

(2025) 10 DEL CK 1259

In the Delhi High Court

Case No : Writ Petition (C) No. 11348 Of 2022 & Civil Miscellaneous Application
No. 33414 Of 2022

Kuldeep Singh Dabas

APPELLANT

Vs

Gnct Of Delhi

RESPONDENT

Date of Decision : 10-10-2025

Acts Referred:

Citation : (2025) 10 DEL CK 1259

Hon'ble Judges : Navin Chawla, J;Madhu Jain, J

Bench : Division Bench

Advocate : Sourabh Ahuja, Avnish Ahlawat, Nitesh Kumar Singh

Final Decision : Disposed OfD

Judgement

Navin Chawla, J

1. This petition has been filed by the petitioner, challenging the Order dated 25.06.2021 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in O.A. No.1135/2021, titled Kuldeep Singh Dabas v. Govt. of N.C.T. of Delhi & Ors., whereby the learned Tribunal partly allowed the O.A. filed by the petitioner herein, with the following direction:

"3. At this stage, without entering into the merits of the case, it is observed that no show cause notice has been given to the employee, therefore, the said impugned recovery order dated 24.05.2021 is set aside. It is clarified that no comments have been made on the merit of the matter. The respondents are free to proceed after giving due notice and opportunity to the applicant."

2. The petitioner is aggrieved by the said Order only to the limited extent that, while the learned Tribunal set aside the Recovery Order dated 24.05.2021, it did not direct the respondent to continue paying to the petitioner the pay that had earlier been fixed and which the petitioner had been drawing since 2008.

3. The petitioner further challenges the Order dated 08.07.2022 passed by the learned Tribunal in M.A. No.1738/2021 and M.A. No.2433/2021 in the above O.A., whereby the learned Tribunal dismissed the said applications filed by the petitioner, observing as under:

"11. By filing MA No. 2433/2021, the applicant is also seeking that action should be taken on the show cause notice issued by the respondents in terms of their subsequent order dated 13.07.2021 and office order dated 27.08.2021. Both these orders were not part of the O.A. and pertain to subsequent developments. Accordingly, MA No. 2433/2021 is dismissed.

12. In view of the above mentioned, MA No. 1738/2021 is partly allowed and the registry is directed to make necessary corrections only in para 1 of the order dated 25.06.2021, i.e., in place of the date '21.05.2021', the correct date '19.05.2021' be recorded and also in place of 'Rs.1,74,000/-', the correct amount of 'Rs.1,74,040/-' be mentioned. Corrected copies be made available to the concerned parties."

4. To give a brief background of the facts from which the present petition arises, the petitioner, working as a Pharmacist (Group 'C' post) with the respondent since 01.07.1986, was granted the 3rd Financial Upgradation under the Modified Assured Career Progression Scheme (in short, 'MACP'), with effect from 01.09.2008. His pay was fixed in PB-2 with Grade Pay of Rs. 4800/- with effect from the said date, vide Order No. F2(90)/2007/Estt. BMH dated 21.12.2011.

5. Unilaterally and without any Show-Cause Notice, the respondent, vide Order dated 19.05.2021, re-fixed the pay of the petitioner and, by a subsequent Order dated 24.05.2021, directed recovery of the alleged excess amount paid to the petitioner on account of the 3rd Financial Upgradation under the MACP Scheme, which had allegedly been wrongly granted to the petitioner.

6. The petitioner challenged the same by way of the above O.A. before the learned Tribunal.

7. As noted hereinabove, the learned Tribunal, vide its Order dated 25. 06.2021, held that no Show-Cause Notice had been given to the petitioner and, accordingly, set aside the Order dated 24.05.2021 by which recovery had been directed to be made from the petitioner. Importantly, the learned Tribunal made no comment on the Order dated 19.05.2021 passed by the respondent.

8. The learned Tribunal further granted liberty to the respondent to proceed against the petitioner after giving due notice and opportunity to the petitioner.

9. The petitioner thereafter filed M.A. No.1738/2021, seeking correction of an alleged typographical mistake, stating that the learned Tribunal had, by mistake, set aside only the Order dated 24.05.2021 and not the Order dated 19.05.2021, by which the pay of the petitioner had in fact been reduced by the respondent.

10. The petitioner also filed M.A. No.2433/2021 challenging the Show-Cause

Notice dated 13.07.2021 issued by the respondent pursuant to the liberty granted to it, as well as the Office Order dated 27. 08.2021, whereby the respondent again re-fixed the pay of the petitioner.

11. Insofar as M.A. No.1738/2021 is concerned, the learned Tribunal held that in its Order dated 25.06.2021, it had set aside only the Order dated 24.05.2021 by which recovery had been sought to be made by the respondent, and that the Order re-fixing the pay of the petitioner had not been interfered with.

12. As regards M.A. No.2433/2021, the learned Tribunal held that the Show-Cause Notice and the subsequent Order dated 27.08.2021 passed by the respondent, were not the subject matters of the above O.A. and, therefore, could not be made part of the M.A. filed by the petitioner.

