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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

REGN. NO. CA 1101/88

DATE OF DECISION:

Pritam Lal Talwar ..... Applicant.

Versus

Union of India & Ors. .... Respondents.

CORAM: The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the Applicant. .... Shri M.R. Bhardwaj,  
Counsel.

For the Respondents. .... Shri P.P. Khurana,  
Counsel.

( Judgement of the Bench delivered by  
Hon'ble Mr. Justice Amitav Banerji,  
Chairman)

The applicant, an Inspector in Central Excise & Customs, is aggrieved by an order of recovery of an amount representing second and subsequent annual increments granted to him from 1976 onwards. The reason was that the applicant had failed to qualify in the remaining two papers of the Inspectors' Grade Examination and the amount was wrongly paid to him. He is also aggrieved that the impugned order disentitles him to the grant of future increments till he qualifies in the two papers. The impugned order dated 29.9.87 reads as follows:-

"C.No.1049/C/30/85(Conf1)  
Directorate General of Inspection  
Customs and Central Excise,  
New Delhi.

Dated: 29.9.87.

M E M O R A N D U M

Subject: Non-qualifying of the Central Excise  
Departmental Examination of Inspectors-  
Recovery of over payments of amount thereof-  
Collectorate of Customs and Central Excise

Delhi has informed that Shri P.L. Talwar, Inspector (on deputation) has not qualified the Departmental Examination in full in the Inspector's Grade which he had to pass within 2 years of his appointment as Inspector. He is directed to apply for grant of additional chance to appear in the examination to qualify the remaining part of the Departmental Examination giving full reasons that why he could not clear the same. The request for grant of additional chance may be sent to Collector of Central Excise, Delhi in duplicate giving full service particulars, i.e. date of appointment in the present grade and papers in which to appear etc.

Shri P.L. Talwar, Inspector, is hereby directed that he was not entitled to get 2nd and subsequent increments in the grade. The amount on account of 2nd and subsequent increments wrongly paid to him would be recovered and no further increments would be granted till he qualifies the Departmental Examination in full.

Sd/- x x x x  
(MOHEB ALI M.)

DEPUTY DIRECTOR OF INSPECTION"

The contention of Shri M.R. Bhardwaj, learned counsel for the applicant, was that a representation had been made by the applicant requesting grant of exemption for qualifying in the remaining two papers and the same had been rejected arbitrarily by the respondents without giving any reasons. It was urged that the respondents did not apply their minds in the objective manners. The applicant had rendered 35 years of service out of which he had put in more than 12 years as Inspector, Central Excise and Customs. The work and conduct of the applicant had been appreciated through-out and there was no adverse comments about his hard work and integrity.

He was found fit by the D.P.C. on three different occasions viz., for the post of Air Customs Officer; to cross the Efficiency Bar; and for the post of Intelligence Officer in the Directorate of Revenue Intelligence. He had been asked to take the examination during the prescribed period. But the period was not specified in the letter of appointment. He was running in 56th year and he deserved sympathetic consideration of his request for exemption/Examination. Learned counsel further contended that the recovery of the huge amount at this stage would cause financial strain besides mental worry and anxiety. It was pointed out that his retirement is due on 31.8.1990. Learned counsel relied on two decisions where the exemptions were allowed to the employee on discovery of mistake even after 10 years. In C.S. BEDI VS. UNION OF INDIA'S case (ATR 1988(2)CAT 510), the pay of the employee had been rectified after nearly 16 years and reduced by Rs.100/- per month. In that case, it was urged that the impugned orders were made without issuing notice and affording him an opportunity of hearing to state his case which was the basic requirement of the principles of natural justice. It was urged that the total recovery was illegal and inequitable. Learned Single Member observed in para 13 as under:-

"Before an authority proposes to rectify its orders which would result in serious civil consequences to the applicant, it cannot do so without issuing him a show cause notice setting out all the circumstances and affording him an opportunity of hearing to state his case which is one of the basic requirements of the principles of natural justice is now well settled. Without any doubt that had not been done by the authority. On this short ground itself, the orders made against the applicant are liable to be interfered with by me".

Learned Single Member proceeded on the assumption that there was a mistake in the fixation of pay of the applicant and that mistake came to the light of the authorities only in 1986.

A similar question had come up in the case of NILKANTHA SHAH VS. UNION OF INDIA & OTHERS (1987(3)SLJ 307) in which it is held that one cannot take double benefit of fixation under State as well as Central scales. In that case, the Calcutta Bench of the Tribunal observed that the respondents took more than seven years in detecting their mistake regarding wrong fixation of pay which resulted in over payment of more than Rs.13,000/- and even after waiver of 50% on compassionate ground, the applicant was required to pay back more than Rs.6,000/- from his salary. When the applicant was given the benefit of revised pay, he was not aware that he would have to pay back the excess amount drawn and he spent the amount according to the pay scale that he enjoyed. Any deduction at this late stage definitely causes hardship to the applicant. It was also quite clear that the applicant was not responsible for the non-detection of the mistake of the Department for a long <sup>period of</sup> seven years. On this ground, the Application was allowed.

Learned counsel further prayed that the relief as given in the cases of C.S. BEDI(Supra) and NILKANTHA SHAH(Supra) be granted to the applicant in the present case.

