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

\+ W.P.(C) 10252/2026, CM APPL. 47495/2026 & CM APPL. 47496/2026

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

Through: Mr. Raktim Gogoi, CGSC with Ms. Akshita Nigam, Mr. Kaushlendra Dutt Pandey and Mr. Kanhaiya Singla, Advocates.

versus

USHA RANI .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

ORDER (ORAL)

% **27.07.2026**

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Writ Petition has been filed under Article 226 of the **Constitution of India, 1950**[1], seeking issuance of a Writ of Certiorari or any other appropriate writ, order or direction, *inter alia*, challenging the **Order dated 12.08.2025**[2] passed by the **learned Central Administrative Tribunal, Principal Bench, New Delhi**[3] in case being O.A. 1688/2019, titled *"Usha Rani v. Union of India & Ors."*, filed under **Section 19 of the Administrative Tribunal Act, 1985**.

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[1] Constitution
[2] Impugned Judgement
[3] learned CAT

2. By way of the Impugned Order, the learned CAT has set aside Orders dated 31.01.2019 and 08.04.2019, as also the re-fixation order dated 20.02.2017, while directing the Petitioners herein not to recover any amount from the Respondent, and further to pass an appropriate order for re-fixation of pay/pension along with all consequential benefits and arrears. It was also directed by the learned CAT that the aforesaid exercise be completed within the period of three months from the date of receipt of a certified copy of the Impugned Order.

BRIEF FACTS:

3. Shorn of unnecessary details, the facts germane to the institution of the present Writ Petition are as follows:

a. The Respondent herein, *namely,* Smt. Usha Rani, was appointed to the post of **Lower Division Clerk**[4] with Petitioner No. 2 herein, *namely,* Safdarjung Hospital, New Delhi, in the year 1978, and thereafter, was promoted to the post of **Upper Division Clerk**[5] on 24.06.1992.

b. Thereafter, the Respondent was granted the benefit of Second **Assured Career Progression**[6] upgradation in the pay-scale of Rs. 5,000-8,000/- *vide* Order dated 29.12.2006, with effect from 21.07.2001.

c. Upon implementation of the VI **Central Pay Commission**[7], the Respondent's pay was fixed at Rs. 10,700/- in **Pay Band-2**[8] + **Grade Pay**[9] Rs. 4,200/- with effect from 01.01.2006.

[4] LDC
[5] UDC
[6] ACP
[7] CPC
[8] PB-2
[9] GP

d. Subsequently, the Respondent's pay was revised to Rs. 12,090/- in PB-2 + GP Rs. 4,200/- with effect from 01.01.2006 and also paid with arrears.

e. The Respondent was granted a third financial upgradation under the **Modified Assured Career Progression Scheme**[10] with GP Rs. 4,600/- *vide* Order dated 16.04.2010, with effect from 01.09.2008.

f. *Vide* Order dated 20.02.2017, which impugned before the learned CAT, the Petitioners issued a pay fixation order and unilaterally reduced the Respondent's pay to Rs. 10,700/- with effect from 01.01.2006.

g. In pursuance of the same, recovery to the tune of Rs. 15,000/- per month was being made without any communication in respect of the amount of alleged over-payment having been made to the Respondent.

h. Against the recovery being made, the Respondent made representations dated 11.01.2019 and 15.03.2019 which came to be rejected *vide* office orders dated 31.01.2019 and 08.04.2019 without addressing the grounds and contentions raised therein.

i. The Respondent, aggrieved by the said rejection of her representations as well as the unilateral decision of the said recovery being made, raised a challenge to the pay fixation order dated 20.02.2017, along with the office orders rejecting the representation made by the Respondent, dated 31.01.2019 and 08.04.2019 by way of an O.A. before the learned CAT.

j. The Petitioners herein, aggrieved by the successful challenge to the orders as aforestated, have assailed the Judgement and Order

[10] MACP Scheme

dated 12.08.2025 passed by the learned CAT before this Court by way of the present Writ Petition.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

4. Learned counsel appearing on behalf of the Petitioners would submit that the learned CAT has erred in rendering the Impugned Judgment insofar as it fails to take into account the fact that the orders that came to be passed were in pursuance of Audit Objections dated 06.06.2017 that have been raised. It would be submitted that the Audit Objection clearly pointed to the error in the calculation of the basic pays and, which formed the base for the Multiplication Factor of 1.86 and as a result of which, the Respondent started drawing inflated basic pay.

