



2025:DHC:6367-DB



§~49

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 13183/2023 & CM APPL. 52138/2023
EX-INSPECTOR SANJAY KUMARPetitioner

Through: Mr. M.D. Jangra, Adv.

versus

UNION OF INDIA AND OTHERSRespondents
Through: Mr. Avnish Singh, SPC.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **31.07.2025**

C. HARI SHANKAR, J.

1. This writ petition assails order dated 2 August 2023, whereby the petitioner's pay was retrospectively refixed, as well as the recoveries made from his retiral benefits as a result thereof.

2. The petitioner, who was employed as an Inspector in the Border Security Force¹, retired from service on 7 July 2023.

3. After his retirement, the respondent issued order dated 2 August 2023, downwardly revising his pay scale with effect from 1 July 2009. As a result, his pay on the date of his retirement, on 1 July 2023, immediately prior to his retirement, also stood downwardly reversed

¹ "BSF" hereinafter



to ₹ 60,400/- per month.

4. There is no dispute that the order dated 2 August 2023 was issued without any prior notice to the petitioner.

5. Following the issuance of the aforesaid order, the last pay certificate of the petitioner dated 29 August 2023 was issued, proposing to effect recoveries from the petitioner.

6. Aggrieved thereby, the petitioner approached this Court by way of the present petition on 6 October 2023.

7. During the pendency of this writ petition, by order dated 19 February 2025, the respondent reversed the impugned decisions dated 2 August 2023 and 29 August 2023 and revised the pay of the petitioner as on 1 July 2023 to ₹ 64,100/-. The amounts recovered by the petitioner were repaid to him after the passing of the aforesaid order.

8. Mr. Jangra submits that, therefore, the dispute survives at present only with respect to the petitioner's entitlement to interest on the withheld amount from 7 July 2023 till it came to be paid after the passing of the order dated 19 February 2025.

9. In view of the passing of the order dated 19 February 2025, there can be no dispute that, in fact, the downward re-fixation of the petitioner's pay by order dated 2 August 2023 was not in accordance



with law. Besides, the such downward fixation without any notice to the petitioner is in the teeth of the law laid down by the Supreme Court in the following passage from *Bhagwan Shukla v UOI*² and is *ex facie* unsustainable:

“3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs 190 p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs 181 p.m. from Rs 190 p.m. in 1991 retrospectively w.e.f. 18-12-1970. *The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the (sic employee) concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25-7-1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accept this appeal and set aside the order of the Central Administrative Tribunal dated 17-9-1993 as well as the order (memorandum) impugned before the Tribunal dated 25-7-1991 reducing the basic pay of the appellant from Rs 190 to Rs 181 w.e.f. 18-12-1970.*”

(Emphasis supplied)

10. As such, the order dated 2 August 2023 as well as the PPO dated 29 August 2023 are quashed and set aside.

11. Mr. Avnish Singh, learned SPC for the respondents, has drawn our attention to an undertaking which was given by the petitioner on

² (1994) 6 SCC 154



21 April 2023, which reads thus:

“UNDERTAKING

I, the undersigned am going to retire w.e.f. 07.07.2023 and am well aware about anomalies in my pay fixation which is under consideration, so I hereby undertake that, if any recovery or dues pending against me or arises in future due to re-fixation of pay or other reasons be deducted from my pensionary benefits like gratuity, commutation etc. I will not raise any objection and will not approach any court of law in this regard.

Sd/-
Sanjay Kumar, INSPR (GD)
(Regt No. 021099762”

12. The aforesaid undertaking can be of no avail to the respondent.

13. The judgment of the Supreme Court in *State of Punjab v Rafiq Masih*³, in para 18, absolutely proscribes recoveries of payments allegedly overpaid to an employee in the following cases:

“(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,

³ (2015) 4 SCC 334



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.”

14. An undertaking given by an employee, from whom recoveries is proposed, has been regarded, in the judgment of the Supreme Court in *High Court of Punjab and Haryana v Jagdev Singh*⁴, to dilute the rigour of para 18 of *Rafiq Masih* in the case of recoveries being made from pensionary benefits, as in the present case. However, the undertaking has to be provided by the employee *in the first instance, while opting for the revised pay scale*. This is clear from para 11 of *Jagdev Singh*:

“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 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.”

15. An undertaking taken at the point of making recoveries is, therefore, of no avail. In fact, the wording of the undertaking, on which Mr. Avnish Singh places reliance, is also significant. The petitioner has undertaken not only to raise any objection to the recoveries but also not to approach any court of law in that regard. An undertaking which, thus, forecloses legal remedies is, to our mind, *ex facie* unenforceable at law. In the realm of contract law, such an undertaking would be void, as infracting Section 28⁵ of the Indian

⁴ (2016) 14 SCC 267

⁵ 28. **Agreements in restraint of legal proceedings void.** — Every agreement, -
(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the



Contract Act, 1872.

16. The undertaking, on the face of it, is provided under compulsion, if not duress.

17. Even otherwise, *Jagdev Singh* is clear that the undertaking has to be given at the time when the erroneous fixation of pay took place and not at any later point of time.

18. In that view of the matter, the undertaking dated 21 April 2023 provided by the petitioner cannot be cited as a defence by the respondents.

19. The Supreme Court has held, in *S.K. Dua v State of Haryana*⁶, that an employee is entitled to interest on delayed payment of retiral benefits:

“13. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. It is not in dispute by and between the parties that the appellant retired from service on 30-6-1998. It is also undisputed that at the time of retirement from service, the appellant had completed more than three decades in government service. Obviously, therefore, he was entitled to retiral benefits in accordance with law. True it is that certain charge-sheets/show-cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr Quraishi against whom serious allegations of

time within which he may thus enforce his rights, or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights,

is void to that extent.

⁶ (2008) 3 SCC 44



malpractices and misconduct had been levelled by the appellant which resulted in removal of Mr Quraishi from the post of Secretary, Irrigation. The said Mr Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. *The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years.*

14. *In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents."*

(Emphasis supplied)

20. In view thereof, the petitioner's entitlement to interest on the amount which was withheld from him for the period from 7 July 2023 till it was paid after the passing of the order dated 19 February 2025 cannot be gainsaid.

21. Accordingly, this petition is disposed of with a direction to the respondents to disburse interest, at the rate of 8% per annum, to the petitioner on the amount which was withheld from his retiral benefits after 7 July 2023 till they were paid after the passing of the order dated 19 February 2025 within a period of 12 weeks from today.



2025:DHC:6367-DB



22. The respondents are also directed to issue a revised PPO in favour of the petitioner in the above terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JULY 31, 2025

AR