Shri P.F. Khurana, learned counsel for the respondents, however, contended that the applicant was promoted as Inspector from the Ministerial Cadre (UDC) on 11.11.1975. He was required

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to pass the departmental examination in paper Nos IV and V i.e. Law and Viva-voce, within one year of his appointment or within two chances occurring after his appointment, whichever was later. But he did not pass the above departmental examination. However, he was granted second increment inadvertently. A Vigilance Enquiry was initiated against the defaulting Officer who was responsible for giving the second increment wrongly to the applicant. The applicant was aware that he had to pass the departmental examination in law paper within one year of his promotion to the executive Grade or within two chances occurring after his appointment. The applicant applied in 1976 for taking the examination. But he did not appear in the examination nor intimated the reasons to the department. He neither prayed to the competent authority to grant him an extra chance nor did he apply for taking the subsequent departmental examination which indicates that the applicant initially avoided to take the examination. Learned counsel also pointed out that it was nowhere required by the respondents to ask the employee to appear in the examination. It was the duty of the individual concerned to clear the examination within the stipulated period. It was stated that the second and subsequent increments were wrongly given to the applicant. Reference was made to paragraph 3 of the Appointment Letter which stipulates that the officer is required to pass the departmental examination prescribed for the post of Inspector Central Excise, within the prescribed period. Paragraph 5 of the said letter also stipulates that the department reserves the right to revert an officer in the event of his being found unfit to hold the post of Inspector of Central Excise. The applicant was not

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confirmed in the grade of Inspector by the D.P.C. in 1987, as he had not passed the departmental examination. It was also stated that although he did not pass the departmental examination within the prescribed period but he was allowed to cross E.B. wrongly, for which a departmental enquiry is being initiated against the officer concerned.

Shri Khurana concluded by submitting that since the applicant had not taken the departmental examination and clear the same he could not be confirmed as an Inspector. He had also concealed material facts and was entitled to any relief. He sought to distinguish the two cases cited by the Learned Counsel for the Applicant.

We have heard learned Counsel for the parties. We have also perused the material on the record before us as well the cited cases. The reason for for passing the order for refund seems to stem from the applicant's failure to pass the departmental examination, in 1976 or any time thereafter. But he drew the pay of an Inspector for 12 long years with increments. It was only in 1987 that the D.P.C. held against him -- as he had not qualified by passing the departmental examination. Now, the failure to pass the said examination was on account of the Applicant's failure to sit in the examination in 1976. He had applied for but for some reason did take the examination. Consequently, he was not confirmed. There was no attempt by him to seek further chance or give plausible reason for not being able to sit in the examination. It is thus apparent that the applicant himself was responsible for this situation. In these circumstances the principle laid down in the case NILKANTHA SAHA VS UNION OF INDIA (supra) & in C.S.BEDI vs. UNION OF INDIA (supra) would not be helpful to the applicant's case. In those two cases mistake was discovered by the Department after a long period and the applicant's had not contributed to the error.

In the case of C.S. BEEDI (supra) the mistake was discovered after 16 years. In the case of NILKANTHA SAHA the mistake was discovered after 7 years. In the former case the entire recovery was held to be bad in law as the Applicant was not issued a show cause notice and affording an opportunity of hearing. In the case of the NILKANTHA SAHA, half of the amount to be recovered was struck off. In the present case the position is different. The applicant was aware of his lack of essential qualification for being confirmed as Inspector. But he continued as Inspector and discharged his duties and was given important assignments and even was allowed to cross E.B., although it is said that it was a mistake and the officer concerned is being proceeded with. We have considered all this and are of the view that the facts of this are different, except that the mistake was discovered after a long period, i.e., 12 years. There was a mistake, admits of no doubt. It was a mistake on the part of the Department in continuing him as Inspector without having passed the qualifying examination. It was also a mistake in allowing him to cross the E.B. There is nothing to infer that the applicant induced the Department to make the mistake. Another factor which needs to be taken into account is that the Applicant discharged his duties ably and without any adverse remarks re. ability or integrity. He worked as Inspector throughout this period. There was no shortcoming on his part in this regard. A question arises should he be penalised to the extent that he has to refund all the amount of the second and subsequent increments? This question becomes important as we are sitting in the equity jurisdiction of the High Court under Art 226 of the Constitution of India. Supreme Court has clearly held that this Tribunal is a substitute of the High Court in respect of service matters of the Central Government employees.

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Keeping in view the above and also considering the fact that the applicant retires by the end of this month (August 1990) from service, it will be too harsh, if he is made to refund the amounts of 2nd and subsequent increments paid to him over the years. As it is not having been confirmed as Inspector, he will receive pensionary benefits at a lower rate. That by itself will be a punishment for him. We are therefore of the view that an equitable view be taken in this case.

We would therefore uphold the order dated 29.9.87 in so far as the grant of further increments to the applicant till he qualifies in full in the Departmental Examination. As regards the refund of the amounts of the 2nd increment and the subsequent increments we are of the view that since he rendered satisfactory service without any adverse entry during this period the same may not be recovered from him. We order accordingly. There will be no order as to costs in this O.A.

*B.C. Mathur*  
( B.C.MATHUR )  
Vice Chairman.

*Amitav Banerji*  
( AMITAV BANERJI )  
CHAIRMAN.

Pronounced in open court today.

*27.9.90*