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

Date of decision: 09.04.2025

+ W.P.(C) 17342/2024 & CM APPL. 73812/2024, CM APPL. 73813/2024

NATIONAL COUNCIL FOR CEMENT BUILDING MATERIALSPetitioner

Through: Mr.Suresh Tripathy &
Mr.Srikrishnan, Advs

versus

PARDEEP KUMAR AND ORSRespondents

Through: Mr. Rahul Raj Mishra &
Mr.Prashant Karan, Advs
Ms.Shagun Shahi Chugh &
Ms.Nandita Mishra, Advs for
R-7/UOI.
Mr.Vedansh Anand, GP

+ W.P.(C) 17356/2024 & CM APPL. 73900/2024, CM APPL. 73901/2024, CM APPL. 15426/2025

NATIONAL COUNCIL FOR CEMENT AND BUILDING MATERIALSPetitioner

Through: Mr.Suresh Tripathy &
Mr.Srikrishnan, Advs.

versus

ANITA CHOPRA AND ORS.Respondents

Through: Mr. Rahul Raj Mishra &
Mr.Prashant Karan, Advs
Mr.Piyush Beriwal,
Mr.Vedansh Anand, Mr.Nikhil
Kumar Chaubey, Ms.Jyotsna
Vyas & Mr.Rohit Yadav, Advs
for R-6



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+ **W.P.(C) 17370/2024 & CM APPL. 73965/2024, CM APPL. 73966/2024**

NATIONAL COUNCIL FOR CEMENT BUILDING MATERIALSPetitioner

Through: Mr.Suresh Tripathy &
Mr.Srikrishnan, Advs.

versus

SHRI SATISH KUMAR AGARWAL AND ORS

.....Respondents

Through: Mr. Rahul Raj Mishra &
Mr.Prashant Karan, Advs
Ms.Shagun Shahi Chugh &
Ms.Nandita Mishra, Advs for
R-7/UOI.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 15426/2025

1. This application has been filed by respondent no.6 for marking his appearance in the Order dated 27.02.2025.
2. The application is allowed. The name of Mr.Piyush Beriwal be reflected in the Order dated 27.02.2025 as appearing for respondent no.6.

W.P.(C) 17342/2024 & CM APPL. 73812/2024, CM APPL. 73813/2024

W.P.(C) 17356/2024 & CM APPL. 73900/2024, CM APPL. 73901/2024

W.P.(C) 17370/2024 & CM APPL. 73965/2024, CM APPL. 73966/2024



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3. These petitions have been filed challenging the Order dated 11.11.2024 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the “learned Tribunal”) in Original Application (OA) No. 1842/2022, titled ***Pardeep Kumar & Ors. v. Union of India & Ors.***; O.A. No. 2902/2022, titled ***Anita Chopra & Ors. v. Union of India & Ors.***; and O.A. No. 1440/2022, titled ***Satish Kumar Agarwal & Ors. v. Union of India & Ors.***, allowing the OAs filed by the respondents herein, with the following direction:

“8.1. This Tribunal is of the considered view that the present OAs deserve to be allowed, keeping in view the fact that no recovery can be effected from an employee without giving any show cause notice. Respondents are, therefore, directed to refund the amount, if any, already recovered, which has been wrongly adjusted against the retiral dues, contrary to the aforesaid proposition of law. The Respondents are directed to pay the applicants all the retirement/ service benefits including Gratuity/ Ex- gratia on Gratuity as per the relevant rules. The consequential relief(s) shall follow thereof. These directions shall be complied with by the respondents within a period of two months from the date of receipt of a certified copy of this order, failing which the applicants shall also be entitled to interest at GPF rates till the date of actual payment.”

4. As common submissions have been made by the learned counsels for the parties, we herein narrate the brief background of the facts giving rise to the present petitions from WP(C) 17356/2024.



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5. The respondents were issued Recovery Notices dated 07.10.2020 by the petitioner, claiming therein that the respondents had elected to be paid as per the Pay Structure based on the 7th Central Pay Commission (in short, '7th CPC'). The applicability of the Revised Pay Structure to the employees of the petitioner was subject to certain conditions, whereby the petitioner was to align all service conditions, pay, and allowances with the Government of India Rules before such implementation.

