

**(2017) 04 RAJ CK 0228**  
**In the Rajasthan High Court**  
**Case No : 6387 of 2015**

Prakash Chandra Bothra

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

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**Date of Decision :** 06-04-2017

**Acts Referred:**

**Citation :** (2017) 04 RAJ CK 0228

**Hon'ble Judges :** Pushpendra Singh Bhati

**Bench :** SINGLE BENCH

**Advocate :** Prakash Chandra Bothra, B.P.Bohra

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## Judgement

1. The petitioner has preferred this writ petition against the order dated 26.04.2013 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur in Original Application No.367/2012, whereby the original application filed by the petitioner has been dismissed and against the order dated 10.07.2013 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur in Review Application No.11/2013, whereby the review application filed by the petitioner has been dismissed.

2. The petitioner/applicant had preferred the aforesaid original application challenging the order of recovery passed against him by the respondents.

3. The applicant was appointed on the post of Personal Assistant in the year 1972 and he has attained superannuation on 31.07.2012 after completing forty years of service. The respondents made re-fixation of the pay of the petitioner in accordance with earlier Original Application No.88/2010. While such re-fixation was done, the petitioner suffered an order of recovery of Rs.9,40,619/-, two months prior to his retirement and about two years after re-fixation of his pay. The recovery was started from full salary of two months i.e. June and July, 2012, and thereafter, from retiral benefits, as accruing to the applicant.

4. The learned Tribunal dismissed the original application filed by the petitioner while relying on the judgment as reported in (2012) 8 SCC 417, Chandi Prasad

Uniyal & Ors. Vs. State of Uttarakhand & Ors., whereby the departmental authorities were at liberty to recovery the excess amount paid due to re-fixation of the salary.

5. The petitioner present in person has only relied upon the case law as reported in (2015) 4 SCC 334, State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.

6. The relevant Para 18 of the judgment in Rafiq Masih (supra) is as follows:-  
"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 employee, 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."

7. The petitioner in person has stated that he is squarely covered by Proposition (iii), which is the prevailing law laid down by the Apex Court in Rafiq Masih (supra), and therefore, no recovery can be made as the recovery order was issued two months prior to his retirement.

8. Learned counsel for the respondent continued to rely upon Chandi Prasad Uniyal (supra) and also relied upon the judgment reported as (2016) 14 SCC 267, High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh. As far as the precedent law in Chandi Prasad Uniyal (supra) is concerned, the same has been considered by the Apex Court while delivering the judgment in Rafiq Masih (supra).

9. In Jagdev Singh (supra) in Para 10, all the propositions laid down in Rafiq Masih (supra) have been applied and interpreted. The only difference in Jagdev Singh (supra) that Proposition (ii) laid down in Rafiq Masih (supra) was not made applicable in the facts of that particular case. However, the Apex Court did not change any of the propositions of law laid down in Rafiq Masih (supra).

10. . After hearing the learned counsel for the parties and perusing the record of the case as well as the precedent law cited, we are of the opinion that Rafiq Masih (supra) is a good law holding the field at this juncture, and therefore, there is no reason why Proposition (iii) laid down in para 18 of the judgment in Rafiq Masih (supra), should not be applied in the present case. It is an admitted position that the petitioner was served with the recovery order two months prior to his retirement and thus, the respondents cannot escape the law laid down in Rafiq Masih (supra).

11. In light of the aforesaid discussion, the writ petition is allowed. The impugned order dated 26.04.2013 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur as well as the order dated 10.07.2013 passed in the review application No.11/2013 are quashed and set aside. The order memo No.SP/Con/2012-13 dated 24.07.2012, which is the recovery order is declared illegal, and thus, the same is also quashed and set aside. The respondents are directed to refund the amount recovered from the petitioner alongwith interest @ 6% per annum, till actual payment is made.