

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12844 of 2021**

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1. The Union of India through the Secretary, Ministry of Labour and Employment, Jaisalmer House, 26, Man Singh Road, New Delhi-110001.
2. The Under Secretary, Ministry of Labour and Employment, Jaisalmer House, 26, Man Singh Road, New Delhi-110001.
3. The Welfare Commissioner, Ministry of Labour and Employment, Labour Welfare Organisation, Shram Bhawan, Daronda, Ranchi-834002(Jharkhand).
4. The Dy. Welfare Commissioner, Ministry of Labour and Employment, Labour Welfare Organisation, Karma, Jhumn Telaiya, Koderma-825409 (Jharkhand)
5. The Welfare Commissioner, Ministry of Labour and Employment, Labour Welfare Organisation, House no. 180/A/B, 2nd Floor, Road no. 4A, Patliputra Colony, Patna-800013, (Bihar).

... .. Petitioners

Versus

Sri Bijoy Kumar Son of Late Baijnath Prasad, Resident of Ward no.15, Goal Bagaicha, Gabra, P.S.-Sadar, District-Gaya, Pin Code-823002. (Bihar).

... .. Respondents

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**Appearance :**

For the Petitioners	:	Mr. Pradeep Kumar, C.G.C. Mr. Kumar Sachin, C.G.C.
For the Respondent	:	Mr. Prince Kumar Mishra, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**and**

**HONOURABLE MR. JUSTICE MADHURESH PRASAD**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)**

**Date : 20-12-2021**

The Union of India through the Secretary, Ministry of Labour and Employment and other officials of the said Ministry have preferred this writ application under Article 226 of the Constitution of India seeking quashing of an order dated 17.01.2020 passed in O.A. No. 78 of 2018 by the Central Administrative Tribunal, Patna Bench, whereby the Tribunal has allowed the application filed by the sole respondent. The



respondent preferred the said application before the Tribunal seeking direction to the petitioners to grant him cash equivalent to earned leave, group insurance and medical allowance at the rate of Rs.500/- per month along with 12 percent interest for delayed payments against the said heads. He took a plea before the Tribunal that without any valid reason, his complete retiral dues were not being released, despite repeated request and lapse of three years from the date of his superannuation. He also asserted that the respondent was not given any notice for recovery of any amount, consequent upon the alleged erroneous fixation of pay-scale/grade pay, leading to excess payment to the respondent than his actual entitlement.

2. In the written statement filed before the Tribunal on behalf of the Union of India, a plea was taken that recovery had been made of the excess payment made to the petitioner because of incorrect fixation of grade pay inasmuch as he was allowed grade pay of Rs.4600 in place of Rs.4200 upon grant of first ACP, Rs.4800 in place of Rs.4600 against second ACP and Rs.5400 in place of Rs.4800 against grant of MACP ignoring the first ACP, which was already granted to the petitioner to Rs.4200 from Rs.2800.



3. The Tribunal relying on the Supreme Court's decision in case of *State of Punjab v. Rafiq Masih (White Washer) and others*, reported in (2015) 4 SCC 334 allowed the petitioners application in following terms :-

*“These facts are not denied by the respondents and there is apparently no error on the part of the applicant for which he can be held responsible for this overpayment. The recovery in this case on account of any alleged excess payment is, therefore, clearly in violation of the dictum of the Hon'ble Apex Court in the Rafiq Masih's case. It is also very unfortunate that the employee who was suffering from various ailments and who kept on running to various offices to get this information was not even provided with the information regarding why his complete retiral dues were not released. I, therefore, dispose of this OA with the direction to the respondents to immediately refund all amounts which have been deducted by way of recovery of excess payment made by the respondents from the retiral dues of the applicant within three months of receipt of this order. No order as to costs.”*

4. The said order of the Tribunal is being assailed on the ground that the respondent himself had given an undertaking at the time of fixation of ACP/MACP to the following effect :-



*“I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of any or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government Either by adjustment against further payments due to me or otherwise.”*

5. Mr. Pradeep Kumar, learned Central Government Counsel appearing on behalf of the Union of India has submitted that the Tribunal failed to take into account the aforesaid undertaking of the respondent given by him at the time of fixation of his pay, in the light of Supreme Court’s decision in case of ***High Court of Punjab & Haryana v. Jagdev Singh***, reported in **(2016) 14 SCC 267**. He has submitted that the respondent was bound by the undertaking so given by him and he could not have questioned the action of the petitioners of recovery of the amount paid in excess to him because of incorrect fixation of pay.

6. Mr. Prince Kumar Mishra, learned counsel appearing on behalf of the respondent, on the other hand, while defending the Tribunal’s order has contended that the Tribunal rightly applied the law laid down in case of ***Rafiq Masih*** (supra) considering the respondent’s advanced age and the hardship which he was facing subsequent to his retirement. He has placed reliance on a Division Bench decision of this Court in case of ***Shobha Kant Mishra vs.***



*Union of India & Ors.* reported in **2021 (4) BLJ 423** to contend that in similar circumstance, despite there being similar undertaking given by an employee, this Court restrained the respondent Bank in that case from further recovery of the amount paid in excess to the petitioner of that case. He has also referred to a Division Bench decision of Telangana High Court in case of *Union of India vs. A. Sreedhar*, (AIRONLINE 2020 TEL 213) to submit that the High Court of Telangana too restrained the respondents from recovery of any further amount, which was, admittedly, paid in excess to the actual entitlement to the respondent of that case.

7. He has submitted that if the petitioner Union of India is not directed by this Court to refund the amount recovered illegally from the respondent on the ground of excess payment made to him in the absence of any allegation of misrepresentation or fraud played by the respondent, the respondent shall be put to serious undue hardship. He accordingly submits that the impugned judgment and order of the Tribunal do not require any interference.

8. On perusal of the pleadings on record, it is not in dispute that the respondent had been paid amount in excess to what he was legally entitled to because of incorrect fixation of pay at the time of granting him ACP/MACP. Such amount paid to the



respondent in excess has already been recovered by the petitioners. The fact that the respondent has given an undertaking to the aforesaid effect is not in dispute. In such circumstance, in our opinion, the Supreme Court's decision in case of **Jagdev Singh** (supra) applies with full force, paragraph 11 of which reads as under : -

*“11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.”*

9. The Division Bench decision of this Court in case of **Shobha Nath Mishra** (supra) is of no help to the case of the respondent for the reason that in the said case, certain amount was wrongly credited in the account of the petitioner of that case by the Bank. When the Bank proceeded to recover the amount, the Division Bench, in order to balance the equities between the parties, directed that the Bank to refrain from making any further recovery from the petitioner. The Division Bench, at the same



time, observed that to the extent the recovery has already been made from the monthly pension of the petitioner, the same would not be refunded.

**10.** Situated thus, we are of the opinion that the impugned judgment and order of the Tribunal, whereby the Tribunal has directed refund of the amount recovered from the respondent, which was, admittedly, paid in excess because of wrong fixation of pay, deserves interference.

**11.** The impugned order dated 17.01.2020 passed in O.A. No. OA/050/00078/2018 by the Central Administrative Tribunal, Patna Bench, is accordingly set aside.

**12.** This writ application stands allowed accordingly.

**13.** There shall, however, be no order as to costs.

**(Chakradhari Sharan Singh, J)**

**( Madhuresh Prasad, J)**

Pawan/-

AFR/NAFR	NAFR
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