Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 05/09/2026

(2022) 07 CAT CK 0020

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00563 Of 2016

T.J. Jose & Others — APPELLANT

Vs

Union Of India & Others — RESPONDENT

Date of Decision : 20-07-2022

Acts Referred:

Citation : (2022) 07 CAT CK 0020

Hon'ble Judges : Ashish Kalia, Member J;K. V. Eapen, Member (A)

Bench : Division Bench

Advocate : Varkey, Martin, Mini R. Menon

Final Decision : Disposed Of

Judgement

Ashish Kalia, Member, J

1. The relief claimed by the applicants are as under:

“I) Declare that the impugned recoveries from the salary and DCRG of the applicants and/or withholding of their allowance are unjust, illegal and without jurisdiction.

II) Direct the respondents to refund the recovered/withheld amounts of Rs. 31387, 30483, 41781 and 98568 respectively to applicants 1 to 4 with 12% interest.

III) Award costs of and incidental to this application.

VI) Grant such other relief, which this Honourable tribunal may deem fit and proper in the circumstances of the case.”

2. The brief facts of the case are that the applicants retired as Chief Pharmacists in Pay Band Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,800/-from different Railway Hospitals of Trivandrum Division on 31.1.2016, 31.10.2015, 30.6..2015 and 30.9.2015 respectively. They are aggrieved by the illegal recoveries of Rs. 31,387/-, Rs. 30,483/-, Rs. 41,781/- and Rs. 98,568/- respectively from their

dues like salary, allowance, bonus, DCRG etc. at the fag end of their service or at the time of retirement due to an audit objection against MACP granted to them. Initially the applicants were holding the post of Pharmacists Grade-I in the scale of Rs. 5,500-9,000/-. After the implementation of VIth Pay Commission their pay was fixed in PB-2 Rs.9,300-34,800/- plus Grade Pay of Rs. 4,200/- w.e.f. 1.1.2006. Applicants Nos. 1 & 2 were promoted as Chief Pharmacists-II in PB-2 Rs. 9,300-34,800/- plus Grade Pay of Rs. 4,600/- w.e.f. 16.5.2008 and 18.2.2008 respectively. While so a revised pay structure for Pharmacists cadre was issued by the Railway Board vide Annexure A2 RBE No. 47/2010 dated 30.3.2010. The applicants did not get any financial benefits out of Annexure A2. Thereafter, the applicants were granted financial upgradation under the MACP scheme. The 1st and 2nd applicants who were in Grade Pay of Rs. 4,600/- were granted 2nd MACP in Grade Pay of Rs. 4,800/- w.e.f. 1.9.2008 and applicants Nos. 3 & 4 who were in Grade Pay of Rs. 4,200/- were granted 1st MACP in Grade Pay of Rs. 4,600/- and 2nd MACP in Grade Pay of Rs. 4,800/- w.e.f. 1.9.2008. However, the respondents in June, 2015 effected recovery of Rs. 2,910/-, Rs. 2,800/-, Rs. 4,686/- and Rs. 9,400/-respectively from the salary of the applicants. On inquiry they were told that it was over-payment of pay and allowances detected during test audit. However, in the fag end of their service, the respondents recovered an amount of Rs. 31,387/-, Rs. 30,483/-, Rs. 41,781/- and Rs. 98,568/-respectively from their dues like salary, allowance, bonus, DCRG etc. The applicants submitted Annexure A7 series of representations but the same were not considered by the respondents. They rely upon the judgment of the apex court in State of Punjab & Ors. v. Rafiq Masih (White Washer) & connected cases - AIR 2015 SC 696 in support of their contentions. Therefore, the applicants submit that the action of the respondents to effect recovery is highly erroneous, arbitrary and illegal.

3. Notices were issued to the respondents. Mrs. Mini R. Menon entered appearance for respondents. They filed a reply statement contending that all the applicants had joined as Pharmacists and retired as Chief Pharmacists from different Railway Hospitals of Trivandrum Division. The applicants were granted financial benefit under MACP scheme erroneously due to misinterpretation and when it was pointed out during the audit check as per the report of the Sr. Divisional Audit Officer, Trivandrum, over payment made on account of erroneous MACP granted to them, were recovered. The respondents have every right to recover the over payment involved in the matter. The respondents contend that erroneously over payments were made by way of granting 2nd MACP w.e.f. 1.9.2008 to the 1st applicant, 1st and 2nd MACP w.e.f. 1.9.2008 to the 2nd and 3rd applicants. The respondents also contend that all the applicants were given notice regarding the recovery in view of the audit objections. They rely upon the judgment of the apex court in Union Territory of Chandigarh & Ors. v. Gurcharan Singh & Anr.-(2013) 12 SCR 853, wherein the Hon'ble apex court observed that though the submission has been made on behalf of the respondent that no amount should be recovered from the salary paid to the respondent, the said

submission cannot be accepted because if any amount has been paid due to mistake it must be rectified and the amount so paid in pusuance of the mistake must be recovered. Hence, the respondents pray for dismissing the OA.

4. Heard Mr. Martin G. Thottan, learned counsel appearing for the applicants and Mrs. Mini R. Menon learned counsel appearing for the respondents. Perused the record.

5. With regard to the revised pay fixation on account of erroneously grant of financial upgradation under MACP scheme in respect of the applicants is concerned, the respondents submitted that the 3rd MACP was granted to the 1st, 3rd and 4th applicants erroneously with effect from 1.9.2008 and 2nd and 3rd MACP to the 2nd applicant w.e.f. 1.9.2008. The respondents have re-fixed the pay of the applicants when it was pointed out in the audit report and corrected their mistake. Therefore, to that extent the action of the respondents cannot be found faulted with.

6. Further as regards the recovery part of Rs. 31,387/-, Rs. 30,483/-, Rs. 41,781/- and Rs. 98,568/- respectively from the dues like salary, allowance, bonus, DCRG etc. of the applicants, we find that the Hon'ble apex court in Rafiq Masih's case (supra) had set down the law and declared recovery as impermissible from employees under certain circumstances. The Apex Court ruled :

“12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

(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, 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.”

In view of the apex court's decision in Rafiq Masih's case (supra) we find that the applicants' case falls within item No. (ii) wherein the apex court held that recovery from employees who are due to retire within one year of the order of recovery is impermissible. Moreover, it is the duty of the respondents to pay the correct pay and allowances to its employees. We further find that there was no misrepresentation or any fault on the side of the applicants while fixing their pay on grant of financial upgradation under the MACP scheme. Therefore, in view of the decision of the apex court in Rafiq Masih's case (supra) recovery from employees who are due to retire within one year of the order of recovery is impermissible. Hence, the amount so recovered from the applicants i.e. Rs. 31,387/-, Rs. 30,483/-, Rs. 41,781/-and Rs. 98,568/- respectively may be refunded to the applicants within a period of three months from the date of receipt of a copy of this order.

7. The Original Application is disposed of as above. There shall be no order as to costs.

