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

Decided on: 10.02.2025

\+ **W.P.(C) 5566/2020 & CM APPLs. 20105/2020, 24259/2020**

RAVI PRAKASH YADAV .....Petitioner

Through: Mr. Amit Singh & Mr. Aman Pathak, Advocates.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Rakesh Kumar, CGSC with Mr. Sunil, Advocate for R-1/UOI. [M:-9811549455].
Mr. Kamal Kant Jha, SPC with Mr. Avinash Singh, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. The petitioner assails an office order dated 05.02.2020 issued by the respondent No. 2-Security Printing and Minting Corporation of India Limited ["SPMCIL"], whereby his pay scale has been revised, and recovery of excess amount paid to him has been directed.

2. The petitioner applied for the post of Officer (Materials) in SPMCIL, pursuant to an advertisement issued in March, 2011. For this post, the advertisement mentioned the pay scale of ₹9,300-34,800/- with grade pay of ₹4,800/-.

3. The petitioner was successful, and was issued a letter of appointment on 30.03.2012. It was mentioned that he would be appointed as Officer (Materials) at E-1 Level, and the aforesaid pay scale was

reiterated. The terms and conditions annexed to the appointment letter further provided as follows:

> *"1 For the post of Officer (Materials) at E-1 Level, the applicable scale of pay is Rs. 9300-34800/- with grade pay of Rs.4800/- (CDA). Allowances will be as per orders of the SPMCIL from time to time. Presently, the scale is on Central DA Pattern but shall be changed over to Rs. 16400-40500/- in Industrial DA Pattern."*[1]

4. The petitioner accepted the appointment, but requested an extension in joining time. By a letter dated 25.04.2012, he was granted an extension of joining time by a period of three months until 25.07.2012. He admittedly joined on 24.07.2012, and was posted in the India Government Mint, Hyderabad ["IGM"].

5. In the meantime, the Government of India, by an order dated 27.06.2012, accorded sanction for change-over from Central Dearness Allowance ["CDA"] to Industrial Dearness Allowance ["IDA"] pay scales, in respect of executives and non-unionized supervisors of SPMCIL. As far as the grade of Officers [Grade E-1] was concerned, the CDA pay scale of ₹9,300-34,800/- with grade pay of ₹4,800, was stated to correspond to IDA pay scale of ₹16,400-40,500/-. The change-over was also stated to be effective from the date of the order. The method of fixation was incorporated from OM No. 2(11)/94-DPE(WC) dated 29.10.2010 issued by the Department of Public Enterprises.

6. In a circular dated 07.07.2012[2], the formula for fixation of basic pay in the corresponding IDA pattern was provided as follows:

- *"Pay in CDA + Grade Pay + DA in CDA pattern of Pay-scale (as on 27.06.2012) divided by 1.567*

[1] "CDA" and "IDA" pattern refer to "Central Dearness Allowance Pattern" and "Industrial Dearness Allowance Pattern" respectively.
[2] Annexure P-6 to the writ petition.

- *1.567 = aggregate of Basic Pay + IDA expressed in percentage term as assuming 1 as Basic Pay in IDA Pay Scales."*

7. After the petitioner joined on 24.07.2012, he was paid for the months of July and August, 2012, in accordance with the CDA pattern. The pay slips for the said two months have been annexed to the writ petition, which shows his basic pay as ₹13,350/- and grade pay as ₹4,800.

8. The petitioner's pay was thereafter sought to be converted to the IDA pattern, in accordance with the aforesaid circulars. IGM sought a clarification from the headquarters of SPMCIL, having regard to the fact that the pay of the petitioner and one other similarly placed officer, was sought to be reduced from ₹18,150/- to ₹16,400/-, in accordance with the IDA pay scale. In the clarification sought on 08.12.2012, IGM expressly mentioned that the petitioner had joined SPMCIL on 24.07.2012, after the notification of IDA pay scales. Reference was also made to the terms and conditions of the appointment. A reminder was sent by IGM on 27.09.2013, where again the date of the petitioner's appointment was mentioned. A clarification was specifically sought as to whether the basic pay of the two officers may be continued at ₹16,400/-, or their basic pay of ₹18,150/-, fixed in CDA at the time of their joining as per their offer of appointment, was to be protected.

