

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 10th DAY OF MARCH 2011)

PRESENT:

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

ORIGINAL APPLICATION NO. 773 OF 2004
ALONGWITH

ORIGINAL APPLICATION NO. 403 OF 2006

(U/s, 19 Administrative Tribunal Act.1985)

1. Malaria Research Centre Employees Welfare Association, Regd. No. S-29900, Head Office 2, Nanak Enclave, Radio Colony, Delhi-110009, through Shri Satish Chandra Shukla, its Executive Member.
2. Dr. B. Shahi, aged about 51 years, son of (Late) Dr. U.S. Shahi, working as Officer Incharge, Malaria Research Centre, community Health Centre, Field Station Shankargarh, Allahabad.
3. S.C. Shukla, aged about 41 years, son of Shri H.C. Shukla working at Malaria Research Centre, Community Health Centre, Field Station Shankargarh, Allahabad.

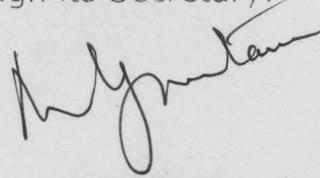
.....Applicants in O.A No. 773/04

By Advocate: Shri Ashok Mehta
Shri S.K. Om

VERSUS

1. Union of India, through Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
2. Director, National Institute of Malaria Research, 22, Sham Nath Marg, New Delhi-110054.
3. Director General, Indian Council of Medical Research, V. Ramalinga Swami Bhawan, Ansari Nagar, New Delhi.
4. National Institute of Malaria Research through its Director 22, Sham Nath Marg, New Delhi 110054.
5. Secretary, Ministry of Finance, Department of Expenditure, South Block, New Delhi.
6. Ministry of Finance (Dept. Of Expenditure) through Finance Secretary, Govt. of India, North Block, New Delhi.
7. Ministry of Science and Technology Technology Bhawan, New Mehrauli Rd, N. Delhi through its Secretary.
8. Ministry of Health and Family Welfare, Nirman Bhawan, through its Secretary.

.....Respondents



By Advocates: Shri A. Vaish
Shri M.B. Singh

ORIGINAL APPLICATION NO. 403 OF 2006

1. Ramesh Kumar Bhatia, S/o Shri Tulsidas Bhatia, aged about 39 years, Insect Collector.
2. Sudhir Kumar Sen, S/o Shri R.C. Sen, aged about 40 years, Insect Collector.
3. Mohan Singh Patel, S/o Shri Gopal Singh Patel, aged about 42 years, Insect Collector.
4. Dayanand Vishwakarma, S/o Shri J.P. Vishwakarma, aged about 40 years, Lower Division Clerk.
5. Dr. Sunil Kumar Chand, S/o Bhupati Chand, aged about 45 years, Research Scientist.
6. Shri Ajay Saxena, S/o Shri R.N. Saxena, aged about 43 years, Assistant Research Scientist.
7. Shri Arvind Jaiswal, S/o Dr. H.K. Jaiswal, aged about 43 years, Assistant Research Scientist.
8. Santosh Kumar Gautam, S/o Ram Dayal Gautam, aged about 41 years, Driver.
9. Sone Singh Thakur, S/o Shri K.S. Thakur, aged about 42 years, Driver.
10. Suresh Kumar Dubey, S/o Shri Uma Prasad Dubey, aged about 40 years, Driver.
11. Tara Chand Rai, S/o Shri K.L. Rai, aged about 42 years, Field Lab Assistant.
12. Jagdish Prasad Koshta, S/o Khannulal Koshta, Aged about 41 years, Field Lab Assistant.
13. Prem Lal Dahiya, S/o Narayan Prasad Dahiya, aged about 41 years, Field Lab Assistant.
14. Tulsidas Kanojia, S/o Badlu Prasad Kanojia, S/o Badlu Prasad Kanojia, aged about 42 years, Field Lab Assistant.

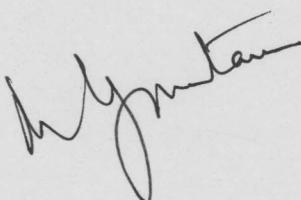
By Advocate: Shri S. Ganguly
Shri M. Sharma

VERSUS

1. Union of India, through the Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
2. Ministry of Finance Department Of Expenditure New Delhi, through its Secretary.
3. Indian Council for Medical Research, Ansari Nagar, P.O. Box No.4491, New Delhi, through its Director General.
4. Director, Malaria Research Centre, ICMR, 22, Sham Nath Marg, New Delhi.

.....Respondents

By Advocates: Shri A.P Khare
Shri Ashish Shrotri



ORDER

We have heard Shri Ashok Mehta, Advocate and Shri S.K. Om, learned counsel for the applicant and Shri M.B. Singh, learned counsel for the respondents.

2. This O.A. has been filed by the applicant against the order withdrawing the payment of 40% fitment benefit to the employees of National Institute of Malaria Research.