5. It would be submitted that the inflated basic pay continued to be made to the Respondent, between the period starting from 01.01.2006 till some time in 2016-17.

6. Learned counsel for the Petitioners would further submit that it is this Audit Objection which led to the action taken by the Petitioners, thereby issuing formal orders for correction in the alleged error in pay fixation and re-fixation of the Respondent's pay at Rs. 10,700/- with effect from 01.01.2006. It would further be contended that the said re-fixation was strictly in compliance with Rule 7 and Note-2A of CCS (Revised Pay) Rules, 2008. He would, in view thereof, submit that the learned CAT had clearly erred in rendering the judgment in favour of the Respondent since the aspect of the Audit Objections had not been considered.

7. It would further be submitted that the judgment passed by the Hon'ble Supreme Court in ***State of Punjab & Ors. v. Rafiq Masih***

(White Washer)[11] would not apply in the present case since the recovery was initiated at least three years prior to the retirement of the Respondent.

ANALYSIS:

8. We have heard Ms. Akshita Nigam, learned Counsel appearing on behalf of the Petitioners.

9. We, at the outset, note that it is surprising that though the Audit Objections themselves came to be raised on 06.06.2017, it has been stated that the Office of the Medical Superintendent of the Petitioner No. 2 issued a formal order for correcting the error in payment almost four months prior to the said audit having been conducted, i.e., on 20.02.2017.

10. This anomaly, by itself, raises a presumption that the alleged correction was not based on any "Report", and for which the foundation was sought to be laid subsequently by means of an audit that came to be conducted. Though this aspect does not form a part of the judgment that came to be rendered by the learned CAT, however, we are of the view that this, too, is an aspect which appeals to us for upholding the judgment of the learned CAT.

11. Turning now to the second aspect, *namely*, the alleged non-application of the judgments of the Hon'ble Supreme Court in ***State of Punjab & Ors. v. Rafiq Masih (White Washer)*** (supra) and ***Thomas Daniel v. State of Kerala***[12], we are of the view that resort to the said judgments would arise only if the Petitioners are able to absolve themselves of their legal obligation to ensure that, prior to passing any

[11] (2015) 4 SCC 334
[12] Civil Appeal 7115/2010

order entailing civil consequences, including reduction in pay or recovery, a show-cause notice is necessarily issued.

12. Admittedly, in the present case, no such show-cause notice was ever issued. It was this aspect that formed the bedrock of the conclusions drawn by the learned CAT. The learned CAT has relied upon the judgment passed by the Hon'ble Supreme Court in ***Bhagwan Shukla v. Union of India & Ors.***[13] as also its own judgment in ***Malti Kathuria v. Union of India & Anr.***[14] to grant the reliefs, as sought for in the following manner:

> "**7.** Learned counsel for the applicant submits that the present case is covered by the decision rendered by the Hon'ble Apex Court in the matter of ***State of Punjab and Ors. Vs. Rafiq Masth (White Washer)***, reported in (2015) 4 SCC 334 and Civil Appeal No. 7115/2010 in the matter of ***Thomas Daniel Vs. State of Kerala*** and various other judgments and also places reliance on the decision rendered by the Hon'ble Apex Court in judgment dated 05.08.1994 in the matter of in ***Bhagwan Shukla Vs. Union of India & Ors.***, reported in (1994) 6 SCC 154, where the Hon'ble Apex Court has held that an order causing civil consequences (like reduction of pay/recovery) cannot be passed without putting the employee on notice and giving an opportunity to show cause. He states that re-fixation cannot be done without issuance of show cause notice. Learned counsel for the applicant by placing reliance on the order/judgment dated 16.05.2025 of the Tribunal in O.A. No. 3685/2018 in the matter of ***Malti Kathuria Vs. Union of India & Anr.,*** submits that the present matter is squarely covered by the said order/judgment passed by this Tribunal in which one of us namely [Hon'ble Mr. Manish Garg, Member (J)] was also a Member. For facility of reference, the relevant portion of the same reads as under:-
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> > "4. Having heard the learned counsel for the parties and perused the records of the case. The factual matrix as highlighted hereinabove is not in dispute. It is an admitted position that no show cause notice has been issued for initiating recovery, which was based on a audit objection/ audit report as highlighted in above paragraphs. It is also noticeable fact that all retiral dues were paid to the applicant without recovering and withholding any amount, but in a lower pay

