

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.1055 OF 2001.

ALLAHABAD THIS THE 11TH DAY OF SEPTEMBER 2007.

Hon'ble Mr. Ashok S. Karamadi, J.M

Hon'ble Mr. K.S. Menon, A.M

Vijay Bahadur Singh, aged about 60 ½ years, son of Sri Raghunath Singh,
R/o D/62/15-E, Sonia, District Varanasi.

.....Petitioner

(By Advocate: Sri Rakesh Verma)

Versus.

1. Union of India through the Secretary, Ministry of Finance, Central Excise and Custom, New Delhi.
2. The Assistant Commissioner, Central Excise, Faizabad.
3. The Deputy Commissioner, Custom Division, Office of the Central Excise and Custom, Gorakhpur.
4. The Pay & Accounts Officer, Central Excise Commissionerate, Allahabad.

.....Respondents

(By Advocate: R.K. Tewari)

ORDER

By Mr. Ashok S. Karamadi, J.M

This application is filed seeking for quashing the order 25.4.01 passed by respondent NO. 3 and further direction to refund the amount of Rs.22,430/- which was recovered by the respondents on the basis of re-fixation of his pay.

2. Learned counsel for the applicant submits that because of wrong fixation of pay by the respondents without giving any notice to the applicant, the recovery of Rs.22,430/- was made from the pension of the applicant and his pay was revised by the respondents. This action of the respondents stands without any prior notice to the applicant, hence this O.A. for seeking the relief(s).

3. On notice, respondents have filed counter affidavit in detailed. The sum and substance of the counter affidavit is that even though there is an admitted case that the amount of Rs.22430 was paid in excess due to wrong fixation of pay scale of the applicant and after receiving the same, difference amount was recovered from the applicant. Having said so, nowhere it is

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stated that they have passed the recovery order for re-fixation of pay of the applicant with prior notice given to the applicant but in accordance with Rule, the same is done and therefore, sought for dismissal of the O.A.

4. We have heard learned counsel for the parties and perused the pleadings.

5. Having regard to the statements and the facts on record, it is clear that the recovery proceedings and re-fixation of pay of the applicant is concerned, which has changed the nature of applicant's pay scale, was done by the respondents, without any prior notice to the applicant, as the same has resulted in civil consequence of the applicant's depriving his pay scale. In absence of any notice to the applicant, the action taken by the respondents against the applicant is not sustainable in law and as such, the impugned order dated 25.4.01 passed by the respondents has to be set aside as the recovery made by the respondent is not in accordance with law.

6. Accordingly, the O.A. is allowed and impugned order dated 25.4.01 is quashed. Respondents are directed to pass an appropriate order in accordance with law, by giving an opportunity to the applicant, within a period of three months from the date of receipt of a copy of the order. However, it is made clear that any recovery made from the applicant is concerned is not based on the part and the conduct of the applicant/²involvement, in that event appropriate order for refund of the amount recovered be passed.

No costs.


Member-A


Member-J

Manish/-