6. The petitioner claims that an excess payment has been made to the respondents on implementation of the Pay Structure of the 7th CPC, which is to be recovered from the respondents.

7. The petitioner, therefore, vide notice dated 07.10.2020 called upon the respondents to make the payment of the alleged excess amount received by them, within 30 days from the receipt of the Recovery Notice. The respondents made representations against the said Recovery Notice, however, without considering their representations, the demand was reiterated by Notices dated 07.10.2020/03.11.2020 without giving any reasons for the rejection of the representations.

8. Aggrieved by the Recovery Notices, the respondents approached the learned Tribunal by way of the above-mentioned OAs.

9. As noted hereinabove, the learned Tribunal has allowed the above OAs, specifically taking note of the fact that no Show Cause Notice was issued to the respondents before passing the Impugned



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Recovery Notices, and even the representations were not considered and were rejected on the same date.

10. The learned counsel for the respondents submits that representation was rejected and the recovery demand reiterated by the petitioners *vide* order dated 07.10.2020, on which now, as per Annexure-P1/3, a date of 03.11.2020 has been added thereto.

11. Be that as it may, even the said Letter does not contain any reasons, leave alone any consideration of the representation made by the respondents.

12. The learned Tribunal, therefore, allowed the OAs and set aside the Recovery Notices. It further directed that any amount adjusted against the retiral dues of the respondents shall be refunded to the respondents.

13. The learned counsel for the petitioner submits that the learned Tribunal has failed to appreciate that the respondents, while availing the benefit of the 7th CPC, had given an undertaking that, in case it is found that an excess payment has been made to them, the same shall be duly refunded by the respondents. He submits that, therefore, the respondents had already been put to notice that any excess amount paid to them shall be duly recovered from them. There was no need for a separate notice to be issued to the respondents. In support of his plea, he also places reliance on the Judgment of the Supreme Court in *High Court of Punjab & Haryana & Ors. v. Jagdev Singh*, (2016) 14 SCC 267.



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14. On the other hand, the learned counsels for the respondents submits that the undertaking given by them cannot be used by the petitioners to seek recovery of amounts from their retiral benefits post their superannuation and that too without issuing any Show Cause Notice or giving them an opportunity to be heard. In fact, the Impugned Orders, in their submission, do not even give any reasons for the claim of the petitioners that an excess amount has been paid to the respondents. In support of their submission, they have also placed reliance on the Judgment of the Supreme Court in ***Jogeshwar Sahoo & Ors. v. The District Judge, Cuttack & Ors.***, 2025 INSC 449.

15. We have considered the submissions made by the learned counsels for the respondents.

16. The Recovery Notice dated 07.10.2020 issued by the petitioners to the respondents did not give any reasons to the respondents for claiming that an excess amount has been paid by the petitioners to the respondents pursuant to the implementation of the 7th CPC. It simply calls upon the respondents to make the payment of the alleged excess amount paid to them. A sample copy of the Letter is reproduced hereinunder:

*“Ref No: PER/3.410
Date: 07 October 2020*

*Mrs Anita Chopra
45/6, 3 Floor, East Patel Nagar
Delhi-110008*

*Subject: Recovery of excess payment made
during implementation of 7 Control Pay
Commission for Superannuated NCCBM
Officials*



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Dear Sir,

Kindly take notice that after retiring from the service of the National Council for Cement & Building Materials (NCCBM) w.e.f 31 January 2018, you were paid all retirement benefits immediately as per the then existing rules. As per the record, during the month of April/May 2018, you had elected to be paid as per the pay structure based on 7 CPC. The applicability of revised pay structure to the employees of NCCBM was subject to certain conditions whereby the NCCBM was to align all service conditions, pay & allowances, with the GOI rules before such implementation.

It has been noticed that the payment of arrears of pay, DA etc of Rs 476380/- has been made to you in excess on implementation of pay structure of 7th CIC. In the light of the above and the undertaking given by you at the time of electing the revised pay structure, the excess payment made to you is to be recovered.

