



219 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.12598 of 2019 (O&M)

Date of Decision : 05.05.2026

RAVI BHUSHAN

.....Petitioners

VERSUS

**CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH AND
OTHERS**

.....Respondents

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Rishav Sharma, Advocate for the petitioner.
(joined through V.C.).

Mr. Sunil Kumar Sharma, Senior Panel Counsel
for the respondent Nos.2 to 5.

HARSIMRAN SINGH SETHI, J. (Oral)

1. The challenge in the present petition is to the order dated 25.02.2019 (Annexure P-3) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal'), whereby recovery of an amount of Rs.1,09,780/- from the amount of gratuity admissible to the petitioner has been adjusted against the overpayment of salary, has been held to be valid keeping in view the Rules governing.

2. Learned counsel for the petitioner argues that the petitioner was to be retired on attaining the age of superannuation on 28.02.2018 and six months before the said date, proceedings had been initiated against petitioner with regard to overpayment of salary, which was being granted to the petitioner. However, after his retirement, the respondents unilaterally reduced the basic pay of the petitioner from Rs.32,000/- to Rs.28,000/- and

ordered for recovery of the excess payment made to the petitioner upon wrong pay fixation from the retiral benefits admissible to him.

3. Learned counsel for the petitioner submits that once no opportunity of hearing was granted before reducing the actual salary of the petitioner from Rs.32000/- to Rs.28,000/-, which was being drawn by him up to three months prior to the date of retirement i.e. 28.02.2018, the respondents could not have unilaterally refixed his basic pay so as to recover the excess amount paid to petitioner from the pensionary benefits due to him, which fact has been ignored by the Tribunal while passing the impugned order dated 25.02.2019 (Annexure P-3).

4. Learned counsel for the respondents, on the other hand, submits that once the authorities concerned found that the salary which was being drawn by the petitioner was to excess of his entitlement, the authorities concerned reached to the conclusion that the same could be rectified keeping in view the Rules governing, which was done. As per Rule 15(2) of the Railway Servants (Pension) Rules, 1993, any excess amount paid to an employee can be recovered/adjusted from the pensionary benefits. Hence, the Tribunal has rightly appreciated the issue and rejected the claim of the petitioner with regard to recovery of the excess amount by taking into consideration the Rules governing therefore, the present petition deserves to be dismissed.

5. We have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

6. It is a conceded fact that salary @ Rs.32,000/- p.m was being drawn by the petitioner upto three months prior to the date of retirement, which salary, was reduced.

7. As per the settled principle of law settled by the Hon'ble Supreme Court of India, order which cause prejudice to an employee financially can be passed without giving him a show cause notice and opportunity of hearing.

8. It is a conceded position that prior to three months the date of retirement, the petitioner was drawing basic pay of Rs.32,000/-. However, the same was re-fixed being incorrect and about 03 months prior to his retirement his salary was re-fixed @ Rs.28,000/-. The re-fixation of salary cannot be sustained in the eyes of law, as the Railways department could not have unilaterally re-fixed the salary without affording any opportunity of hearing to the petitioner by issuing a show cause notice.

9. As per the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No. 2265 of 2011 titled as ***Chamoli District Co-operative Bank Ltd through its Secretary/Mahaprandhak and another vs. Raghunath Singh Rana and others***, 2016(12) SCC 204, decided on 17.05.2016 and in Civil Appeal No. 9417 of 2019 titled as ***M/s Daffodills Pharmaceuticals Ltd. and another vs. State of U.P. and another*** 2019 (12) JT 283, decided on 13.12.2019, it has been held that where any order passed by an authority concerned causes prejudice to an employee, especially which causes financial liability, an opportunity of hearing is to be given and no such order causing prejudice to an employee can be passed by an employer unilaterally. The relevant para of ***Daffodills Pharmaceuticals's case (supra)*** is as under:-

“15. In the present case, even if one assumes that Surender Chaudhary, the accused in the pending criminal case was involved and had sought to indulge in objectionable activities,

that ipso facto could not have resulted in unilateral action of the kind which the State resorted to- against Daffodils, which was never granted any opportunity of hearing or a chance to represent against the impugned order. If there is one constant lodestar that lights the judicial horizon in this country, it is this: that no one can be inflicted with an adverse order, without being afforded a minimum opportunity of hearing, and prior intimation of such a move. This principle is too well entrenched in the legal ethos of this country to be ignored, as the state did, in this case.

