



2025:DHC:66-DB



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

+ **W.P.(C) 17590/2024, CM APPLs. 74846/2024 & 74847/2024**

THE DIRECTOR GENERAL ALL INDIA

RADIO AND ORS

.....Petitioners

Through: Ms. Vertika Sharma, Adv.

versus

**AKASHVANI AND DOORDARSHAN ADMINISTRATIVE
STAFF ASSOCIATION THROUGH ITS VERSUS**

GENERAL SECRETARY AND ORSRespondents

Through: Mr. Prakhar Bhatnagar, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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08.01.2025

C. HARI SHANKAR, J

1. Aggrieved by the refixation and of their pay retrospectively and recoveries being made on that account, the respondents approached the Central Administrative Tribunal¹ by way of OA 261/2016².

2. Before the Tribunal, the respondents, at the very outset, submitted that they were restricting their relief to the aspect of recovery and that they had resigned themselves to the aspect of refixation.

¹ "Tribunal" hereinafter

² Akashwani & Doordarsan Administrative Staff Association (Recognized) v UOI



2025:DHC:66-DB



3. Before the Tribunal, *qua* the recoveries, the respondents relied on the well-known decision of the Supreme Court in *State of Punjab v Rafiq Masih*³, para 6 of which sets out certain circumstances in which no recovery of excess payments could be made from government employees. The petitioners, *per contra*, relied on the subsequent judgment of the Supreme Court in *Jagdev Singh v High Court of Punjab and Haryana*⁴ in which the High Court carved out an exception to the proscription against recoveries as contained circumstance (ii) envisaged in the *Rafiq Masih* judgment in a case in which, at the time when the pay was refixed, the employee concerned either submitted an undertaking to repay the excess payments in the event that the excess payment was subsequently found to be unjustified or erroneous, or was placed on notice that such recovery was likely. The relevant passage from *Jagdev Singh* reads thus:

“10. In *State of Punjab v Rafiq Masih* this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law :

(i) Recovery from employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*

(iii) Recovery from 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

³ (2015) 4 SCC 334

⁴ (2016) 14 SCC 267



2025:DHC:66-DB



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.

(emphasis supplied)

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”

4. Unfortunately, the Tribunal, while deciding the OA by judgment dated 22 February 2023, merely relied on the judgment in *Rafiq Masih* and did not consider the applicability, or otherwise, of the decision in *Jagdev Singh vis-a-vis* the undertakings stated to have been given by the respondents.

5. Mr. Bhatnagar intercedes at this point to submit that the petitioners had not, with its counter affidavit, placed any undertaking on record. In response to this, Ms. Vertika Sharma has drawn our attention to order dated 25 August 2017, which was passed by the Tribunal during the course of proceedings in OA 261/2016 which reads as under:

“DAILY ORDER

Heard the learned counsel for the parties.

Learned counsel for the respondents argued that before fixation of the pay each employee had given undertaking that excess payment, if any paid and pay is wrongly fixed, the respondents may recover the amount. However, learned counsel for the applicant contended



2025:DHC:66-DB



that this plea was neither taken in the counter affidavit nor they annexed the aforementioned undertaking with the counter reply. He wants to rebut this plea. He seeks two week's time to file an additional affidavit. Time as prayed for, is allowed.

List on 15.09.2017. Interim relief to continue till then.”

6. Ms. Sharma submits that, after having specifically sought to file an affidavit rebutting the contention of the petitioners that, in its counter affidavit before the Tribunal, the respondents had subscribed to undertakings for recovery of the excess payments, no such affidavit was filed by the respondents. Her contention is that the inexorable sequitur would be that the contention of the petitioners that the respondents had, *in fact*, submitted such undertakings stood admitted.

7. We are not expressing any opinion on these submissions one way or the other as we are remanding the matter to the Tribunal. The Tribunal shall, however, also keep the aforesaid order dated 25 August 2017 in mind while hearing the matter on remand.

8. Suffice it to state that, against the judgment dated 22 February 2023 of the Tribunal, the petitioners earlier approached this Court by way of WP (C) 2663/2024, which was disposed of by a Bench, of which one of us (C. Hari Shankar, J.) was a party, by the following order dated 25 September 2024.

“1. After some hearing, Ms. Vertika Sharma, learned Counsel for the petitioner, seeks leave to withdraw this petition as she submits that she would be preferring to move the Central Administrative Tribunal for appropriate orders.

2. Leave and liberty is granted as prayed for.

3. The petition is dismissed as withdrawn.



2025:DHC:66-DB



4. It is made clear that this Court has not expressed any opinion on whether the petitioner would be entitled to any favourable orders from the learned tribunal. If any application is moved before the learned tribunal, it shall be considered on its own merits.

5. Interim order, if any, passed in this case stands vacated.”

9. Following this, and in terms of the liberty granted by this Court, the petitioners filed MA 3792/2024 before the Tribunal. The said MA stands dismissed by the Tribunal by the following order, which constitutes subject matter of challenge in the present petition.

