



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

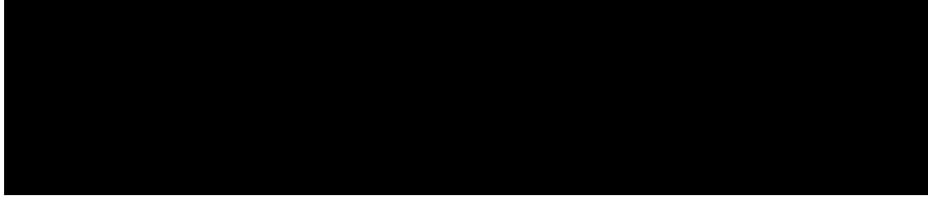
O.A. No. 1328/2022

Reserved on : 09.04.2024

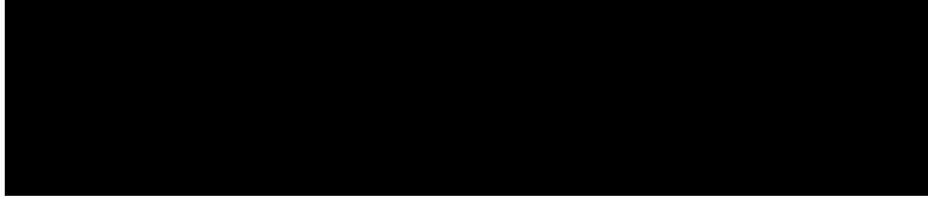
Pronounced on : 23.04.2024

**Hon'ble Mr. Manish Garg, Member (J)
Hon'ble Dr. Anand S. Khati, Member (A)**

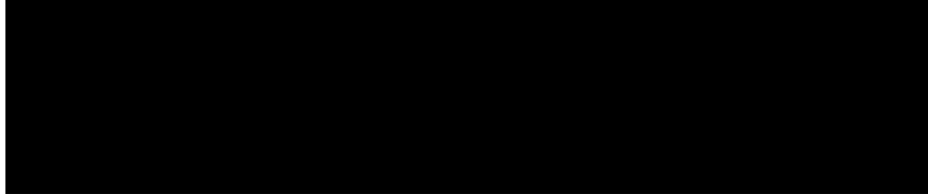
1. Parveen Kumar
aged 33 years, Group 'C'
S/o Sh. Rameshwar Dass



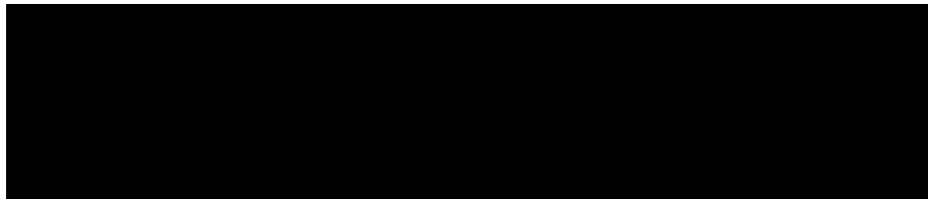
2. Ms Rajbala
aged 37 years, Group 'C'



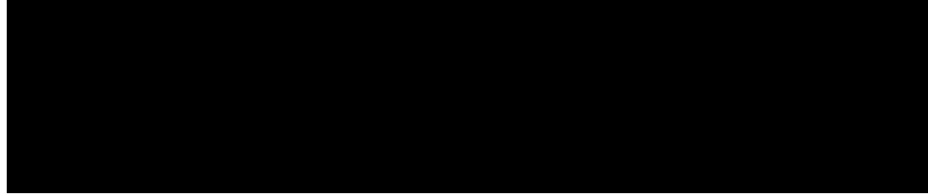
3. Ms. Preeti Tomar
aged 32 years, Group 'C'



4. Arpit Bajpai
aged 32 years, Group 'C'



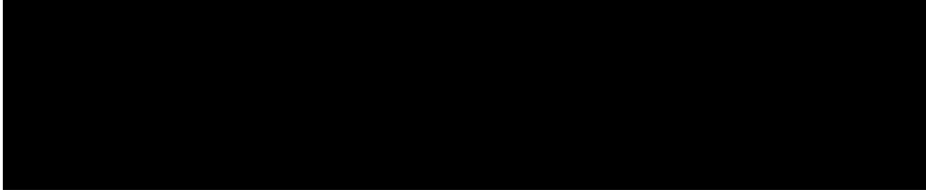
5. Abhilash Kumar
aged 28 years, Group 'C'