16. The High Court, in the opinion of this court, fell into error in holding that in matters of award of public contracts, the scope of inquiry in judicial review is limited. Granted, such jurisdiction is extremely circumscribed; no doubt the court had refused to grant relief to Daffodils against its plea of wrongful rejection of its tender. However, what the impugned judgment clearly overlooks is that the action of the state, not to procure indefinitely, on an assumption of complicity by Daffodils, was in flagrant violation of principles of natural justice.”

10. The relevant paragraph of the ***Chamoli's case (supra)*** is as under:-

“19. The compliance of natural justice in domestic/disciplinary inquiry is necessary has long been established. This Court has held that even there are no specific statutory rule requiring observance of natural justice, the compliance of natural justice is necessary. Certain ingredients have been held to be constituting integral part of holding of an inquiry. The Apex Court in [Sur Enamel and Stamping Works Pvt. Ltd. v. Their Workmen](#) reported in (1964) 3 SCR 616 has laid down following:-

“... An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined – ordinarily in the presence of the employee – in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the inquiry officer records his findings with reasons for the same in his report.”

11. A bare perusal of the above would show that no order causing financial loss to an employee can be passed without affording an opportunity of hearing, and in the present case, it is a conceded fact that re-fixation of the salary of the petitioner was done unilaterally. Hence, no order based upon the salary of petitioner so as to effect recovery of excess amount paid and that too from the pensionary benefits, cannot be allowed.

12. Even otherwise, the question of law with regard to effecting the recovery from a retired employee has already been settled by the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195***, according to which, no recovery can be made from a Class-III and Class-IV employee and that too after his/her retirement from service. Further, as per the judgment in ***Rafiq Masih's case (supra)***, no recovery can be effected from an employee after withdrawing a benefit which an employee was getting in continuance to get for a period of five years before the same was withdrawn. The relevant paragraph of the said judgment is as under:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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 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.”

13. In the present case, the recovery is sought to be made from petitioner on the basis of a unilateral order passed a few months prior to the retirement, which order was also passed in violation of the Rules of Natural Justice. Hence, such an order cannot be preferred or relied upon so as to recover the alleged excess payment from the retiral benefits admissible to petitioner. The Tribunal, while passing the order dated 25.02.2019, has failed to consider the said aspect.

14. Further, as per the settled principle of law in ***Rafiq Masih's case (supra)***, any benefit which an employee continues to get for a period of five years, the same cannot be withdrawn so as to recover the excess payment made upon grant of such benefit.

15. In the present case, nothing has come on record to show that the petitioner was not drawing the salary, which was later re-fixed, for a period of more than five years. Keeping in view the totality of the circumstances, the act re-fixation of the salary that prior to just a few months before retirement from service, which led to effecting recovery from the petitioner, was contrary to the settled principles of law hence, the same cannot be sustained.

16. The Hon'ble Supreme Court of India in ***Civil Appeal No.7115 of 2010 titled as Thomas Daniel versus State of Kerala and others, decided on 02.05.2022***, has held that where an employee was not at fault with regard to the extension of benefit and there is no representation on behalf of the employee concerned to get the emoluments beyond his/her entitlement, the recovery cannot be made. The relevant paragraph of the said judgment is as under:-

“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud 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 payment of emoluments or allowances are not recoverable. This relief against the recovery

is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.”

17. Hence, the recovery which has been effected from the retiral benefits admissible to the petitioner is contrary to the settled principles of law. Accordingly, the recovery so made is directed to be refunded to the petitioner within a period of 8 weeks from the receipt of a certified copy of this order.

18. Pending miscellaneous application(s), if any, shall stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

05-05-2026
Sapna Goyal

(DEEPAK MANCHANDA)
JUDGE

NOTE: Whether speaking/ reasoned: YES
Whether reportable: NO