13. Aggrieved by the above orders, the petitioner has filed the present petition.

14. The learned counsel for the petitioner submits that once the order re-fixing the pay was found to be in violation of the principles of natural justice, the same should also have been quashed by the learned Tribunal.

15. He further submits that the petitioner had challenged the subsequent Order dated 27.08.2021 before the learned Tribunal by way of M.A. No.2433/2021, and the same should have been adjudicated by the learned Tribunal.

16. The above submissions are disputed by the learned counsel for the respondent, who submits that once it was found that the pay of the petitioner had been wrongly fixed, the benefit of such wrong fixation could not have been allowed to continue. She submits that, therefore, the learned Tribunal rightly confined the relief only to the setting aside of the recovery sought to be made by the respondent from the petitioner.

17. She further submits that the Office Order dated 27.08.2021 was not the subject matter of the O.A. and the learned Tribunal, therefore, rightly rejected M.A. No.2433/2021. She further submits that, as of today, there is no challenge to the Order dated 27.08.2021.

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

19. From the above, it is apparent that it is the case of the respondent that the benefit of the 3rd MACP had been wrongly granted to the petitioner with effect from 01.09.2008. On this allegation, it had issued the Order dated 19.05.2021, revising the pay of the petitioner, and the Order dated 24.05.2021, seeking recovery of the excess amount paid to the petitioner. The learned Tribunal found that the recovery was being made without issuing a Show-Cause Notice to the petitioner. Equally, the re-fixation of the pay of the petitioner was also without a Show-Cause Notice.

20. The learned Tribunal, insofar as the recovery is concerned, set aside the Order dated 24.05.2021, directing the respondent to first issue a Show-Cause

Notice to the petitioner. However, with respect to the re-fixation of pay, the learned Tribunal did not give any finding on the same. In fact, it was specifically stated that the order was being passed without entering into the merits of the case and that no comments had been made on the merits of the matter. Therefore, it cannot be held that the Order dated 19.05.2021, re-fixing the pay of the petitioner by delaying the grant of the 3rd MACP benefit, had been upheld by the learned Tribunal. The learned Tribunal ought to have either adjudicated upon the same or left the said order open to challenge in a subsequent O.A. to be filed by the petitioner, if so advised. The learned Tribunal could not have non-suited the petitioner without any adjudication.

21. Even the M.A. filed by the petitioner for clarification/rectification of the order, that is, M.A. No.1738/2021, was disposed of without assigning any reason for not equally setting aside the Impugned Order dated 19.05.2021 along with the Order dated 24.05.2021 or giving any reason for upholding the order dated 19.05.2021, if at all the learned Tribunal had upheld after considering the challenge thereto on merits.

22. We quote from the order of the learned Tribunal as under:

" 10. More or less the prayer in both the MAs are similar, as already mentioned above. The order passed by this Tribunal has taken note of the downward fixation of the emoluments of the applicant and also the subsequent order for recovery of certain amount. This has been clearly indicated in para 1 of the order. However, the date mentioned as 21.05.2021 in the 2nd line of para 1 should have been mentioned as 19.05.2021. In the 1st para itself, the amount of Rs. 1,74,000/- has been mentioned, which should have been Rs. 1,74,040/-. There is no other error in the order including in the operative para No.3, which very specifically and only mentions that no show cause notice was issued and, therefore, the impugned recovery order dated 24.05.2021 is set aside. Beyond this, no other order has been passed or direction given to the respondents."

23. In view of the above, the Impugned Orders dated 25.06.2021 and 08.07.2022 are set aside to the limited extent that the petitioner shall be entitled to agitate his grievance against the re-fixing of his pay and the postponement of the benefit of 3rd MACP vide the Order dated 19. 05.2021 of the respondent, in fresh proceedings to be initiated by the petitioner. In such proceedings, the Orders dated 25.06.2021 and/or 08.07.2022 shall not be read as, in any manner, upholding or expressing any opinion on the Order dated 19.05.2021 passed by the respondent, and such challenge shall be considered by the learned Tribunal afresh.

24. As far as the subsequent Show Cause Notice dated 13.07.2021 and the Office Order dated 27.08.2021 are concerned, in our opinion, the learned Tribunal in its Order dated 08.07.2022 has rightly observed that these orders were not the subject matter of O.A. No. 1135/2021 and cannot be adjudicated upon in an application filed by the petitioner after the disposal of the O.A..

Accordingly, the Order dated 08.07.2022 to this effect is upheld. The petitioner, however, shall have the liberty to challenge the Show-Cause Notice dated 13.07.2021 and the Office Order dated 27.08.2021, if so advised, in accordance with law. If such challenge is made, the petitioner shall be entitled to an extension of the period of limitation for the time spent by the petitioner in pursuing the present petition.

25. The writ petition is disposed of in the above terms. The pending application is also disposed of as infructuous.

26. There shall be no order as to costs.