Accordingly, the undersigned is hereby directed to inform you through this notice to refund amount of Rs.426980/- with 30 days of the receipt of this letter. In case you wish to make any representation regarding recovery of excess payment the same should reach the undersigned within 10 days of the receipt of this letter.

Please be informed that failure to comply with this notice will render you liable to all consequences, including levy of penal interest.

Yours faithfully

for National Council for Cement and
Building Materials



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Hese-RS (PER)”

17. The respondents represented against the said demand, however, by Letters dated 07.10.2020/03.11.2020, the said representation was rejected without giving any reasons for the same, and the demand was reiterated. A sample copy of the said Letter is reproduced herein:-

“Ref No: PER/3.410

Date: 07 October

2020/03 Nov 2020

Mrs Anita Chopra

45/6, 3 Floor, East Patel Nagar Delhi-110008

Subject: Recovery of excess payment made during implementation of 7th Central Pay Commission for Superannuated NCCBM Officials

Dear Madam,

This has reference to your representation in response to our letter dated 07 October 2020 regarding recovery of excess payment made to you on implementation of 7 CPC

The break-up of retirement benefits paid to you is as under:

<i>Name</i>	<i>GRATUITY AMT PAID</i>	<i>EX GRATIA PAID</i>	<i>SICK LEAVE ENCASHMENT PAID</i>	<i>HRA COMPONENT ON PL ENCASHMENT PAID</i>
<i>MRS ANITA CHOPRA</i>	<i>1000000</i>	<i>400000</i>	<i>0</i>	<i>0</i>



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The payments of Gratuity above notified government limit (if any) and Ex-gratia on gratuity, as per then existing NCB rules, were ever and above the payments entitled to government employees on retirement.

Accordingly, you informed vide our letter dated 07 October 2020 to refund the payment of arrears of pay, DA etc paid as excess amount. You are again requested to within one month of receipt of this letter. refund the excess

Yours faithfully,

*for National Council for Cement
and Building Materials*

Head-HRS (PER)”

18. The demand was further reiterated by the petitioner *vide* Letter dated 13.11.2020, and thereafter, recoveries were made from the retiral dues of the respondents.

19. Only because the respondents have given an undertaking that in case any excess amount had been paid on the implementation of the 7th CPC, they would be bound to return the same, in our view, recovery could not have been made from the retiral dues of the respondents much after their retirement. It is to be noted that, as claimed by the learned counsel for the petitioner, the undertakings are said to have been given by the respondents before their superannuation.

20. In case any excess amount was paid to the respondents, the same should have been claimed from the respondents prior to their



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superannuation. The Impugned Recoveries were sought to be made much beyond the date of superannuation of the respondents. In similar facts, the Supreme Court in **Jogeshwar Sahoo** (supra), has held as under:

“9. This Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part 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 payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered.

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11. In *Col. B.J. Akkara (Retd.) v. Government of India*² this Court considered an identical question as under:

*“27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled (vide *Sahib Ram v. State of Haryana* [1995 Supp (1) SCC 18: 1995 SCC (L&S) 248], *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)*



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967] and V. Gangaram v. Regional Jt. Director [(1997) 6 SCC 139: 1997 SCC (L&S) 1652]:

(a) *The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.*

(b) *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.*

28. *Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.*



29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. Therefore of the view that the respondents We are shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.”

21. In **Jagdev Singh** (supra), the Supreme Court was considering a case where the recovery was sought to be made almost immediately after the undertaking had been given by the respondent therein. The Revised Pay Scale based on the undertaking was granted to the respondent on 07.01.2002, and the Recovery Notice was issued on 18.02.2004. In the present case, the alleged undertakings were given by the respondents in the year 2016, while the recovery has been



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sought to be made in the year 2020, much after the respondents had already superannuated.

22. We, therefore, find no error in the Order passed by the learned Tribunal. The petitions, along with the pending applications, are accordingly dismissed.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

APRIL 9, 2025/rv/ik

Click here to check corrigendum, if any