9. The headquarters of SPMCIL responded by a communication by 03.10.2013, reiterating the formula for conversion of the pay scale from the CDA pattern to the IDA pattern.

10. IGM sought a further clarification on 08.05.2014[3], clearly

[3] Annexure P-17 to the writ petition.

highlighting that it was not clear whether the petitioner and the other similarly placed officer were to be given the benefit of pay protection or not. The dates of joining, fixation of the petitioner's pay under the CDA pay scale, and the implementation of the IDA pay scale were all expressly elaborated, after which the following clarification was sought:

> *"1. Whether the above officers are eligible for conversion of CDA Scales to IDA Scales duly protecting their basic pay of Rs. 18,150/- paid under CDA Scales in the month of July, 12 and August, 2012 even after they had joined after implementation of IDA Scale.*
>
> *OR*
>
> *2. Their minimum basic pay will be fixed as per IDA Scales only at Rs. 16,400/- as they had joined after the date of implementation of IDA Scales i.e. 27.06.2012."*

11. By a communication dated 22.07.2014[4], the headquarters of SPMCIL specifically referred to the cases of the two officers, including the petitioner, and reiterated the formula for conversion of the CDA pay scale to corresponding IDA pay scale under the aforementioned circulars. It was specifically stated as follows:

> *"2.* ***Further, it is clarified that the Basic Pay of Officers on changeover from CDA to IDA pattern of pay-scales should be protected.*** *You may initiate the action accordingly."*[5]

12. In consonance with this clarification, IGM further noted that the matter was discussed with the Director (HR) of SPMCIL, and IGM was advised to protect the basic pay under CDA. It is stated that this direction was also given by the Chairman and Managing Director, SPMCIL in his visit to IGM on 14.08.2014. Directions to this effect were therefore issued on 23.08.2014, the petitioner's pay was fixed under IDA as follows:

> *"Fixation of IDA Pay in respect of Sri Ravi Prakash Yadav, Officer*

[4] Annexure R-3 to the rejoinder-affidavit dated 24.11.2022.
[5] Emphasis supplied.

(Mint), by protecting the CDA pay, as per GM's note approval dated 27.08.2014.

	Pay as on 24.07.2012	*Rs.13,350*
	Grade Pay	*Rs. 4,800*
	Total	*Rs. 18,150*
ADD IDA 65%	*Rs. 11,798*	
TOTAL : Rs.29,948/-	*Rs. 29,950*	
2.	*Div. Factor 1.567*	
	29,950/1.567	*19,112/19120*
(IDA Pay w.e.f. 24.07.2012 to 30.06.2013)		*Rs. 19,120/-*
3.	*1.07.2013 to 30.06.2014*	*Rs. 19,700/-*
4.	*1.07.2014*	*Rs. 20,300/-"*

13. The petitioner's grievance arises from an order dated 05.02.2020 issued by the headquarters of SPMCIL, in which it is contended that the petitioner should have been placed in the IDA pay scale directly upon his joining, as he joined the respondent after 27.06.2012, and that the benefit of change-over has been wrongly granted to him. Consequent recovery is also sought to be effected from the petitioner.

