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

Date of decision: **06.08.2025**

\+ W.P.(C) 4981/2019

CHATURBHUJ RATHORE .....Petitioner

Through: Mr. Asish Nischal, Mr. Arun Nischal and Mr. Shivam Kumar Singh, Advs

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. R. V. Sinha and Mr. A. S. Singh, Advs. for R-2 & R-3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed challenging the Order dated 08.01.2019 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 1504/2017, titled ***Chaturbhuj Rathore v. Union of India & Ors.,*** dismissing the said O.A. filed by the petitioner herein.

2. To give a brief background of the facts in which the present petition arises, the petitioner was granted the first time bound Industrial Dearness Allowance (IDA) pay-scale upgradation from level E-2 to E-3 by an Office Order dated 24.12.2010 passed by the respondent no. 4. One of the conditions for such upgradation in the said Office Order was that the petitioner shall have to compulsorily undergo two weeks' training within two years of the upgraded IDA pay scale's Order being issued for being eligible for drawal of the

increment in the upgraded IDA pay- scale.

3. The petitioner was thereafter granted the time bound IDA pay scale from level E-3 to E-4 by an Order of 09.11.2011 passed by the respondent no. 4.

4. The petitioner superannuated from service on 30.09.2014.

5. Thereafter, the respondent no. 4 issued a notice dated 05.03.2015, calling upon the petitioner to provide copies of the administrative orders/approval granting him the upgradation from E-2 to E-3 level, as also the orders for passing/completing the two weeks' compulsory training. The petitioner submitted a response dated 11.03.2015, claiming that the administrative approval for his upgradation from E-2 to E-3 level would be available in the administration only.

6. Considering the reply, the respondent no. 4 issued a revised pay fixation memo dated 18.04.2015, and also a recovery notice dated 26.06.2015, whereby, from his retirement gratuity and computed value of pension, an amount of Rs.2,75,212/- was recovered.

7. The petitioner filed the above O.A. challenging the said recovery.

8. The petitioner has placed reliance on the judgement of the Supreme Court in ***State of Punjab & Ors. v. Rafiq Masih & Ors.***, (2015) 4 SCC 334, to contend that post the superannuation no recovery can be made.

9. The learned Tribunal, however, observing that the petitioner, being a Group-A officer and that too in Accounts Section, should have been very cautious and careful with regard to his entitlement to

upgradation, and once it is not disputed that the upgradation was not proper, consequences were bound to follow, that is, the recovery of excess amount paid to him was bound to be made.

10. The learned counsel for the petitioner, in challenge to the Impugned Order, submits that the learned Tribunal has erred in not appreciating the judgement of the Supreme Court in ***Rafiq Masih*** (supra) properly. He submits that in ***Rafiq Masih*** (supra), apart from prohibiting a recovery to be made from a Class-C employee, it had further stated that recovery should normally not be allowed to be made from an employee who has either retired or is about to retire. He further places reliance on the judgement of this Court in ***Maha Nagar Telephone Nigam Ltd. v. Shri Ramdhan Gupta & Anr.***, 2019 SCC OnLine Del 7125.

11. The learned counsel for the petitioner further submits that, in any case, no recovery could have been made without issuing a show-cause notice and eliciting a response thereto, from the petitioner.

12. On the other hand, the learned counsel for the respondent submits that it was a pre-condition of the upgradation that the petitioner shall complete the two weeks' compulsory training. The petitioner could not submit any certificate of completing the same, therefore, was not entitled to the upgradation and hence, the recovery was rightly made from the petitioner.

13. He further submits that, in fact, the petitioner has acted in connivance with other officers in drawing the additional pay, to which he was not entitled.

14. In rejoinder, the learned counsel for the petitioner submits that

as far as plea of connivance is concerned, the same is not based on any material on record and is completely vague. He further reiterates that no notice in this regard has ever been issued to the petitioner. In support he places reliance on the judgement of this Court in ***Sanjay Kumar v. Union of India & Ors.***, 2025 SCC OnLine Del 463.

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

16. In ***Rafiq Masih*** (supra), while giving the illustrations of circumstances wherein the recovery of any excess amount paid to an employee may be prohibited, the Supreme Court stated as under:

> *"**18.** 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
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> *(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*
>
> ***(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.***
>
> *(iii) Recovery from the 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."*
>
> **(Emphasis Supplied)**

17. A reading of the above would show that each of the above circumstances are independent of each other. One of the circumstances where recovery has been prohibited, is where the employee has retired or is due to retire within one year of the order of recovery or where the recovery is being made of an amount paid in excess of 5 years.

18. In ***Shri. Ramdhan Gupta*** (supra), considering the above conditions laid down by the Supreme Court in ***Rafiq Masih*** (supra), this Court held as under:

> *"**11.** From the above, it would be seen that so far as employee belonging to Class III and Class IV services (or Group C and D services), are concerned, recovery was declared to be impermissible in all situations, where excess payment had been made to them mistakenly by the employer, for which they were not responsible in any way. The categories (ii) to (v), above, however, are not restricted to employees belonging to Class III and Class IV, or Group C and Group D services.*
>
> ***12.** Thus, the submission of Mr. Dutt that recovery from respondent No. 1 could be affected since he was not a Class III or Class IV employee, has no merit. His case squarely falls in Clauses (ii) and (iii) aforesaid, since the recovery was made on the retirement of respondent No. 1, and it related to a period well in excess of five years."*

19. In the present case as well, the petitioner had superannuated

from service on 30.09.2014. Though, it was not a show-cause notice asking him to show-cause as to why the recovery be not made, the first notice issued to the petitioner *qua* the same was issued on 05.03.2015, asking him for documents to prove that he had undertaken the two weeks' compulsory training required for the pay-scale upgradation from level E-2 to E-3. Thereafter, in effect, no show-cause notice was issued to the petitioner, either calling upon him to explain as to why the recovery should not be made or attributing any connivance or active participation of the petitioner in the excess amount paid to him. The plea of connivance, therefore, remains unsubstantiated as on date.

20. In ***Sanjay Kumar*** (supra), in similar circumstances, this Court has held as under:

> *"**6.** It is not denied that the petitioner is a Group 'C' employee. Though vaguely contended by the respondents that the petitioner was to be partially blamed for having withdrawn the RHA and the HRA, no reason has been supplied for placing this blame, even partially, on the petitioner. It is only in the Counter Affidavit that it has been asserted that the petitioner had volunteered to refund the excess amount received by him under the above heads of payment. There is no document filed in support of this assertion. Therefore, we have to proceed on the basis that it was the respondents themselves who were to blame for having paid the subject amount to the petitioner though he was not entitled to the same."*

21. Given the above facts, as the petitioner had already superannuated, and in fact, no Show Cause Notice seeking such

recovery was ever sent to the petitioner, recovery made from him was not justified. The learned Tribunal has clearly erred in dismissing the O.A., only on the basis that the petitioner belongs to a Group-A service.

22. The Impugned Order is accordingly set aside.

23. The respondents are directed to refund the amount recovered by them from the gratuity and the other pension emoluments of the petitioner, within a period of six weeks from today, along with interest at the rate of 6% per annum.

24. However, as the petitioner is also unable to show that he had undertaken the two weeks' compulsory training, as far as future payments are concerned, the same shall be in accordance with the revised pay fixation memo, that is, withdrawing from the petitioner the benefit of the upgradation granted to him.

25. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

MADHU JAIN, J

AUGUST 6, 2025/bs/ys/*VS*