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O.A.NO.1292 OF 2004

ORDER DATED 04.12.07

CORAM: DR.D.K.SAHU, MEMBER(JUDL.)

AND

SHRI C.R.MOHAPATRA, MEMBER(ADMN.)

Heard the Ld.Counsel for both the parties.

2. The application is for quashing Annexure-A/5 dated 09.11.04 wherein an order has been passed for recovery of the alleged excess payment made in fixation of pay and to refund the sum of Rs.2,876/- which have already been recovered from the applicant. The application, the reply and also the submission of the facts reveal that there was an erroneous fixation of pay, accordingly, it has been corrected. So the excess payment made is ordered to be recovered under the impugned order at Annexure-A/5.

3. The submission, counter submission and also the pleadings reveal that there was no misrepresentation or lapses on the part of the applicant in such fixation of pay. It is manifested ^{from} in the judgement of Sahib Ram Vrs. State of Haryana & Ors(1994(5)SLR753(SC)) that when there was no misrepresentation or lapses on the part of the employee in fixation of pay, the authority cannot recover the excess payment made to him. Likewise the Apex Court in the case of P.H.Reddy Vrs. NTRD & Ors(2002 (2) SLR 694) held that the employees who had been in receipt of an higher amount on account of erroneous fixation, could not be

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required to reimburse the excess payment paid to them although the authority was well within its rights to correct the error committed by it and to fix the pay of the employee in terms of the entitlement. In the case of N.D.P.Namboodripad Vrs. Union of India (2007(12)4 SCC 502), the Apex Court observes that the excess amount paid while calculating the pension cannot be recovered.

4. At the stake of representation, in the instant case, the payment has been made to the applicant by the respondent authorities for which there was no misrepresentation or lapses on the part of the applicant. In the circumstances, the Res.No.2 is well within its power to correct the error committed by him and fix the pay of the applicant. The amount said to be excess ^{can} ~~may~~ not be recovered from the applicant.

5. Accordingly, the O.A. is allowed. The impugned order of Res.No.2(Annexure-A/5) is ^{partly} ~~quashed~~ _{is}. The respondents are directed not to recover any amount under the said order and to refund an amount of Rs.2,876/- that has already been recovered from the applicant, within two months from the date of communication of this order. No order as to costs.


(C.R. MOHAPATRA)
MEMBER(ADMN.)


(D.K. SAHU)
MEMBER(JUDL.)