14. I have heard Mr. Amit Singh, learned counsel for the petitioner and Mr. Kamal Kant Jha, learned counsel for SPMCIL.

15. The first question which arises in the present case is whether the petitioner's pay was liable to be refixed in the year 2020, after the initial exercise of fixation of pay was undertaken in the year 2012-13. In this regard, it may be noted that IGM, Hyderabad, where the petitioner was posted, raised specific queries with the headquarters of SPMCIL on 08.12.2012 and 27.09.2013, which expressly concerned the case of the petitioner and a similarly placed officer. Both had joined the service of SPMCIL after 27.06.2012, but pursuant to an offer and a joining letter which had been issued before the said date. The petitioner had also drawn

pay for the months of July and August, 2012 under the applicable CDA pay scale. The petitioner's unit sought clarification at that stage itself as to whether the petitioner was entitled to pay protection. It was clarified by SPMCIL headquarters' letter dated 03.10.2013, that the formula for change-over from CDA to IDA, should be applied. It may be noted that the letter dated 03.10.2013 also specifically referred to the case of the present petitioner. A further clarification sought by IGM again, with the specifics of the petitioner's case, led to the same advice emanating from the headquarters in their communication dated 22.07.2014. This was duly implemented and the petitioner's pay, originally fixed in the CDA scale, remained protected. The petitioner was paid on this basis, for more than six years thereafter.

16. The impugned letter dated 05.02.2020 revisits the issue to the detriment of the petitioner, after the matter was already resolved by SPMCIL in its earlier communications. No reason is revealed in the order, except for the fact that the corporate office had apparently received grievances from other employees.

17. In the counter affidavit filed by SPMCIL also, the aforesaid factual position is not denied, but support is sought to be drawn from the advertisement and the appointment letter issued to the petitioner, wherein the shift from the CDA to IDA scale was contemplated. Although an allegation has been made in the counter affidavit that the correspondence of 2012-13 was prompted by a misrepresentation on the part of the petitioner,[6] no such misrepresentation has been identified. Repeated clarifications have been sought from Mr. Jha with regard to the exact

misrepresentation made by the petitioner, but no such misrepresentation has been pointed out from the record. In fact, the communications referred to above, comprise of correspondence from IGM – not the petitioner – to the headquarters of SPMCIL, which expressly referred to the petitioner's date of joining, and sought clarification as to whether his pay is to be protected. The fact is that the petitioner was issued the joining letter prior to the notification dated 27.06.2012 and, although he joined after 27.06.2012, his pay for the first two months was processed under the CDA pay scales. The headquarters of SPMCIL, therefore, had all the facts before it, which were referred to it by its own unit, where the petitioner was posted. The respondent took a considered decision that his pay should be protected. That decision was repeated not just in one communication, but in several, as noted above.

18. Even on the question of consequential recovery, it may be noted that the judgments of the Supreme Court in *State of Punjab and Ors v. Rafiq Masih (White Washer)*[7], and *Thomas Daniel v. State of Kerala*[8], are in the petitioner's favour.

19. In *Rafiq Masih (White Washer)*[9], the Supreme Court held as follows:

> "*13. First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir case [Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475 : (2009) 1 SCC (L&S) 744] recognised, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to*

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[6] Paragraph 18 of the counter affidavit.
[7] (2015) 4 SCC 334.
[8] 2022 SCC OnLine SC 536.
[9] Supra (note 7).

recover the same. ***Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery****. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses.* ***Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee****.*

xxx *xxx* *xxx*

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, 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."[10]

20. Further, in *Thomas Daniel*[11], the Supreme Court held as follows:

"*9. This Court in a catena of decisions has consistently held that* ***if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable****. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.*

xxx *xxx* *xxx*

14. Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

15. Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified."[12]

21. In line with these judgments, recovery at this stage is also impermissible, as this Court has held against the respondent on the allegation of misrepresentation by the petitioner.

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[10] Emphasis supplied.
[11] Supra (note 8).

22. In these facts and circumstances, I am of the view that the petitioner has made out a case for relief in this petition. The impugned communication dated 05.02.2020 is, therefore, set aside and the respondents are directed to proceed in terms of the decision dated 22.07.2014, communicated by SPMCIL headquarters to IGM.

23. The writ petition stands disposed of in these terms, but there will be no order as to costs. All pending applications also stand disposed of.

PRATEEK JALAN, J

FEBRUARY 10, 2025
'pv'/SD/

[12] Emphasis supplied.