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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH ALLAHABAD.

Original Application No. 83 OF 2005.

ALLAHABAD THIS THE 16TH DAY OF SEPTEMBER, 2005

Hon'ble Mr.K. B.S. Rajan, Member-J.

P.N. Tiwari, S/o late Sri B.D. Tiwari, aged about 60 years, R/o C-17, Dhoomanganj, Allahabad. ....Applicant.

(By Advocate : Sri Pankaj Srivastava)

Versus.

1. Union of India through Secretary, Ministry of Finance, New Delhi.
2. The Chief Commissioner of Income Tax, Allahabad.
3. Chief Commissioner of Income Tax, Lucknow.
4. Zonal Accounts Officer, Central Board of Direct Taxes, Allahabad.
5. Income Tax Officer, Pratapgarh.

....Respondents.

(By Advocate : Mrs. Saumitra Singh)

ORDER

The applicant in this O.A. joined the services of the respondents in the year 1964 and superannuated on 30.11.2004. At the time when he was waiting eagerly his terminal benefits for his re-settlement, he has been slapped with an order of recovery of Rs. 1,15,293/- on account of certain alleged over payment since the year 1983, this



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recovery, without notice, is challenged in this case.

2. The impugned order dated 18.11.2004 reads as under :-

"1. Two advance increment granted to Sh. Paras Nath Tiwari on passing of Inspector Exam from Stenographer (SG) is not admissible vide CBDT order no. F. No. 29017/50/84-Ad-IX dated 19.3.84. As such you are required to regulate his pay from 1.12.1982 onwards keeping in view the existing orders and recommendation of the IV and V CPC, record the same in the service book amend the calculation sheets accordingly and re-submit the case along with due-drawn statements for the period from 1.12.1982 onwards showing the amount of excess pay and allowances paid to him for the above period to be recovered from gratuity.

2. Vigilance clearance certificate issued by the competent authority is required to be submitted for authorization of PPO."

3. The applicant fairly states that in this O.A. he has no claim relating to proposed action in regard to finalization/revision of the pensionary benefits as contained in the impugned order, whereas what he agitates is to the proposed recovery as mentioned above.

4. The respondents have contested this O.A. They have stated that if for any reason, some erroneous payments have been made to the applicant, the respondents are well within their right to recover



the same and in this regard they have relied upon the judgment of this Tribunal dated 5.8.2005 passed in O.A. no. 71 of 2005 wherein liberty was given to the respondents to pass appropriate orders after notice to the applicant so that the applicant's pensionary benefits may be released at the earliest. In the said judgment, however, the recovery order has been quashed and set-aside. Counsel for the applicant takes advantage of the said very judgment contending that according to the said judgment, quashing of recovery order having been passed a like order may be passed in this case as well. Counsel for the respondents, on the other hand, submits that vital difference lies in the deduction of the excess payment which in the case of the applicant has taken place during his service period prior to 30.11.2004.

5. Arguments have been heard and documents perused.

6. It is now well settled that any excess payment made not on account of or on the basis of any mis-statement on the part of the individual cannot be recovered especially after the retirement of the individual. The following decisions of the Apex Court are relevant to be cited.

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

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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.

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(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

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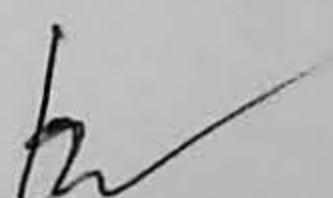
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not be recovered from those of the employees who have already retired from service.

(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)*

7. The recovery is on account of erroneous fixation of pay on his promotion. The applicant is stated to have been paid two advance increments. Be that as it may, there is no scope of recovery of the amount already made to the applicant right from the year 1983. All that is permissible is that respondents may be at liberty to prevent any further excess payment that could be made, by way of rescheduling the pension on the basis of the exact pay at the rate the applicant would be entitled on the date of his retirement. This of-course requires due notice to the applicant, whereafter only fixation of pension can be re-calculated. Till then the applicant is entitled the pension as per his last pay drawn, though it may be made provisionally.

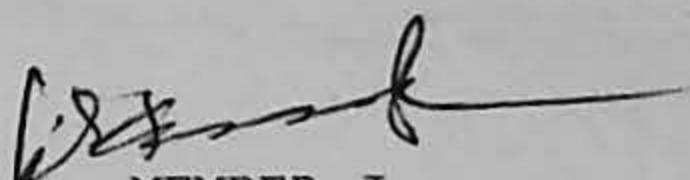


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8. In view of the above, the O.A. succeeds with the following directions:

- (a) Order directing recovery of the amount of Rs 1,15,293 is hereby quashed. Respondents shall not recover any amount from the DCRG in pursuance of the order dated 18.11.2004 (impugned). Any amount withheld out of the terminal benefits shall be paid forthwith.
- (b) The applicant shall be paid provisional pension on the basis of the last pay actually drawn.
- (C) It is open to the respondents to take action under the due process of law for rectification of their error in fixation of pay of the applicant and for re-fixation of pay and allowances of the applicant and re-schedule the pension that the applicant is entitled to.
- (d) Needless to mention that before processing the case for re-fixation of pay, the applicant shall be put to due notice.

9. With the above directions, the O.A. stands disposed of with no order as to costs.

  
MEMBER-J

GIRISH/-