

(2025) 05 DEL CK 0820

In the Delhi High Court

Case No : Writ Petition (C) No. 12434 Of 2022, Civil Miscellaneous Application
No. 15554 Of 2024

Umesh Chand Tyagi

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 06-05-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Code of Civil Procedure, 1908 — Section 151

General Provident Fund (Central Services) Rules 1960 — Rule 11

Citation : (2025) 05 DEL CK 0820

Hon'ble Judges : Navin Chawla, J;Shalinder Kaur, J

Bench : Division Bench

Advocate : Jatin Bhardwaj, Gaurav Sharma, Siddhartha Nagpal

Final Decision : Allowed

Judgement

Shalinder Kaur, J

1. The present petition has been filed under Article 226 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 (CPC), seeking the following reliefs:

"a) Issue a writ, order or direction quashing the Respondents' letters, dated 24.03.2022, 08.06.2022, 27.06.2022, 21.07.2022, 22.07.2022 and 04.08.2022 and consequently direct the Respondents herein to refund the Petitioner with the entire illegally recovered amount of Fourteen Lakhs Sixty-Nine Thousand Two Hundred and Sixty-Eight rupees only (Rs.14,69,268/-), along with appropriate penal interest from the date on which the said recovery has been made till the date of final refund; and

b) Issue a writ, order or direction directing the Respondents to remove the withhold from the Petitioner's GPF account and consequently direct the Respondents to clear and transfer the Petitioner's full and final GPF payment into

his SBI Bank A/c No. 105617 66164; and

c) Issue a writ, order or direction initiating appropriate proceedings (both civil and criminal) against all the concerned erring officials of the CISF who were involved in illegally recovering the amount of Rs. 14,69,268 /- from the Petitioner herein; and

d) Direct the Respondents herein to pay a compensation of Five Lakhs rupees only (Rs. 5,00,000 /-) to the Petitioner herein on account of the tremendous harassment, mental agony and humiliation suffered by the Petitioner and his family at the hands of the Respondents; and / or

e) Direct the Respondents to pay the cost of One Lakh rupees (Rs.1,00,000/-) to the Petitioner herein towards the legal fees and expenses in filing and pursuing the instant case before this Hon'ble Court; and / or

f) Pass other or further orders as may be deemed fit and proper in the facts and circumstances of the case."

2. Alluding to the factual background necessary for the disposal of the present petition, the petitioner joined the Central Industrial Security Force (CISF) as a Constable on 04.07.1984 and in the year 2005, he was promoted to the rank of Head Constable. In April, 2011, an amount of Rs.3,97,780/- was inadvertently credited to the General Provident Fund (GPF) account of the petitioner by the respondent no.2. It is the case of the petitioner, he became aware of the said credit on 04.04.2012, and on the very same day, he preferred an application to the concerned authority, informing them about the excess payment; he also requested the concerned authority to inform him as to how and why the said amount was credited to his account. It is further the case of the petitioner that he received no response to the said application and on making a verbal inquiry, he was informed that the credited amount belonged to him.

3. Thereafter, in June 2012, the petitioner withdrew an amount of Rs.1,50,000/- from the said GPF account for the purpose of his son's education. He made four more withdrawals from the said GPF account for the purpose of his son's education in the years 2013, 2014, 2015 and 2020. He also withdrew an amount of Rs.5,00,000/- from the said GPF account for the purpose of his daughter's marriage.

4. In the month of March, 2019, the petitioner was promoted to the rank of Assistant Sub-Inspector (ASI), following which, on 31.12.2021, he superannuated from Service in the said rank as a Group 'C' officer.

5. Vide a letter dated 24.03.2022, the Assistant Commandant / Pension for the Deputy Inspector General (DIG) of the CISF Unit, DMRC Delhi, informed the petitioner that there was some discrepancy in the transfer details and accordingly, the GPF final payment of the petitioner was withheld till further orders. In response to the same, the Assistant Commandant, on 08.06.2022, sent a letter to the Senior Accounts Officer, Pay and Accounts Officer (PAO)/CISF,

Delhi stating therein that he had superannuated on 31.12.2021 and that his GPF final payment had been forwarded to the PAO/CISF vide the office letter dated 22.12.2021. However, despite two reminders, his GPF had not been released.

6. The Senior Accounts Officer, PAO/CISF/ respondent no.3, by a letter dated 27.06.2022 sent to the Office of DIG, CISF Unit DMRC Delhi, informed the Office that an amount of Rs.3,97,780/- was inadvertently credited to the GPF account of the petitioner instead of the GPF account of one Sh. Mangla Ram Saini. On a recast of his account, it was observed that he withdrew an excess amount of Rs.14,69,268/-, which is to be recovered from the petitioner, failing which the amount would be recovered from his retirement dues.

