speaking Order dated 16.08.2023, and the recovery was thereafter sought to be made by the Order dated 29/31.08.2023. He submits that therefore, the learned Tribunal has erred in interfering with the Impugned recovery, and the Impugned Order of the learned

Tribunal deserves to be set aside.

9. We have considered the submissions made by the learned counsel for the petitioners, however, find no merit in the same.

10. At the outset, we would note that it is not the case of the petitioners that the respondent, in any manner, misrepresented or caused wrong fixation of his pay in the year 2009. It is only after the expiry of almost 14 years and just before the retirement of the respondent, that the petitioners sought to make the recovery, realizing that the pay of the respondent has been wrongly fixed.

11. In ***Rafiq Masih*** (supra), the Supreme Court stated that one of the circumstances in which the recovery of excess amount mistakenly being paid by the employer can be interdicted is where the recovery is sought to be made after a period of more than 5 years. In the present case, the recovery sought to be made by the petitioner was just before the retirement of the respondent and after 14 years of the alleged wrongful fixation of the pay of the respondent. In our opinion, this would cause grave prejudice to the respondent who was not to blame in the entire episode.

12. Accordingly, we find no merit in the present petition. The same is dismissed. Pending application is also disposed of being infructuous.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

JULY 15, 2025/Arya/*VS*