2025:DHC:1067-DB

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

Date of Decision: 19.02.2025.

\+ W.P.(C) 3903/2019

ASHA RAM NEHRA

.....Petitioner

Through: Mr. Samarth Luthra, Adv.

versus

COMMISSIONER OF POLICE AND ANR.

.....Respondent

Through: Mr. Amit Tiwari, CGSC with Mr. Farmaan Ali, Ms. Ahushi Srivastava and Ms. Asi Jagbir, Advs. with ASI Jaybir Singh.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE MANOJ JAIN

REKHA PALLI, J (ORAL)

1. The present writ petition under Article 226 and 227 of the Constitution of India seeks to assail the order dated 14.09.2018 passed by the learned Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'), Principal Bench, New Delhi in Original Application (O.A.) No. 1134/2018. Vide the impugned order, the learned Tribunal has rejected the O.A. filed by the petitioner, wherein he had sought quashing of order dated 17.11.2017 passed by the respondents reducing his pay with effect from (w.e.f.) 05.12.1988 and, consequently directing recoveries to be made from

him on account of the purported over-payment made to him w.e.f. 05.12.1988.

2. The brief factual matrix as is necessary for the adjudication of the present petition may be noted at the outset. The petitioner who had initially joined the Border Security Force (BSF) as a Constable on 10.11.1978, joined the Delhi Police by way of deputation on 05.02.1986. He was, thereafter, on 05.12.1988, absorbed in the Delhi Police where he continued to serve till his superannuation on 31.01.2018.

3. It is the petitioner's case that upon him being absorbed in the Delhi Police on 05.12.1988, his pay was as per his entitlement correctly fixed at Rs.960/- + Deputation Allowance @10% in the pay scale of Rs.825-15-900-EB -20-1200. Consequently, he continued to draw all due increments and upgradations in pursuance of the said pay fixation. After a period of 19 years and without any notice to the petitioner, the respondents on 17.11.2017 suddenly passed an order directing reduction of his pay to Rs.950+Rs.106 (as P.Pay). In pursuance of this order, the respondents also directed that a sum of Rs.2,97,879/- be recovered from the petitioner.

4. Being aggrieved, the petitioner approached the learned Tribunal in March 2018, by when a sum of Rs.45,778/- had already been recovered from his salary. We are informed that upon his superannuation, the balance sum of Rs.2,52,101/- has also been deducted from the petitioner's gratuity.

5. Before the learned Tribunal, the petitioner had, in support of his O.A., claimed that the respondents could not have, after a period of 19 years, reduced his pay retrospectively and that too without putting him to any notice. The petitioner had also urged that, in any event, no recoveries could

have been made from him for the payments made to him for the last 19 years. In support of his plea, the petitioner had relied on the decisions of the Apex Court in ***Bhagwan Shukla vs. Union of India & Others*** (1194) 6 SCC 154 and ***State of Punjab & Ors. vs. Rafiq Masih & Ors.*** (2015) 4 SCC 334. The O.A. was opposed by the respondents by urging that after the petitioner had been absorbed in Delhi Police he was not entitled for any deputation allowance, which was wrongly paid to him, and, therefore, they were justified in reducing his pay, for which no prior notice was required to be given to him as it was an admitted position that the petitioner was no longer on deputation w.e.f. 05.12.1988.

6. Upon consideration of rival submissions of the parties, the learned Tribunal accepted the pleas of the respondent and consequently vide the impugned order, dismissed the O.A. by holding that the decisions relied upon by the petitioner were not applicable to the facts of the present case.

7. It is in these circumstances, that the petitioner has approached this Court by way of the present petition. Before us, learned counsel for the petitioner has reiterated the same submissions made before the learned Tribunal. He has, consequently, urged that the pay of the petitioner could not have been reduced with retrospective effect without giving him any opportunity to show cause, for which purpose he has relied on the decision in ***Bhagwan Shukla (supra)***. He has, by placing reliance on the decision in ***Rafiq Masih & Ors.,*** further urged that in any event, taking into account that the petitioner was not responsible for fixation of his pay w.e.f. 05.12.1988 at Rs.960/- + Deputation Allowance @10% in the pay scale of Rs.825-15-900-EB -20-1200, which it is now claimed by the respondents, was erroneous, no recoveries could be made from him at this belated stage.

8. Learned counsel for the respondents has sought to vehemently oppose the petition by reiterating the pleas taken before the learned Tribunal. He has, therefore, contended that once it is evident that the petitioner was absorbed permanently in Delhi Police w.e.f. 05.12.1988, he was not entitled to receive any deputation allowance, which was wrongly paid to him. Consequently, the respondents were justified in making recoveries of the excess amount paid to him and therefore, the learned Tribunal could not be faulted in dismissing the O.A.