7. The petitioner sent a letter to the respondent no. 3 on 02.07.2022, stating therein that he had not received his GPF amount despite having submitted all his documents with the pension department in 2021, and that a recovery was being initiated from his account one year after submitting such documents. The petitioner requested the respondent no.3 to provide him the details of his GPF account, as also the transaction details and cheque no. by which the amount of Rs.3,97,780/- was credited to his GPF account.

8. On 20.07.2022, the petitioner's bank account was put on hold, and on 21.07.2022, the Office of DDO, CISF Unit, DMRC Delhi sent a reminder regarding the recovery of the excess GPF payment from the petitioner. Pursuant to the said reminder, the respondent no.4, on 22.07.2022, requested the petitioner to deposit the excess payment of Rs.14,69,268/-. On the same day, the petitioner sent two letters, one to the respondent no.3 and the other to the respondent no.4, wherein he reiterated his stance of innocence and stated that he was willing to forego the amount of Rs.3,97,780/-, but not interest on the same. He further requested that the hold on his account be removed.

9. It is the case of the petitioner that on 29.07.2022, six persons from the PAO office of the CISF, Delhi called him to meet at a temple near his residence. Upon meeting the petitioner, these 6 individuals threatened the petitioner and sought recovery of the money from him. On the morning of 18.08.2022, the petitioner was informed that his fixed deposits of Rs. 11 lakh and Rs.10 lakh each were broken without any intimation to the petitioner and that an amount of Rs.14,69,268 was recovered from the same at the insistence of the CISF. Aggrieved by this arbitrary action of the respondents, the petitioner has filed the present writ petition.

SUBMISSIONS OF THE PARTIES

10. In support of the petition, the learned counsel for the petitioner submitted that the illegal and arbitrary action of the respondent CISF in recovering the amount of Rs.14,69,268 without the consent of the petitioner is in violation of the mandate contained in Article 14 of the Constitution of India and is in contravention to the law laid down in the decision of the Supreme Court in *State of Punjab vs Rafiq Masih*, (2015) 4 SCC 334. The learned counsel for the

petitioner also places reliance on the Office Memorandum (OM) dated 02.03.2016 issued by the Department of Personnel and Training (DoPT), advising all ministries and departments to deal with the issue of wrongful/excess payments in accordance with the said Judgment.

11. He submitted that as soon as the petitioner came to know of the credit of Rs.3,97,780/-, he immediately submitted an application dated 04.04.2012 to the concerned authority, intimating the said authority of the aforesaid amount credited in his account. On submitting such application, the petitioner received no response to the same. The learned counsel relied on the decision of the Apex Court in *Shyam Babu Verma vs Union of India*, (1994) 2 SCC 521, and urged that if an excess payment is not made on account of misrepresentation or fraud by an employee, then the said excess payment cannot be recovered by the employer.

12. The learned counsel for the petitioner submitted that immediately after filing of the writ petition, he received a letter on 26.08.2022, stating that his GPF balance had been deducted to zero. Resultantly, the amount of Rs.3,04,454/- that was lying in the petitioner's GPF, which ought to be released to him at the time of his retirement did not accrue to him. Therefore, under the garb of making recovery, the petitioner's GPF contributions have been extinguished as well, amounting to an illegal recovery of Rs.17,73,722/-.

13. The learned counsel submitted that the stand of the respondent that the petitioner was sitting on Rs.3,97,780/- of one Sh. Mangla Ram Saini, cannot now be sustained as the entire account of Mr. Saini had stood settled in the year 2016 itself, five years before the petitioner retired. The said stand has been accepted by the respondents as well.

14. In support his contentions, the learned counsel for the petitioner also relied on the following decisions:

- *Jawahar Lal vs State of Himachal Pradesh*, MANU/HP/0582/2023;
- *Bare Lal Upadhyay vs State of Uttar Pradesh*, MANU/UP/0606/2016;
- *S.S. Chaudhary v. State of H.P.*, 2022 SCC OnLine HP900;
- *Shankar Narayan Chakrawarty v. State of Chhattisgarh and Ors.*, MANU/CG/0334/2020;
- *Mrinal Kanti Ghosh vs State of West Bengal & Ors.*, MANU/WB/1406/2023; and
- *Dilshad Ali v. Union of India*, 2019 SCC Online Del 10416

15. Per contra, the learned counsel for the respondent submitted that despite being aware of the fact that the GPF amount of Rs.3,97,780/- did not belong to him, the petitioner kept withdrawing various amounts from his GPF account. He submitted that the amount credited into the account of the petitioner belonged to one Sh. Mangla Ram Saini, which was inadvertently credited to the account of

the petitioner, and that such withdrawals made by the petitioner despite knowing that this amount did not belong to him, showed the mala fide intent on part of the petitioner.

