



2025:DHC:3211-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 8270/2017, CM APPLs. 34041/2017 & 29348/2018

DR. M.C. PANDEY

.....Petitioner

Through: Mr. Sudeep Singh and Mr.
Rishabh Bhardwaj, Advs.

versus

UNION OF INDIA & ANR

.....Respondents

Through: Ms. Sangeeta Rai, Sr. PC for
UOI

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

28.04.2025

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C. HARI SHANKAR, J.

1. The petitioner retired from the Indo-Tibetan Border Police¹ in 1999. On the basis of the pay scale of ₹12,000-375-16,500/-, which was being drawn by him at that time, he was sanctioned pension @ ₹8,523/- w.e.f. 1 November 1999. We deem it appropriate to provide a screen shot of the Pension Payment Order² issued by the respondents thus:

¹ "ITBP", hereinafter

² "PPO", hereinafter



DECLARATION OF BANK

I wish to draw pension/ECRG/Ret (Name of Nationalised Bank)

through bank draft.
S.B.I. R.K. Puram Code- 1076
SB A/C No. 15557

[Signature]
Signature of Applicant

SPECIMEN SIGNATURE

Specimen signature of No. **111101801** Rank **CMD** Name **DR. M.C. PANDEY**

1. *[Signature]*
 2. *[Signature]*
 3. *[Signature]*

DR. M.C. PANDEY
 Commandant
 Base Hospital, I.T.B. Police

Thumb and finger impressions in respect of No. **111101801** Rank **CMD**
 Name **DR. M.C. PANDEY** of Base Hospital, ITB Police widow
 of No. **1111** Rank **1111** Name **111111** of Base Hospital
 ITB Police.

THUMB FOREFINGER MIDDLE FINGER RING FINGER LITTLE FINGER

[Finger Impressions]

DECLARATION OF REFUND EXCESS PAYMENT

No. **111101801** Rank **CMD** Name **DR. M.C. PANDEY**
 where as the Govt. servant of India in the MEMA constended to grant a sum of
 Rs. _____ as the name _____ pension due to
 me/due to late No. **1111** Rank **1111** Name **1111**
 of Base Hospital ITB Police, I hereby acknowledged that in accepting this
 amount of full pension due to me/due to late No. **1111** Rank **1111**
 Name **111111** is subject to revision on there being found
 to in excess of that to which I am entitled under the rule and promise to
 has no objection to such revision.

I further promise to repay any amount advanced to me in case of
 that to which I may be eventually found entitled.

[Signature]
Sig. of the applicant

Place: New Delhi-62
 Dated: _____
DR. M.C. PANDEY
 Commandant
 Base Hospital, I.T.B. Police

2. Subsequently, in 2006, consequent on the recommendation of the 6th Central Pay Commission, the petitioner's pension was revised to ₹20,955/-.



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3. The petitioner continued to be paid the revised pension till 2016. In 2016, the respondents claim to have realised that, while re-fixing his pension in 2006, the petitioner's pay scale have been erroneously fixed, by treating his pay scale as ₹14,300-400-18,300/- instead of ₹12,000-375-16,500/-. Accordingly, a decision was taken to downwardly revise the petitioner's pension. Though no communication was addressed to the petitioner by the respondents, the respondents wrote to the Manager, Centralised Pension Processing Centre, State Bank of India, on 21 September 2016, thus:

“No.231849903377/1986359/A2 Diary No: PR316055349

Date:21/SEP/2016

To,
THE MANAGER
STATE BANK OF INDIA,
CENTRALISED PENSION PROCESSING CENTRE
CHANDINI CHOWK BRANCH PREMISES
DELHI, 110006

SUB: REVISION OF PENSION OF PANDEY SHRI MC,
HOLDER OF PPO NUMBER: 231849903377, AT BRANCH
(0001076): STATE BANK OF INDIA, RK PURAM, NEW
DELHI, DELHI, ACCOUNT NUMBER: AC:10932798958

Sir/Madam,

An amendment letter No W023184160800348 DT: 06/JUN/2016 in respect of PPO mentioned above is forwarded herewith in original. The amount mentioned in this SSA may be verified from original documents for payments and modifications may be carried out in both the halves of the ppo arranged as under:

Date Of Birth (Pensioner): 08/11/1947 Pay Scale (31/12/2005):
12750-375-16500

Pay Band: 15600-39100

Grade Pay: Rs.7600/-

Last Pay Draw: NIL Qualifying Service (Y-M-D): 29-9-15

Name of spouse: PANDEY SMT JANKI Date Of Birth (Spouse):



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12/07/1950

Revised Pension (Per Month)

1. REVISED BASIC PENSION: Rs.19264/- W.E.F. 01/JAN/2006
(Rupees Nineteen Thousand Two Hundred Sixty Four Only)
2. REVISED PENSION COMMUTED: Rs. 3409/-
(Rupees Three Thousand Four Hundred Nine Only)
3. REVISED REDUCED PENSION: Rs.15855/- W.E.F.: 01/JAN/2006
(Rupees Fifteen Thousand Eight Hundred Fifty Five Only)
4. AMOUNT OF DIFFERENTIAL COMMUTATION PAYABLE: NO CHANGE
5. ADDITIONAL DEATH/RETIREMENT GRATUITY PAYABLE: NO CHANGE
6. ADDITIONAL PENSION (80 YEARS AND ABOVE): AS APPLICABLE
7. CONSTANT ATTENDANT ALLOWANCE: NIL
8. REVISED FAMILY PENSION
AT ENHANCED RATE: Rs.19264/- FROM: To: 07/NOV/2011
(Rupees Nineteen Thousand Two Hundred Sixty Four Only) AT
NORMAL RATE: Rs.12714/- FROM 08/NOV/2011 TO: TILL
DEATH/REMARRIAGE
(Rupees Twelve Thousand Seven Hundred Fourteen Only)

9.