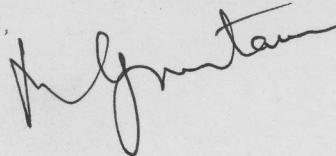
3. The case of the respondents is that fitment benefit was wrongly given to the applicants and, therefore, on realization of mistake, it has been withdrawing. Learned counsel for the respondents has placed reliance the decision of ***Hon'ble High Court of Orissa, Cuttack – Prasanna Kumar Behera and ors.***

Vs. Union of India decided on 07.4.2010.

4. Learned counsel for the applicant, on the other hand, states that in view of various Rulings of Apex Court and High Court, it is settled position in law that any excess payment made by the employee to the employer in which no fraud has been committed by the employee, no recovery is to be made therein. In this regard, the following decisions of the Apex Court are apt to be referred to arrive at the correct legal position:-

(a) ***Shyam Babu Verma v. Union of India, (1994) 2 SCC 521, at page 525:***

11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall



only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.

(b) *Sahib Ram v. State of Haryana*, 1995 Supp (1) SCC 18, at page 19:

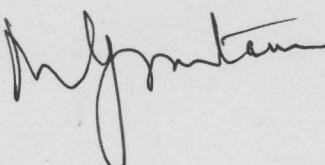
It is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant.

(c) *Bihar SEB v. Bijay Bhadur*, (2000) 10 SCC 99, at page 103

We do record our concurrence with the observations of this Court in *Sahib Ram* case and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances.

(d) *Kerala SRTC v. K.O. Varghese*, (2003) 12 SCC 293, at page 305 :

36. In addition to the general questions raised in other appeals, one other aspect which needs to be noted is that some amount was sought to be recovered from the respondents on the ground that they were paid amounts in excess of their legal entitlements. The attempt to recover the amount was resisted by the respondent employees who filed writ petitions before the High Court which at the first instance directed disposal of the representations filed by them. On fresh consideration, orders were passed for recovery. The ground taken for directing recovery was that there was wrong fixation of pay. That was again challenged before the High Court. Taking note of the fact that pay was fixed in 1974 and the writ petitioners were not responsible for any wrong fixation of pay, the recovery of the amount was held to be inequitable by the learned Single Judge of the High Court. The writ appeal was also dismissed. In addition to the questions raised in other appeals, the Corporation has assailed the directions of the High Court not to recover. On hearing learned counsel for the parties and taking note of the peculiar circumstances noticed by the High Court, we do not find any scope for interference with that part of the High Court's directions which related to recovery of the amounts allegedly paid extra to the employees. So far as other issues are concerned, this shall be examined by the High Court afresh as directed.



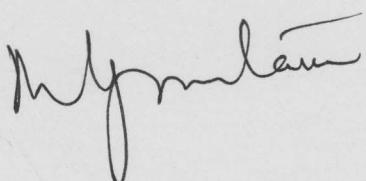
(e) *Union of India v. Indian Rly. SAS Staff Assn., 1995 Supp (3) SCC 600, at page 601 :*

8. The result, therefore, is that the respondent-employees in the present proceedings would be entitled to the revised pay scales only with effect from 1-4-1987 since the revised pay scales will be fixed for the first time with effect from that date. They are not entitled to any difference on the basis of the notional fixation of pay w.e.f. 1-1-1986. The arrears, if any, paid to the respondent-employees on account of the notional fixation of their pay w.e.f. 1-1-1986 may be recovered from their future salaries. It is, however, made clear that the said arrears shall not be recovered from those of the employees who have already retired from service.

(f) *Ram Dayal Rai v. Jharkhand SEB, (2005) 3 SCC 501, at page 506 :*

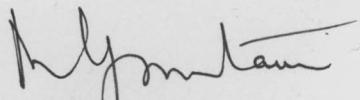
If the pensioner's benefit is cut at 5% out of the total amount of pension payable to the appellant, the appellant will suffer an irreparable loss and injury since, after retirement, the pensionary benefit is the only amount available to eke out a livelihood for the retired employees of the Government. (emphasis supplied)

5. Learned counsel for the applicant drew my attention to the letter dated 1/7/2010 written by I.C.M.R to the Director In Charge, National Institute of Malaria Research, New Delhi. It very clearly says that request has been made by the Council to the Ministry of Health and Family Welfare regarding review of policy decision on the matter of granting 40% fitment benefit to IDVC project staff and the decision/approval from Ministry of Health and Family Welfare is still awaited. The same will be intimated to you. It is clear from the above letter that matter is under consideration of Ministry of Health and Family Welfare and it is not in the knowledge of either council that matter is finally decided by the Ministry.



6. In view of all circumstances narrated by both the sides, it is very clear that it is the Ministry of Health and Family Welfare has to take a policy decision regarding payment of fitment benefit to the ICMR staff or otherwise it would be appropriate to dispose of the O.A. with the direction to the respondent NO.1 to decide the above mentioned policy matter within a period of three months from the date of receipt of a certified copy of the order. So far as the over payment of the applicants are concerned, I am of the considered view that the same will not be recovered as it is very clear that any payment made, due to no fraud committed by the applicants.

7. With the above directions, O.A. is accordingly disposed of. No costs.


Member (A)

Manish/-