“Order of The Tribunal

MA No. 3792/2024

Present MA has been filed by the applicant (Respondents in the OA) for re-consideration the OA No. 261/2016 decided by this Tribunal vide an order dated 22.02.2023 wherein the following order was passed:-

“7. Accordingly, the OA is allowed to the extent that recovery of any alleged or stated excess payment made in pursuance of the pay fixation of the applicants shall not be made and stands waived off.]

8. As a consequence of this order, the respondents are obliged to refund the amount, if any which stands already recovered Further, if any of the terminal or other benefits of the applicants have been withheld to secure this recovery, the same too shall be released forthwith, in no case later than 12 weeks from the date of the receipt of a certified copy of this order.

9. Pending M.A(s), if any, stand disposed of accordingly. There shall be no orders as to costs.”

2. Aggrieved by the afore quoted order, the respondents have approached the Hon'ble Delhi High Court in W.P. (C) No. 2663/2024. The respondents withdrew the said petition with liberty to prefer their remedies before this Tribunal. For the sake of better



2025:DHC:66-DB



appreciation, the order of the Hon'ble Delhi High Court is reproduced herein below:-

"1. After some hearing, Ms. Vertika Sharma, learned Counsel for the petitioner, seeks leave to withdraw this petition as she submits that she would be preferring to move the Central Administrative Tribunal for appropriate orders."

3. Accordingly, the respondents have preferred the present MA. Learned counsel for applicant in the MA explains, that the applicants in the OA, had given an undertaking at the relevant point of time after pay fixation that in case they received any amount, that was not due to them they would be obliged to refund the same. Along with this application she placed on record these undertakings. The grounds were raised at the appropriate time in the OA, however, while deciding the OA the Tribunal has ignored this fact. The same has been recorded in the order dated 25.08.2023. Therefore, learned counsel for the applicant in the MA submits that the OA be re-heard.

4. In order to decide this MA, we may revert back to the order dated 22.02.2023. While deciding the OA, the coordinate Bench of the Tribunal, incidentally one was a Member in the Bench that decided the OA on 22.02.2023. While recording the submission of the learned counsel for the respondent has recorded, that all the applicants at the time of fixation of pay have furnished written undertaking that 'in case any over payment be made, the applicants shall be liable to refund the same. Precisely, this reason has been detailed in the MA. For the sake of better appreciation the para 3 is recorded in verbatim:-

"3. Learned counsel for the respondents on the other hand submits that being custodians of the public fund, the respondents are obliged to effect recovery once it is detected that over payment has been made to the applicants. She further submits that all the applicants at the time of fixation of pay had furnished a written undertaking that in case any over payment is made, they shall be liable to refund the same. In view of this undertaking as also the law laid down by the Hon'ble Supreme Court in Civil Appeal No. 3500 of 2006 titled Jagdev Singh vs. High court of Punjab and Haryana and Ors, the respondents have no option but to effect the recovery. She elaborates that in the aforementioned matter, the Hon'ble Supreme Court had categorically stipulated that once the employee has given an undertaking, he cannot escape recovery of



2025:DHC:66-DB



any excess payment which may have been granted to him beyond entitlement.”

5. The decision of the Hon'ble Apex Court in *Jagdev Singh (supra)* the OA, was decided in light of the decision of the Hon'ble Apex Court in Rafiq Masih. According to us, the respondents are in fact trying to seek review of the order dated 22.02.2023. As there is no error of fact or law pointed out in the order, more so learned counsel for applicant in the MA, the contends of the MA, had been duly dealt with by the Tribunal as detailed above. Accordingly, we do not find merit in the MA, the same is dismissed.”

10. We are of the clear view that the Tribunal could not have refused to pass any order on merits in MA 3792/2024, especially as this Court had directed that the MA be decided on merits.

11. Learned Counsel for the respondents, on being queried by the Court, is agreeable to the matter being remanded to the Tribunal for a decision on merits in MA 3792/2024 filed by the Petitioners.

12. Accordingly, without expressing any further observations on the merits of the matter, or on the legality or otherwise of the recoveries effected from the respondents, and leaving all aspects of the matter open for agitation before the Tribunal by both sides, the impugned order dated 16 October 2024 is quashed and set aside. MA 3792/2024 is remanded for reconsideration to the Tribunal afresh.

13. It is reiterated that the Tribunal would decide the MA on merits.

14. In order to avoid further delay, both sides are directed to present themselves before the Tribunal on 21 January 2025. We request the Tribunal to hear the matter on the said date without permitting any



2025:DHC:66-DB



unnecessary adjournments and, if possible, to pass orders thereon within a period of two weeks therefrom.

15. The writ petition stands allowed in the aforesaid extent with no orders as to costs.

16. It is informed that a Contempt Petition CP 813/2023 filed by the respondents is pending before the Tribunal.

17. Needless to say, as we have set aside the impugned order, the CP cannot survive. It is, accordingly, disposed of. Of course, this Court would not act as an impediment against the respondents again approaching the Tribunal by way of contempt proceedings, should such an occasion arises in the future.

18. This petition stands allowed in the aforesaid extent with no order as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 8, 2025/as/ar

Click here to check corrigendum, if any