16. The learned counsel submitted that the petitioner, vide an application dated 22.07.2022 addressed to the PAO, New Delhi, claimed that he had checked the balance in his GPF account on 04.04.2012 during his posting at CISF Unit, 9th Reserve Battalion, Deoli, Rajasthan and had found an amount of ₹ 3,97,780/- was credited to his account. It is pointed out that the said amount was in fact credited only in June 2012, approximately three months after the date on which the petitioner claims to have seen the amount in his account. The learned counsel urged that this discrepancy indicates a possible misrepresentation and casts serious doubt on the genuineness of the petitioner's claim.

17. He further submitted that following the petitioner's inaction, the PAO was compelled to approach the SBI Mohan Cooperative branch for recovery of the said amount.

18. He submitted that although interest is payable by the Government, on the subscriber's deposit under the GPF (Central Services) Rules, 1960, no penal interest has been charged in the present case. It is submitted that the recovery was carried out strictly in accordance with Rule 11 of the said Rules, which governs such situations.

ANALYSIS AND FINDINGS

19. Having heard the learned counsels for the parties and perused the record, the primary question that falls for determination in the present case is whether the respondent authorities were justified in effecting a recovery of ₹ 14,69,268/- from the petitioner and reducing his GPF account, which had a balance of ₹ 3,04,454/- to zero, particularly after his retirement.

20. The petitioner, who was initially appointed as a Constable in the CISF on 04.07.1984, was promoted to the post of Head Constable in 2005 and thereafter to the rank of ASI in March 2019. He superannuated from service on 31.12.2021. The main plea of the petitioner is that he noticed an unusual credit of ₹ 3,97,780/- in his GPF account and immediately brought this to the notice of the concerned authority vide his application dated 04.04.2012. In the interregnum, no communication was addressed to the petitioner warning him of a potential recovery. It was only upon his superannuation that, vide letter dated 24.03.2022, the Assistant Commandant (Pension), CISF, DMRC Unit, Delhi, intimated that the petitioner's GPF final payment had been withheld owing to a discrepancy. Subsequently, on 27.06.2022, the petitioner was informed for the first time that the amount of ₹ 3,97,780/- had, in fact, been erroneously credited to his account due to a clerical mistake, and that the said sum belonged to one Sh. Mangla Ram Saini. Upon recasting of the account, it was alleged that the petitioner had withdrawn a total of ₹ 14,69,268/- in excess.

21. Though the petitioner claims that by way of a written communication dated 04.04.2012, he brought to the notice of the respondent that a sum of ₹ 3,97,780/- appeared to have been credited in his GPF account, and requested that the source of the said credit be clarified to him, the respondents seek to contend that, as on 04.04.2012, the said amount could not have been credited to the petitioner's GPF account, since a cheque bearing no. C-52452 dated 30.03.2012 for ₹ 15,58,087/-, issued for disbursal amongst nine CISF personnel, including one Sh. Mangla Ram Saini, had only been received by the Office PAO, Delhi and was thereafter submitted to the SBI, Nehru Place Branch vide Challan No. 44 dated 12.04.2012. This cheque, it is not in dispute, was realised on 26.05.2012. What emerges clearly from the record is that no amount stood credited to the GPF account of the petitioner either on or before 04.04.2012.

22. Be that as it may, it was only during the process of finalising the petitioner's GPF account at the time of his retirement, that the respondents claim to have discovered that a sum which was, in fact, intended to be credited to the GPF account of Sh. Mangla Ram Saini, had been erroneously credited, vide Transfer Entry No. 1359 in June 2012, to the petitioner's GPF account.

23. It is equally undisputed that there is no material to suggest that the petitioner played any role, by act or omission, in the said erroneous credit, or that the same was occasioned by any fraud, misrepresentation, or misstatement attributable to him. It is, in fact, an admitted position that the credit of ₹ 3,97,780/- to the petitioner's GPF account was the result of a bona fide mistake on the part of the respondents. The sum intended for one Sh. Mangla Ram Saini was, due to an error in the accounting process, credited instead to the petitioner's account, where it remained undetected for nearly a decade. The dues of Sh. Mangla Ram Saini came to be cleared without inquiry into the missing credit, which portrays a lack of diligence on the part of the respondents. Even then, no steps were taken to identify the erroneous beneficiary until the petitioner superannuated on 31.12.2021.

24. It is in this context that the decision of the Supreme Court in Rafiq Masih (White Washer) (supra) assumes particular significance. The Court therein, after a comprehensive analysis on the issue of recovery of excess payments, categorically held that recovery from retired employees, particularly those belonging to lower cadres, would be impermissible where such payment was made on account of no fault attributable to the employee. The Court further held that where such excess payment had been for a period in excess of five years before the order of recovery is made, such recovery shall be impermissible in law. The relevant extract reads as under:

"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 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."

