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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 11.08.2025***

+ W.P.(C) 12022/2025

UNION OF INDIA THROUGH ITS SECRETARY & ORS.

.....Petitioners

Through: Mr.Nirvikar Verma, SPC.

versus

DR VISHNU SWARUP GUPTA

.....Respondent

Through: Mr.Ankur Chibber, Adv.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE MADHU JAIN****NAVIN CHAWLA, J. (ORAL)****CM APPL. 49067/2025 (Exemption)**

1. Allowed, subject to all just exceptions.

W.P.(C) 12022/2025 & CM APPL. 49065/2025, CM APPL. 49066/2025

2. This petition has 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 'Tribunal') in O.A. No. 623/2023, titled *Dr.Vishnu Swarup Gupta v. Union of India & Ors.*, allowing the O.A. filed by the respondent herein and directing that the amount of the alleged excess payment towards Transport Allowance recovered from the gratuity amount payable to the respondent, shall be refunded to him within a period of three



months from the date of receipt of a certified copy of the said order, failing which the respondent shall also be entitled to interest at GPF rates for delayed period till the actual date of payment.

3. To give a brief background of the facts in which the present petition arises, the Government of India, by O.M. dated 28.01.1994, had extended the facility of a vehicle to the officers in the rank of Joint Secretary and above and to the Head of Departments in Senior Administrative Grade of the Central Government. *Vide* O.M. dated 03.10.1997, the concept of payment of Transport Allowance was introduced.

4. By a subsequent O.M. dated 29.08.2008, the officers were granted an option to avail Travel Allowance in lieu of car facility, provided that they are entitled for the same in terms of O.M. dated 28.01.1994. Such benefit was extended to the respondent herein as well. However, pursuant to an audit objection, on 19.08.2014, this facility was stopped for the respondent.

5. The respondent superannuated on 31.03.2016, and while settling his retiral benefits, an amount of Rs. 5,40,000/- was recovered from the gratuity payable to him, claiming the same to be excess amount paid to him as travel allowance prior to his retirement despite him not being eligible to receive the same.

6. The respondent represented against the same, and failing to get a positive response, filed an O.A., being O.A. No. 2463/2019 which was disposed of by an Order dated 22.08.2019 by the learned Tribunal directing the petitioners to decide the representation of the respondent. The petitioners, however, rejected the representation of the respondent



by an Order dated 05.01.2023, which then came to be challenged in the above mentioned O.A. As noted hereinabove the learned Tribunal has allowed the O.A filed by the respondent with the above directions.

7. The learned counsel for the petitioners submits that the respondent having been paid the Transport Allowance though he was not entitled for the same, and the said facility stopped prior to his retirement, that is by an Order dated 19.08.2014, the petitioner was entitled to recover the excess amount paid notwithstanding that the respondent had superannuated on 31.03.2016.

8. He submits that the said issue is also pending consideration before this Court in W.P.(C) No. 3689/2019, titled ***Union of India and Ors. v. Dr. B.P. Arneja and Ors.***

9. Placing reliance on the Judgment dated 21.04.2022 of the Orissa High Court in W.P.(C) No. 11686/2018, titled ***Dr. Surendranath Pati v. Union of India & Ors.***, he submits that the High Court has allowed the government to make recovery from a similarly placed employee to whom Transport Allowance had been paid, though he was not entitled to the same and later recovery was made from the retiral dues.

10. He further places reliance on Rule 71 of the CCS (Pension) Rules, 1972 to submit that any amount which remains outstanding till the date of retirement of a government servant can be adjusted against the amount of retirement gratuity.

11. He submits that, therefore, in the present case, the learned Tribunal has erred in directing the petitioners to refund the amount that had been recovered from the respondent.



12. On the other hand, the learned counsel for the respondent, who appears on advance notice of this petition, submits that though by an Order dated 19.08.2014, the petitioners stopped the payment of Transport Allowance to the respondent, there was no recovery notice issued to the respondent till his superannuation. The amount was recovered by withholding his gratuity payment without any notice to him. He submits that the same is clearly impermissible in terms of the Judgment of the Supreme Court in *State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.*, (2015) 4 SCC 334.

13. He submits that in similar circumstances, this Court, by its Judgment in *Dr. Shashi Vashisht v. Union of India and Ors.*, 2023:DHC:7045-DB, has directed the refund of the amount recovered from the petitioner therein.

14. He further submits that the Judgment in *Dr. Surendranath Pati v. Union of India & Ors* passed by the Orissa High Court, has failed to consider the circumstances laid down by the Supreme Court in Paragraph 12 (ii) and (iii) of *Rafiq Masih* (supra), which are independent of Clause (i), and wherein it was stipulated that recovery should not be allowed to be made from the retiral dues of the employee.

15. He further submits that in *Dr. Surendranath Pati* (supra), the Court also found that the petitioner therein had misrepresented and concealed vital facts, thereby disentitling him to any relief, which is not an allegation made against the respondent herein.

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



17. It remains undisputed that prior to the superannuation of the respondent, the petitioners did not issue him any notice for recovery. In fact, even on the superannuation of the respondent, the recovery was unilaterally made by the petitioners without any notice to the respondent. Though the petitioners had decided not to extend the benefit of Transport Allowance to the respondent by a common order dated 19.08.2014, no further action for recovery was made for almost two years till the date of superannuation of the respondent herein.

18. The learned counsel for the petitioners submits that by a Communication dated 09.03.2015, addressed by the Director General of Audit (Central Expenditure) to the Secretary Health and Family Welfare Department, Government of India, he had been advised to make recovery of the amounts paid as Transport Allowance to the doctors, the fact remains that in spite of the Communication dated 09.03.2015, it is not the case of the petitioners that any further steps were taken to make such recovery from the respondent while he was still in service. The petitioners have not placed any further communication that was addressed to the respondent pursuant to the above correspondence from the Director General of Audit. The fact, therefore, remains that as far as the respondent is concerned, there was no notice to him for any recovery to be made till the date of his superannuation.

19. In **Rafiq Masih** (supra), the Supreme Court has listed the circumstances where recovery from retiral dues may be impressible in law and should not be allowed:

“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."*

20. The above circumstances, which have been mentioned by the Supreme Court, are not conjunctive in nature but are in the alternative. Paragraph 12(ii) thereof provides that recovery would be impermissible from a retired employee or an employee who is due to retire within one year of the order of recovery.

21. In the present case, in fact, not only is recovery made post the retirement of the respondent but also without notice to him.



22. As far as reliance on the Judgment of the Orissa High Court in *Dr. Surendranath Pati* (supra) is concerned, with respect, the Orissa High Court did not consider the circumstances mentioned by the Supreme Court in the clauses other than one contained in Paragraph 12(i) of *Rafiq Masih* (supra) that has been reproduced hereinabove. The relief was refused to the petitioner therein also on the ground that he had not approached the Court with clean hands and had failed to disclose some vital facts, which is not the allegation against the respondent herein.

23. As far as pendency of W.P.(C) No. 3689/2019, titled *Union of India and Ors. v. Dr. B.P. Arneja and Ors.*, is concerned, we may not express any opinion on the same as we are not aware of the issues raised in that petition. In the present petition, we find no reason to interfere with the Impugned Order passed by the learned Tribunal as we find no infirmity in the same.

24. The petition, along with the pending applications, is accordingly dismissed.

NAVIN CHAWLA, J

MADHU JAIN, J

AUGUST 11, 2025/bs/VG/ik