[13] (1994) 6 SCC 154

[14] O.A. 3685/2018

scale.
4.1. There is nothing on record that any departmental action was taken qua any delinquent official, who fixed the wrong pay. The recovery is sought to be made only pursuant to an audit objection that to without issuance of any show cause notice.
4.2. Learned counsel for the applicant has drawn attention to the fact that in identical situation in the matter of Gokul Chand Kosila Vs. Union of India and Others (supra), a Co-ordinate Bench of this Tribunal in OA. No. 956/2017, decided on 29.08.2024, has observed as under: -
"6. The aforesaid facts are undisputed. It is not disputed that the applicant superannuated on 31.08.2015 and it is further not disputed that a recovery has been made from the gratuity of the applicant post his retirement. We have also perused the decision rendered by the Hon'ble Apex Court on an identical issue in Civil Appeal No. 1635 of 2013, titled Jagdish Prasad Singh Vs. State of Bihar & Others dated 08.01.2024,. Relevant paragraphs of the same read as under:-
"24. Recently, this Court in Thomas Daniel v. State of Kerala and Others, held that the State cannot recover excess amount paid to the ex-employee after the delay of 10 years.
25. The Government Resolution dated 8th February, 1999 to be specific, the highlighted portion supra is amenable to the interpretation that it protects the status and pay of those employees who had received their time bound promotions prior to 315t December, 1995. As a consequence, the Secretary concerned, while rejecting the representation clearly misinterpreted and misapplied the said Resolution to the detriment of the appellant.
26. The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he had been promoted as an ADSO, while drawing the pay scale of Rs.6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained.
27. The order dated 8th October, 2009 passed by the State Government directing reduction in the pay scale of the

appellant from Rs.6500-10500 to Rs.5500-9000 w.e.f. 1st January, 1996 and directing recovery of the excess amount from him is grossly illegal and arbitrary and is hereby quashed and set aside. The impugned order dated 27th August, 2012 passed by the Division Bench of the High Court does not stand to scrutiny and is hereby quashed. Therefore, the appellant shall continue to receive the pension in accordance with the pay scale of Rs.6500- 10500.

28. In case, if any reduction in pension and consequential recovery was effected on account of the impugned orders, the appellant shall be entitled to the restoration/reimbursement thereof with interest as applicable.

29. The appeal is allowed in these terms.

No order as to costs."

7. In view of the aforesaid facts and circumstances, we hereby quash and set aside the impugned orders dated 20.08.2015 and 23.12.2015 (Annex.A/1 & A/2). Respondents are directed to restore the pay of the applicant as per order dated 17.12.2002 with all the consequential benefits including re-fixation of retirement benefits with arrears and refund the recovered amount from his gratuity with interest at the GPF rate.

8. The said exercise shall be completed within a period of three months from the date of receipt of a certified copy of this Order.

9. With the aforesaid directions, the OA is allowed.

10. No order as to costs."

5. In view of the same, we allow the present O.A. and impugned orders dated 09.06.2017 and 13.07.2018 are quashed and set aside. The respondents are directed not to recover any amount from the applicant and appropriate orders for re-fixation of pay/pension be passed alongwith all consequential benefits and the arrears to the same also be released. The said exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order. A copy of the order so passed by the respondents be given to the applicant.

6. This disposes of the present O.A. All pending M.As, if any, shall also stand disposed of

7. No order as to costs."

8. Having heard the learned counsel for the parties and perused the records of the case. The factual matrix as highlighted hereinabove is not in dispute. It is an admitted position that no show cause notice has been issued for initiating recovery, which was based on a audit objection/audit report as highlighted in above paragraphs. In the facts and circumstances, we intend to follow the ratio laid down by this Tribunal in the case ***Malti Kathuria*** (supra).

> **9.** In view of the same, we allow the present O.A. and impugned orders dated 31.01.2019 & 08.04.2019 **[Annexure-A/1 (Colly)]** and 20.02.2017 **(Annexure-A/2)** are quashed and set aside. The respondents are directed not to recover any amount from the applicant and appropriate orders for re-fixation of pay/pension Tribunal be passed along with all consequential benefits and the arrears to the same also be released. The said exercise shall be completed within a period of three months from the date of receipt of a certified copy of this order. A copy of the order so passed by the respondents be given to the applicant."

13. In view of the clear non-adherence to the legal mandate for issuance of a show-cause notice prior to taking any action, as has been done in the present manner, we are of the opinion that there is no infirmity in the Judgement impugned herein.

