

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.252 & 261 of 2012

Cuttack this the 9th day of September, 2014

IN O.A.NO.252/2012

Dr.R.C.Srivastava...Applicant

-VERSUS-

Indian Council of Agricultural Research & Ors....Respondents

IN O.A.No.261/2012

Dr.R.Raja...Applicant

-VERSUS-

Indian Council of Agricultural Research & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to CAT,PB, New Delhi for being circulated to various Benches of the Tribunal or not ?


(R.C.MISRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.Nos.252 & 261 of 2012

Cuttack this the 9th day of September, 2014

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HON'BLE SHRI R.C.MISRA, MEMBER(A)

IN O.A.NO.252/2012

Dr.R.C.Srivastava
Aged about 55 years
At present Principal Scientist
Directorate of Water Management
At-Chandrasekharpur
PO-Rail vihar
Bhubaneswar-23
Dist-Khurda

...Applicant

By the Advocate(s)-M/s.A.Mishra
S.Das

-VERSUS-

1. Indian Council of Agricultural Research
Represented by its Secretary
KrishiBhawan
New Delhi-110 001
2. Director
Central Agricultural Research Institute
Port Blair
At/PO-Port Blair
Andaman & Nicobar Islands
PIN-744 101
3. Director
Directorate of Water Management
At-Chandrasekharpur
PO-Rail Vihar
Bhubaneswar-23
Dist-Khurda

...Respondents



By the Advocate(s)-Mr.S.B.Jena

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IN O.A.No.261/2012

Dr.R.Raja

Aged about 38 years

S/o. Sh.R.Rajagounder

At present Senior Scientist

C.R.R.I.,

At/PO-Bidyadharpur

Town/Dist-Cuttack

...Applicant

By the Advocate(s)-M/s.A.Mishra
S.Das

-VERSUS-

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Cuttack
At/PO-Bidyadharpur
PO-Rail Vihar
Town/Dist-Cuttack

...Respondents

By the Advocate(s)-Mr.S.B.Jena

ORDER

R.C.MISRA, MEMBER(A):

The point to be decided in both the above mentioned Original Applications being the same and similar, this common order is being



passed. However, for the sake of reference, facts of O.A.No.261 of 2012 are being referred to.

2. Applicant in O.A.No.261 of 2012 is a Senior Scientist in the Central Rice Research Institute (CRRI), Cuttack. He has approached this Tribunal seeking the following relief.

“...to quash the letter dated 16.9.2011 under Annexure-A/7;

...to observe that by disbursing the ISDA to the applicant no illegalities have been committed; or

...to pass such other order(s)/direction(s) as deemed fit and proper in the interest of justice”.

3. Facts of the case in brief are that the applicant had earlier been posted as a Scientist of the Central Agricultural Research Institute at Port Blair in Andaman for a period of five years. The order of appointment was issued on the recommendations of the Agricultural Scientist Recruitment Board vide Memorandum dated 14.2.2003 (Annexure-A/1). As per Appendix-9 of the FRSR sub-clause(3), Central Government Civilian Employees who have all India transfer liability will be granted special (Duty Allowance) amounting to 20% of basic pay on posting to Andaman, Nicobar and Lakshdweep Islands and this Special Duty Allowance will be known as Island Special Duty Allowance(in short ISDA). In pursuance of this provision, applicant was granted the ISDA @ 20% of his basic pay for the period from 6.3.2003 to 20.8.2008, during which he was serving at Port Blair. However, the Ministry of Finance, Department of Expenditure issued an **OM dated 29.5.2002** regarding the eligibility for receiving ISDA based upon the judgment of the Hon'ble



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Supreme Court. The background on which the above OM could be issued is that some employees working in the North Eastern Region who were not eligible for grant of Special Duty Allowance agitated this issue before the Central Administrative Tribunal, Guwahati Bench and in some cases, the Tribunal granted the prayer of the applicants. The Central Government challenged the orders of the Tribunal before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide judgment dated ^{5.10.2001} ~~20.9.1994~~, upheld the case of the Government of India that the *Central Civilian Employees who have all India transfer liability are entitled to the grant of Special Duty Allowance on being posted to any station in the North East Region from outside the region and Special Duty Allowance would not be payable merely because of a clause in the appointment order relating to all India transfer liability.* In pursuance of this judgment of the Hon'ble Supreme Court, the Ministry of Finance directed all the Ministries of the Department of Government of India that the amount already paid on account of Special Duty Allowance to the ineligible persons before **5.10.2001** will be waived. However, if there are any recoveries which have been made already, they shall not be refunded. The amount paid on account of this action to ineligible persons **after the date 5.10.2001 will be recovered.** This order was made applicable mutatis mutandis with regard to the claims of the Island Special Duty Allowance also. Thereafter, the Indian Council of Agricultural Research on the basis of the orders of the Ministry of Finance communicated the necessary