25. The DoPT OM dated 02.03.2016 also advised all Ministries and Departments to abide by the above judgment.

26. Applying the said enunciation of law to the facts of the present case, there can be no gainsaying that the petitioner, who retired as an Assistant Sub-Inspector, a Group 'C' post, was visited with recovery of a sum of ₹ 14,69,268/- after nearly ten years, without being served even a Show Cause Notice or afforded any opportunity to respond. It is only on 27.06.2022, that the PAO, CISF, addressed a communication to the concerned authorities and copied to the petitioner, wherein it was conveyed that an amount of ₹ 3,97,780/- had been "inadvertently" credited into the petitioner's GPF account.

27. That apart, the petitioner asserts that the recovery was not only effected without notice, but that a sum in excess of the amount claimed (i.e., ₹ 17,73,772/- as against ₹ 14,69,268/-) was deducted, with no explanation forthcoming for the additional deduction of the amount already in the petitioner's account. The same has not been disputed by the respondents. We are of the opinion that such a course of action is manifestly arbitrary, procedurally unfair, and plainly impermissible in law. Moreso, the aforesaid amount was deducted from two fixed deposits of the petitioner, that too without bringing the same to his knowledge. The recovery was therefore, contrary to all canons of law. Support in this regard is drawn to the judgment of this Court in Dilshad Ali (supra).

28. The prejudice caused to the petitioner is writ large from the fact that the respondents, in their affidavit dated 30.12.2024, have stated that upon a subsequent recasting of the petitioner's GPF account, it was found that the actual recoverable amount stood at ₹ 5,50,109/-, and not ₹ 14,69,268/-. It was admitted that the earlier higher figure was based on a miscalculation, and the

excess amount of ₹ 9,19,159/- was refunded to the petitioner, on 27.02.2024, during the pendency of the present writ petition. However, no explanation been proffered for the prolonged delay or the manner of the initial recovery.

29. What merits emphasis is that, even according to the respondents, this revised figure of ₹ 5,50,109/- includes the principal amount of ₹ 3,97,780/-, which was admittedly credited inadvertently in the year 2012, as well as the interest accrued on the same till August 2022. In other words, the respondents seek to retain not merely the erroneously credited principal but also interest on the same, despite the admitted position that the error was solely attributable to their own accounting lapse.

30. The petitioner has rightly contended that once the principal recovery itself is rendered impermissible in law under the binding dictum in *Rafiq Masih (supra)* wherein it was held that there can be no occasion for permitting recovery of the interest allegedly accrued on such amount. Recovery of interest in such a context would amount to penalising the petitioner for an error that was neither occasioned nor contributed to by him.

31. Further, the respondents' own affidavit discloses that Sh. Mangla Ram Saini, to whose account the sum of ₹ 3,97,780/- was originally intended to be credited, retired in 2016, and his account was fully settled by the respondents vide authority letter dated 08.09.2016. It is thus evident that even as of 2016, there was no shortfall in the account of Mr. Saini. Yet, in 2022, the respondents issued a demand to the petitioner suggesting that he had withheld a sum due to Mr. Saini. This inconsistency is both striking and unexplained.

32. The respondents have also stated that at the time of his retirement in December 2021, the petitioner had a balance of ₹ 3,04,454/- in his GPF account. However, the respondents seek to dismiss the said entry as a 'miscalculation', without providing any documentary basis or breakdown. What is significant and concerning is that this amount comprises the petitioner's own monthly contributions made over the course of 37 years of service. There is no explanation as to how or why these lifelong contributions could be legally extinguished or adjusted against a third party's mistaken credit. The attempt to erase this amount is procedurally indefensible and substantively arbitrary. Reliance of the respondent on the undertaking dated 07.07.2021 and 01.09.2021 given by the petitioner to refund any excess amount credited to his account, cannot be used by the respondent to recover the amounts in violation of the dictum of the Supreme Court in *Rafiq Masih (supra)*.

33. Accordingly, the Writ Petition is allowed with the following directions:

a) The revised pension proposal and all consequential recovery actions, to the extent they provide for deduction of any amount from the petitioner's GPF account or retirement dues on account of the erroneously credited sum, are quashed and set aside;

- b) The respondents are directed to refund to the petitioner a sum of ₹ 8,54,563/- (i.e., ₹ 5,50,109/- plus ₹ 3,04,454/-), being the amount still due and withheld, within a period of twelve weeks from today along with interest at the rate of 6% per annum from the date of deduction till the date of refund;
- c) The respondents shall also pay to the petitioner interest at the rate of 6% per annum on the sum of ₹ 9,19,159/- from the date of the recovery thereof from the petitioner till the date of its refund;
- d) The parties shall bear their own costs.

34. The pending application also stands disposed of.