Note:

(a) Reduced Pension as per col. 3 will take effect from the date CVP paid by PAO & differential commuted value is/was credited into the pensioner's account by the bank. Commuted value of pension will be restored after 15 years from the date of credit by the Abnk or date of payment made by PAO.

(b) Pension/Provisional Pension, DA Relief etc., if paid may be adjusted suitably.

(c) D.R to be allowed as admissible from time to time for people who are not re-employed.



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(d) 100% Pension/Family Pension arrear as per GOI order based on 6th CPC is payable. Revised Gratuity/Commutation Amount should be paid in full based on this revision authority.

(e) Please see reverse for other guidelines for banks and pensioners.

(f) None

Yours Faithfully
Pay & Accounts Officer”

4. Aggrieved by the aforesaid communication, the petitioner has approached this Court by means of the present writ petition. As it transpires, even before the writ petition was filed, an amount of ₹1,71,500/- had already been recovered from the petitioner. A further amount of ₹1,64,922/- was also recovered from the petitioner. Consequent to order dated 9 January 2018, the amount of ₹1,64,922/- stands returned to the petitioner with interest. An amount of ₹1,71,500/- which was recovered prior to the petitioner approaching the Court is still remaining with the respondents.

5. The petitioner, in the writ petition, has challenged the decision of the respondents to effect recoveries from the petitioner’s pension.

6. We have heard Mr. Sudeep Singh, learned Counsel for the petitioner and Ms. Sangeeta Rai, learned Senior Panel Counsel for the Union of India at some length.

7. The issue in controversy is no longer *res integra*, as it stands settled by the judgment of the Supreme Court in *State of Punjab v*



Rafiq Masih (White Washer)³. Prior to the decision in **Rafiq Masih**, the department have been effecting recoveries on the basis of the earlier judgment of the Supreme Court in **Chandi Prasad Uniyal v State of Uttarakhand**⁴. The Supreme Court took into account the said decision as well as several other judgments, including **Shyam Babu Verma v UOI**⁵, **Sahib Ram v State of Haryana**⁶, and ultimately identify certain situations in which recoveries would not be permissible. Para 18 of the judgment of the Supreme Court in **Rafiq Masih**, which so holds reads 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:

(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,

³ (2015) 4 SCC 334

⁴ (2012) 8 SCC 417

⁵ (1994) 2 SCC 521

⁶ 1995 Supp (1) SCC 18



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.”

8. The rigour of para 18 of the judgment of *Rafiq Masih* has subsequently been diluted in *High Court of Punjab and Haryana v Jagdev Singh*⁷, on which Ms. Rai relies. Ms. Rai has drawn our attention to paras 10 and 11 of the judgment in *Jagdev Singh*, which read 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 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

⁷ (2016) 14 SCC 267



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.”

9. Clearly, from paras 10 and 11 of *Jagdev Singh*, the Supreme Court has carved out an exception to the proposition (ii) in para 18 of *Rafiq Masih*, which dealt with permissibility of recovery from retiral benefits. The Supreme Court has held that, in a case in which the officer concerned was put on notice, at the time of the allegedly erroneous fixation of pay, recovery might be possible at a subsequent stage if the fixation was found to be erroneous, or where the officer subscribed to an undertaking to the said effect at that point of time, recovery would be permissible and the officer would not be protected by clause (ii) in para 18 of the decision in *Rafiq Masih*.

10. The only other circumstance in which the rigour of *Rafiq Masih* is diluted is where the officer is itself complicit in ensuring that higher pay, which was not due to him, was drawn by him, and is therefore guilty of fraud, which exception has been noticed in *Thomas Daniel v State of Kerala*⁸ which otherwise reiterates *Rafiq Masih*.

11. Ms. Rai seeks to rely on the undertaking in the PPO of which the screenshot has been provided in para 1, to contend that recovery from the petitioner was permissible.

12. We are unable to agree with Ms. Rai for more than one reason.

13. Firstly, the undertaking largely comprises of blanks. There is no

⁸ 2022 SCC OnLine SC 536



mention of the amount involved. All that is contained is a signature at the foot of the undertaking. The undertaking, therefore, is no undertaking at all in the eyes of law.

14. Secondly, even if it were to be presumed that the aforesaid undertaking was valid, it applies only at the stage when the pension of the petitioner was fixed in 1999. It does not operate in perpetuity. The petitioner never gave an undertaking that, for all times to come thereafter, if any re-fixation of pension took place and was found to be erroneous, he would be agreeable to recoveries.

15. Thirdly, at the time when the allegedly erroneous re-fixation of pension took place in 2006, the petitioner did not subscribe to any such undertaking. Para 11 of *Jagdev Singh* is clear. It applies only where at the time of re-fixation of pay, the employee concerned subscribes to an undertaking expressing his consent to recovery in the event of the fixation being found to be erroneous at a later point in time.

16. For all these reasons, we are of the opinion that the respondents cannot rely on the decision in *Jagdev Singh* to justify its decision to effect recoveries from the petitioner.

17. The case, therefore, squarely falls within circumstance (ii) in para 18 of *Rafiq Masih*.

18. The petitioner is, therefore, entitled to succeed.



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19. Accordingly, the decision to effect recoveries from the petitioner's pension and the communication dated 21 September 2016 addressed to the Bank by the respondents in that regard are quashed and set aside.

20. The amount of ₹1,71,500/- if not paid within a period of four weeks from today shall entail interest at the rate of 8% per annum from the date on which it was recovered till the date of actual payment.

21. The writ petition stands allowed in the aforesaid terms.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

APRIL 28, 2025/aky

Click here to check corrigendum, if any