

Central Administrative Tribunal
Principal Bench

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Original Application No. 534 of 2004

New Delhi, this the 30th day of July, 2004

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member (A)

Hemant Kumar Verma,
s/o late D.C. Verma,
R/o WZ-38, Naraina,
New Delhi.

....Applicant

(By Advocate: Shri S.N. Anand)

-versus-

1. The Government of NCT of Delhi
Through Head of the Department
NCC Directorate, Chabi Ganj,
Kashmere Gate, Delhi.
2. Camp Commandant,
ATC/CATC
No. 1 Delhi Air Sqn. NCC (Flying),
Safdarjang Airport,
New Delhi.
3. The Accounts Officer (NCC)
NCC Directorate, Chabi Ganj,
Kashmere Gate, Delhi. ...Respondents

(By Advocate: Ms. Renu George)

O R D E R (ORAL)

By Shri Justice V.S. Aggarwal:

The applicant, by virtue of the present
application, seeks to assail the order of 4.12.2003,
which reads as under:-

- "1. Please refer to the photocopy of
the Internal Audit report 98-99 to
2001/2002.
2. As per report it has been observed
that Rs. 16,243/- has been drawn in
excess towards your pay and allowances.
3. You are therefore directed to
refund this excess amount forthwith."

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2. Some of the relevant facts are that the applicant has been working as Aero Modelling Instructor since 3.9.1979. With the coming into force of the Vth Central Pay Commission, the pay of the applicant was fixed. Applicant's grievance is that suddenly the recovery of Rs. 16,243/- is being effected. He assails the said order on the following grounds:-

- a) Principles of natural justice have been violated and no show cause notice has been issued.
- b) Once the payment has been made to the applicant for no fault of the applicant, this recovery cannot be effected.

3. The original application is being contested.

4. We have carefully considered the said submissions.

5. On legal principles, we do not dispute either of the propositions ~~enumerated~~ by the applicant. Normally, before effecting any recovery, a notice to show cause has to be issued.

6. The purpose of issuing the show cause notice is to make the said person aware of the assertions

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or allegations so that he can answer the same. This principle is based on the principles of fair play, justice and equity.

7. In the present case in hand, a notice had been given to the applicant dated 4.12.2003. He was asked to refund the excess amount. The applicant had submitted a reply on the next day i.e. on 5.12.2003. He recited :

"Reference with letter No.
IDAS/A/Civ/Audit/66/2183 dated 4th
Dec., 2003.

2. As per the above mentioned letter recovery under the head pay and allowances is not justified mentioning my previous representations. Since I am advised by the higher authorities to reply immediately without giving me sufficient time to plan myself. I request that I will deposit the amount of Rs. 16243/- in 20 equal instalments of Rs. 812/- each. At present I am facing hardship due to my domestic problems. Further, I want to bring in your kind notice the my request regarding pay and allowances (through representation) has not been justified.

Thanking you,

Yours faithfully,
sd/-

Dated: 5.12.2003

AMO"

8. In other words, instead of disputing the amount, he admitted that what was claimed from him is due. Having admitted, it is too late in the day for the applicant to contend that another separate notice to show cause had to be issued. That would be improper because the principle of fair play in any case has been followed.

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9. Reverting back to the second argument, once again we do not dispute that if payment has been made to a person and he has not practised any fraud or misrepresentation, the same ordinarily is not to be recovered. We refer with advantage to the decision of the Hon'ble Supreme Court in the case of Shyam Babu Verma vs. Union of India & Ors., 1994(2) SCC 521.

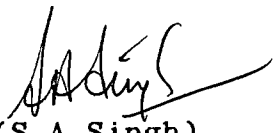
10. But in the facts of the present case even the said principle will not apply. This is for the reason that the applicant himself admitted that excess payment has been made and he is ready to refund the same in instalments. In face of such a situation, when there is a clear and unambiguous ~~confession~~ ^{admission} made by the applicant, he cannot be allowed to re-press the said facts, so stated. In fact, legalism in the facts of the present case should not override the admissions made.

11. Keeping in view the said facts, the Original Application must fail and is dismissed.


12. At this stage, the applicant's learned counsel states that the applicant is a Group-III employee. As stated by him, he may be allowed to make the payment in twenty instalments of Rs. 812/- each. There is no dispute to this fact raised at the other end. Resultantly, we direct that applicant would refund the said amount in monthly

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instalment of Rs. 812/- beginning from 16th of August, 2004 and would continue to do so month by month by 16th of each succeeding months. We make it clear that in case applicant fails to make the payment, the respondents would be within their right to recover the balance amount immediately.


(S.A. Singh)
Member (A)

/na/


(V.S. Aggarwal)
Chairman