14. The ratio of ***Bhagwan Shukla (supra),*** in our considered view, squarely applies to the facts of the present case. The Respondent had been drawing her pay on the basis of the pay fixation already made by the Petitioners. The said fixation continued for several years and, on the basis thereof, the Respondent was paid her salary and consequential benefits. The Petitioners thereafter proceeded to re-fix her pay with retrospective effect from 01.01.2006, thereby reducing the pay which had already been fixed and paid to her. This was not a mere ministerial or clerical correction having no adverse consequence. The re-fixation directly impacted the Respondent's emoluments and resulted in recovery of amounts which had already been paid to her. The action, therefore, clearly entailed civil consequences and attracted the requirement of compliance with the principles enshrined in ***Bhagwan Shukla (supra)*** and ***Malti Kathuria (supra)***.

15. Significantly, the Respondent was not afforded any opportunity to contest the proposed re-fixation before the same was effected. The Petitioners did not issue any show-cause notice setting out the alleged

error in the original fixation, the basis on which the revised fixation was proposed, the period for which the proposed correction was to operate, or the consequential recovery that was sought to be made.

16. The Respondent was thus confronted with a *fait accompli*, with the adverse consequences of the decision already taking effect before she had any meaningful opportunity to explain her position. The subsequent representations made by her against the action cannot be regarded as a substitute for the opportunity which ought to have preceded the initial decision itself.

17. The distinction between a pre-decisional opportunity and a post-decisional representation is material in the present case. Once the Petitioners had unilaterally re-fixed the Respondent's pay and commenced recovery, the Respondent was effectively called upon to challenge a decision which had already been taken and implemented. The requirement recognised in ***Bhagwan Shukla (supra)*** is intended precisely to prevent such unilateral action where the decision has the effect of adversely affecting an employee's civil rights and financial entitlements. The opportunity to represent must, therefore, ordinarily precede the decision, and cannot be reduced to a mere formality after the adverse action has already been taken.

18. We are also unable to accept that the existence of an Audit Objection can dispense with such requirement. The Audit Objection may have brought to the notice of the Petitioners an alleged error in the fixation of pay; however, the Audit Objection, by itself, could not have conclusively determined the rights of the Respondent or authorise an automatic reduction of her pay. The Respondent was entitled to know the precise basis of the alleged error and to place her explanation before the competent authority. It was only thereafter that

the Petitioners could have arrived at a reasoned decision in accordance with law. The failure to undertake this exercise renders the re-fixation order vulnerable on the ground of violation of the principles of natural justice.

19. In the present case, therefore, the non-compliance with the principle enunciated in ***Bhagwan Shukla (supra)*** is not a mere technical or procedural irregularity. It goes to the root of the validity of the action undertaken by the Petitioners. The very order by which the Respondent's pay was re-fixed to her detriment was passed without affording her an opportunity of being heard. Resultantly, the consequential recovery, which emanates from and is founded upon such re-fixation, cannot independently survive. The recovery being merely a consequence of the re-fixation order, once the foundational order itself is found to have been passed in violation of the relevant law, the consequential recovery must necessarily fail with it.

20. In view of the clear non-adherence to the requirement of issuing a show-cause notice before undertaking an action having adverse civil consequences, we find no infirmity in the conclusion arrived at by the learned CAT. In these circumstances, it is not necessary for this Court to enter into the question of whether the restrictions on recovery as enunciated in ***Rafiq Masih (supra)*** or ***Thomas Daniel (supra)*** would independently apply to the facts of the present case. The impugned action is liable to be set aside on the fundamental ground that the Respondent's pay could not have been re-fixed to her detriment, and consequential recovery commenced, without first affording her an opportunity to show cause.

21. For the same reason, the consequential action of recovery, being founded upon the re-fixation of pay which itself suffers from the vice

of violation of the legal requirements as set out in ***Bhagwan Shukla (supra)*** and ***Malti Kathuria (supra)***, cannot be sustained. The recovery, being in substance, a consequence flowing from the impugned re-fixation, is in the nature of the fruit of a poisoned tree, and cannot be permitted to survive independently once the foundational action is held to be unsustainable in law.

CONCLUSION:

22. For the reasons afore-stated and in view of the law laid down by the Apex Court in ***Bhagwan Shukla (supra)***, we are not inclined to interfere with the Impugned Judgement herein.

23. Accordingly, the present Petition, along with pending Application(s), stands dismissed *in limine*.

HARISH VAIDYANATHAN SHANKAR, J.

C. HARI SHANKAR, J.

JULY 27, 2026/AR/tk/**va**