

Order dated 17th November, 2006.

Heard Mr. G.K. Mishra, Learned Counsel for the Applicant and Mr. R. N. Mishra, Learned Additional Standing Counsel for the Respondents and perused the materials placed on record.

Needless to go deep into the matter in view of the admitted fact that the pay of the Applicant along with others having been reduced, it was directed to recover the excess payment made to them due to wrong/erroneous fixation of their pay vide order dated 18.10.1996. The said order was challenged by the Applicant along with others in OA No. 844/1996. The said matter was heard and disposed of on 4th January, 1999. Relevant portion of the order is quoted herein below:

“10. In view of the above, while upholding the order dated 18.10.1996 holding that stepping up of pay in the case of the applicants was wrongly done, we direct that the respondents should not recover the amounts received by the applicants by way of arrear financial benefits for the reasons stated above. We, however, make it clear that in case any amount has already been recovered from these applicants then the same need not be refunded to the applicants.” *Q*

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Thereafter, being aggrieved by the re-fixation of pay of applicant retrospectively, he along with others again approached this Tribunal in OA No. 291 of 1999 which was disposed of on 12th July, 2000 maintaining the earlier decision taken by this Tribunal. However, the Applicant along with others challenged the later order of this Tribunal before the Hon'ble High Court of Orissa in WPC No.9895/2000. The aforesaid Writ Petition was dismissed by the Hon'ble High Court of Orissa on 17.11.2000 relevant portion of the orders are quoted herein below:

“6. Law is well settled in this regard. The apex Court considering a similar point in the decision reported in JT 2002 (2) SC 483 (P.H.Reddy and others v. N.T.R.D. and others) held that pay if re-fixed erroneously could be correctly re-fixed.

7. In this view of the matter, we do not find any infirmity in the order of the Tribunal to interfere with in this proceeding.

The writ application is accordingly dismissed.”

Relevant portion of the decisions of the Hon'ble Supreme Court made in the case of P.H.Reddy and others (supra) is quoted herein below:

“ 2. We have ourselves examined the two office memorandum, one of dated 25.11.58 and the other is of 8.2.1983, and we do not see any *P*

infirmitiy or inconsistency with those circulars relevant in the matter of fixation of pay of an employee, who on retirement from the defence service have been re-employed in a civil post. In our view, therefore, the judgment of this Court in the Director General, ESI, represents the correct view and consequently, the order of re-fixation done by the appropriate authority in the case in hand, does not require any interference, but the employees-appellants, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn, and therefore, that part of the order of the authority is set aside. The direction of the appropriate authority requiring reimbursement of the excess amount drawn is annulled."

This view has again been reiterated by the Hon'ble Apex Court in the case of **Purshottam Lal Das and Others v. The State of Bihar & Others**, JT 2006 (12) SC 581.

The Respondents were not at all correct in their interpretation of the decisions made by this Tribunal and confirmed by the Hon'ble High Court of Orissa. As per the aforesaid orders, the amount is not due for recovery. However, if at all it has been recovered, the same should be refunded to the Applicant, within a period of thirty days from the date of receipt of a copy of this order; failing which the Applicant shall be entitled interest @ 10% per annum on the amount. Accordingly, the impugned order under Annexure-2 dated 21.02.2005 is hereby quashed. ✓

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With the observations and directions made above, this

OA stands allowed. No costs.

^{BBM}
(B.B.MISHRA)
MEMBER(A)

N.D.Raghavan
(N.D.RAGHAVAN)
VICE-CHAIRMAN