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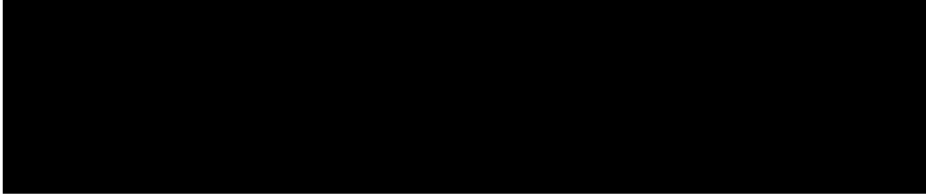
6. Yogesh Kumar Rohilla
aged 32 years, Group 'C'



7. Ravinder Singh, aged 30 years, Group 'C'
S/o Sh. Rajinder Singh



8. Krishan Kumar Meena, aged 37 years, Group 'C'
S/o Sh. Kushla Ram Meena



.. Applicants

(By Advocate : Mr. Yogesh Sharma)

Versus

1. New Delhi Municipal Council
Through its' Chairman
3rd Floor, Palika Kendra
New Delhi-1
2. The Secretary
New Delhi Municipal Council
3rd Floor Palika Kendra
New Delhi-1
3. The Joint Director(Civil)
New Delhi Municipal Council
3rd Floor Palika Kendra
New Delhi-1

...Respondents

(By Advocate: Mr. Vikrant Pachnanda)



ORDER

Dr. Anand S. Khati, Member (A)

The present O.A. has been filed by the applicants challenging the action of the respondents pursuant to Office Order dated 25.05.2021, whereby the respondents have rectified and refixed the Pay/Grade Pay and other admissible allowances of the applicants in 7th CPC Pay Matrix Level-4 (Rs.25500-81100) with effect from the date of their joining. It is submitted that the respondents have also started recovery of Rs.10,000/- p.m. from their salaries for the month of March, 2022, without issuing any show cause notice and without giving any opportunity to the applicants. In this regard, the applicants preferred various representations ventilating their grievance, but to no avail. Hence, they filed the present O.A. seeking the following reliefs:

- “(i) That the Hon'ble Tribunal may graciously be pleased to Pass an order of quashing the impugned order dated 25.05.2021(Annex.A/1) declaring to the effect that the same is illegal, arbitrary and against the law of the land and consequently, pass an order directing the respondents to restore earlier pay of the applicants in Grade Pay of Rs.2800/-, i.e. in the Pay Matrix of Rs.29200-92300 (Cell 1 Level 5 in 7th CPC Pay Matrix) with all the consequential benefits including payment of arrears of difference of pay and allowances with interest.
- (ii) That the Hon'ble Tribunal may graciously be pleased to pass an order declaring to the effect that the whole action of the respondents started recovery from the pay of the applicants is illegal, arbitrary and violation of Principle of natural justice and consequently, pass an order directing the respondents to refund the recovered amount with interest to the applicants.
- (iii) Any other relief' which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants along with the costs of litigation.”

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2. Learned counsel for the applicants vehemently argued that it is not a case of rectification of any mistake but it is a unilateral order refixing/revising the pay and allowances of the applicants to their detriment. He submitted that the applicants were selected and appointed in January, 2019, after being successful in the selection process conducted by DSSSB, to the post of Draftsman Grade-III (Post Code No.32/15) in Grade Pay of Rs.2800/-. Their pay was also fixed at Rs.29,200/- in the pay matrix of Rs.29200-92300 (Level 5 in 7th CPC) vide order dated 15.04.2019. However, by way of the impugned order, the respondents have reduced their pay to Rs.25,500/- in Grade Pay of Rs.2400/- in pay matrix of Rs.25500-81100 (Level 4 in 7th CPC) from the date of their appointment, while there are various other departments in Govt. of India where the Grade Pay to the post of Draftsman is Rs.2800/-. Further, the respondents have also started recovery from their pay on this account, but till date even no order regarding total amount of recovery has been passed. Hence, the impugned order passed by the respondents cannot be said in correction of any mistake but it has changed the service conditions of the applicants, as the pay and allowances drawn by the applicants right from their entry into service till date have been revised without putting them to any notice and without adducing any reasons, which is totally illegal, arbitrary and in violation of principles of natural justice being unilateral in



nature. Hence, the same is liable to be quashed even on this sole ground.

3. To strengthen his arguments, the learned counsel for the applicants has relied upon the case law as under :-

- (i) J.S. Yadav vs. State of U.P. and Another, JT 2011 (5) SC 186.
- (ii) Babu Lal Jain vs. State of M.P. & Ors., 2007 (6) SCC 180.
- (iii) Syed Abdul Qadir & Ors. vs. State of Bihar & Ors., (2009) 3 SCC 475.
- (iv) S. Leikh Abdul Rashid & Ors. vs. state of J&K, JT 2008(1) SC 127.
- (v) Union of India vs. Narendra Singh, 2008 (1) SCC(L&S) 547.
- (vi) Duryodhan Lal Jatav vs. State of UP & Anr., 2005 (3) ATJ 56.
- (vii) Shyam Babu Verma vs. Union of India & Ors., 1994 (2) SCC 521.
- (viii) This Tribunal's order dated 16.11.2022 passed in OA No. 2579/2021 titled K.N. Sati & Ors. vs. UOI & Anr.