9. Having considered the rival submissions of the parties, we may begin by noting the relevant extracts of the impugned order passed by the learned Tribunal. The same read as under:

> *"7. Heard learned counsel for the parties and perused the material placed on record.*
> *8. This Court is unable to accept the contentions of the learned counsel for the applicant, as the applicant has not stated anything in the OA as to how his pay earlier at the time of his absorption was rightly fixed whereas the respondents vide impugned order have clearly stated that at the time of absorption 10% of deputation allowance was also wrongly taken into consideration r while fixing his pay, which they have rectified at the time of*
> *fixation of his pension case as it is the usual practice in the department that while fixing the pay of each and every employee, the character roll of every employee has to be scrutinized. As such there is no illegality in the action of the respondents and, therefore, there is no nee^ for issuance of show cause notice in this regard. The reliance placed by the applicant in the cases of Rajiq Masih and Bhagwan Shula (supra) are not applicable in the case in hand.*
> *9. In the case of U.T. Chandigarh & Ors. Vs. Gurcharan Singh and Another, (2013) 12 SCR 853, the Hon'ble Apex Court upheld the decision of this Tribunal by observing that 'the Tribunal was absolutely right in coming to the conclusion that the pay fixation*

under the order dated 13th October, 1998 was correct because a mistake was committed in the earlier pay fixation under the order dated 2nd September, 1992 .
10. in the result, for the foregoing reasons, this Court is not inqlined to interfere with the impugned order and accordingly, the instant OA being devoid of merit is dismissed! There shall b? No order as to costs."

10. From the perusal of the aforesaid, what emerges is that even though the learned Tribunal has correctly noted the factual position on which we find that the parties are even otherwise not at variance, the Tribunal has failed to appreciate the effect of the two decisions in ***Bhagwan Shukla (supra)*** and ***Rafiq Masih & Ors (surpa)*** relied upon by the petitioner. As noted hereinabove, the first plea of the petitioner is that his pay could not have been reduced without granting him an opportunity to show cause. In this regard, we may refer to the decision of the Apex Court in ***Bhagwan Shukla (supra)*** wherein it was held as under:

"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 b 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."

11. In the light of the aforesaid, we are of the view that once the respondents do not deny that no show cause notice whatsoever was issued to the petitioner by the respondents before reducing his pay with retrospective effect and consequently deciding to make recoveries from his pay and gratuity, the petitioner is correct in urging that the impugned order was liable to be set aside being violative of principles of natural justice. We cannot, however, ignore the respondents' submissions that the petitioner even after being absorbed in the Delhi Police erroneously continued to receive deputation allowance to which he was not entitled to after absorption. We are, therefore, of the view that the respondents ought to be granted an opportunity to correct error, if any, in the fixation of the petitioner's pay scale after issuing him a show cause notice and considering his response thereto.

12. We, accordingly, set aside the impugned order passed by the learned Tribunal and also quash the respondents' order dated 17.11.2017, which was assailed in the OA. We, however, grant liberty to the respondents to pass a fresh order refixing the pay and pension of the petitioner after issuing a show cause notice to him and considering his response thereto. It

is however, made clear that the re-fixation, if any, would be made applicable with prospective effect i.e. from the date of passing of the fresh order.

13. Even though, we are quashing the impugned order dated 17.11.2017 passed by the respondents on the ground of violation of principles of natural justice itself, we deem it appropriate to deal with the petitioner's second plea as well. The petitioner, we find, has urged that even if his pay fixation w.e.f. 05.12.1988 was found to be faulty, no recoveries can be still made from him and therefore the amount of Rs. 297879/- already recovered from his pay and gratuity ought to be refunded to him.

14. To appreciate this plea, we may refer to the decision in ***Rafiq Masih & Ors.*** (supra) relied upon by the learned counsel for the petitioner.

> *"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, 9 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 a been made for a period in excess of five years, before the order of recovery is issued,*
> > *(iv) Recovery in cases ses 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 b 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."

15. From the aforesaid observations of the Apex Court, it is clear that the claim of the petitioner who had, admittedly, been drawing a higher pay for almost 19 years, would be squarely covered within the ambit of the directions issued by the Apex Court in ***Rafiq Masih & Ors. (supra).*** Consequently, while allowing the writ petition and granting liberty to the respondents to take a fresh decision in respect of the fixation of the pay and pension of the petitioner, we make it clear that even if the respondents find that his pension needs to be reduced, no recoveries will be made from him.

16. Further taking into account the admitted position that the entire amount in terms of the impugned order dated 17.11.2017 already stands recovered from the petitioner, we direct that the said amount be refunded to the petitioner within six weeks failing which the said amount will bear interest @ 8% per annum from today.

17. The writ petition stands disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(MANOJ JAIN)
(JUDGE)

FEBRUARY 19, 2025/acm