4. To justify the reliefs sought by the applicants, the learned counsel further argued that even if the payments have been made erroneously, the same were not on the part of the applicants and, therefore, they cannot be punished for the same and no recovery can be made from them at a later stage, as held by the Hon'ble Supreme Court in the case of **State of Punjab and Others vs. Rafiq Masih (White Washer) etc.**

5. The respondents have filed a counter affidavit. Placing reliance on the same, learned counsel appearing for the respondents



submitted that the advertisement for the post of Draftsman Grade-III was issued in 2015 by clearly mentioning the pay scale of Rs.8500-26300 + GP 2800/- in 6th DTL Pay Scale in the requisition form (Annexure R1). As per office order dated 27.12.2017, the DTL pay scales for the left out categories of posts was to be operated from 01.04.1998 to 06.04.2016. With notification of New Delhi Municipal Council (Conditions of Service of Municipal Officers) Regulations, 2016 vide Govt. of NCT of Delhi's Notification No.F.13(126) UD/MB/2014/420 dated 07.04.2016, the salary of all NDMC employees is to be operated in terms of Central Civil Services (Revised Pay) Rules, 2008 as amended from time to time w.e.f. 07.04.2016. The recruitments made after 07.04.2016 were to be done in the 7th CPC and, accordingly, the pay of newly recruited Draftsman Grade-III was fixed in conversion of 6th DTL to 7th CPC. However, the offer of appointment was issued inadvertently in level 5 instead of level 4 with pay of Rs.25500/-, and the pay of the applicants was fixed accordingly. Subsequently, an order of recovery was issued vide Order No.I/2744/2021 (Annexure R3) as per the correct pay scale and recruitment rules of the post, after the approval of the Competent Authority.

6. Learned counsel for the respondents also referred to para 4 of the DoPT OM No. 18/03/2015-Estt.Pay-I) dated 02.03.2016 regarding the guidelines issued regarding recovery of excess



payment made to the Govt. servant on account of wrong fixation of pay in the higher scale, which reads as under:

“4. The Hon’ble Supreme Court while observing that 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 has summarized 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.”

She further submitted that once it has been established that an erroneous pay fixation was done and the applicants have been in receipt of excess payment all through their service, there is no alternative before the respondents except to recover such overpayment as it has put unnecessary burden on public exchequer.

7. Having heard the learned counsels for the parties and going through the pleadings on record meticulously, we are of the view that the basic facts of the case are not in dispute at all. It is not the case of the respondents that the applicants got their pay fixed in the higher pay scale by any misrepresentation, or it was done on account



of any act of omission or commission on their part. In fact, in para 4 of the counter reply, the respondents have themselves admitted that the pay of the applicants was wrong/inadvertently fixed. We appreciate the admission made by the respondents in their counter reply, however, taking lead from the ratios laid down by the Hon'ble Supreme Court and followed by various Courts of law, we are of the considered opinion that if there was a mistake, even though inadvertent, on the part of the respondents, they have to take the responsibility. Moreover, it has also been established that while revising and reducing the applicants' pay, the applicants were not put to any notice nor given any opportunity whatsoever. Subsequently, when the respondents started recovery towards excess payment from their salaries, the applicants preferred representations, but no response was given to them by the respondents.

8. Indubitably, the pay of applicants was fixed without any misrepresentation on their part and if any erroneous payment has been made, the onus entirely lies upon the respondents and the applicants are not at fault. Besides that, the applicants are holding Group 'C' post and, hence, clause 4(i) of the DoPT's OM dated 02.03.2016 is applicable in the instant case. Therefore, the respondents cannot make recovery of such excess payment from the applicants, as per the *dictum* of the Hon'ble Supreme Court in **State of Punjab & others etc. vs. Rafiq Masih (White Washer)**

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etc., 2015 (4) SCC 334, which has further been followed by the Hon'ble Supreme Court in **Thomas Daniel vs. State of Kerala & Ors.**, 2022 LiveLaw (SC) 438.

9. Resultantly, the O.A. is allowed. The respondents are directed not to make any further recovery from the applicants and also directed to refund the entire amount recovered from the applicants within a period of three months from the date of receipt of a copy of this order. The applicants shall be entitled to draw their pay as per the revised fixation of pay.

10. However, in the facts and circumstances, there shall be no order as to costs.

(Dr. Anand S. Khati)
Member (A)

(Manish Garg)
Member (J)

/jyoti/