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instructions to the Director, Central Agricultural Research Institute, Port Blair by letter dated 10.02.2006. In this regard it is important to mention that in the appointment letter issued to the applicant dated 14.2.2003, it was informed that the applicant would not be permitted to seek transfer out of the Andaman Nicobar Island until and unless he has completed a minimum period of five years of service in the initial place of posting. It is further important to note that this appointment was made on the basis of the results of a Special Recruitment Drive Examination for the North Eastern Region & Andaman Nicobar Island. Therefore, the instructions of the Respondents were that the applicant being not subjected to all India Transfer liability shall not be eligible for receiving the ISDA. There was a subsequent developments^R in this matter after the recommendations of the 6th CPC were accepted by the Government of India. The Ministry of Finance issued **OM dated 29.8.2008, in which it was mentioned at Para-3 that the Island (Special) Duty Allowance shall be admissible to the Central Government Civilian Employees including All India Service Officers on their transfer (including on initial appointment) to any place of Andaman & Nicobar and Lakshdweep group of Islands irrespective of whether the transfer is from outside or from within the Islands without insisting on an All India Transfer Liabilities.** However, in the meantime, audit had objected^{to} disbursement of ISDA in favour of the Scientists who were continuing at Port Blair for the period from **5.10.2001 to 29.8.2008** the date on which the liberalization of the

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provision was made by the Ministry of Finance. The direction given in the letter dated 29.5.2002 by the Ministry of Finance for recovery of the allowance which has been paid to ineligible persons after 5.10.2001 still continued to be valid and therefore, the audit recommended for recovery of this payment. Thereafter, the Central Agricultural Research Institute at Port Blair wrote to the Director, Finance of the Indian Council Agricultural Research vide letter dated 19.8.2009 mentioning that if recovery is ordered, there will be hundreds of OAs and WPs filed in various Tribunals/Courts, which will involve huge expenditure towards legal fees and would be a heavy burden on the funds of the Institute. It was also mentioned that the ISDA has not been paid to the Scientists based on any misinterpretation ^{or} of fraud committed by them and therefore, no recovery can be ordered from the concerned beneficiaries. The Institute therefore, requested the ICAR for an amicable solution in the matter. It appears from the letter dated 3.8.2011 at Annexure-A/6 issued by the ICAR to the Director of the Institute at Port Blair that this matter was discussed in the 3rd meeting of the Standing Audit Committee of the Council held on 2.8.2011 under the Chairmanship of Secretary, DARE and DG, ICAR. As per the decision taken in the matter, the Director of the Institute at Port Blair was asked to immediately issue order of recovery of overpayment of ISDA in respect of all the officers whether they are serving in CARI, Port Blair or other Institutes or have retired in the meantime, and also to ensure that speedy recovery is effected. After this decision was communicated,



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the Director of the Institute at Port Blair wrote to the Director, Central Rice Research Institute at Cuttack vide letter dated 16.9.2011 that the irregular payment made to the applicant in this case may be recovered from the salary in installments and the details of required recovery were also enclosed to this letter. It may be noted that the applicant in the meantime had been transferred and was serving as Scientist in CRRI, Cuttack. This letter dated 16.9.2011 at Annexure-A/7 is the subject matter of challenge by the applicant in the present O.A.

4. Respondents have filed a detailed counter reply in which they have corroborated ^lthe most of the facts stated by the applicant in his O.A. and therefore, I do not intend to dwell in detail ^{in d}all those facts again. However, Respondents have opposed the claim of waiver of recovery of the amount paid towards ISDA to the applicant on the ground that between the period 5.10.2001 and 31.8.2008, applicant was ineligible for receiving ISDA. The Respondents took up the matter again with the Ministry of Finance requesting to agree with the proposal of waiver of recovery. But the Ministry of Finance reiterated their earlier position and insisted upon the recovery of the payment of ISDA for the relevant period. It is also the stand taken by the Respondents that the Indian Council of Agricultural Research is an autonomous body fully funded by the Government of India. The ICAR follow the Fundamental Rules and Supplementary Rules of the Government of India mutatis mutandis. They are also bound by the instructions issued by the Ministry of Finance in this regard. The payment made to the applicant on account of



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ISDA is clearly in contravention of Government of India, Ministry of Finance OM dated 29.05.2002. Further, the case of the Respondents is that the OM dated 29.5.2002 was issued by the Ministry of Finance on the basis of the judgment of the Hon'ble Supreme Court in Civil Appeal No.3251 of 1993 in the case of UOI & Ors. vs. S.S.Vijaya Kumar and Ors. decided on 20.9.1994, in which the Hon'ble Apex Court had upheld the submission of the Government of India. However, after the recommendation of the 6th CPC was accepted by the Central Government, the Ministry of Finance issued OM dated 29.8.2008 liberalizing the conditions of eligibility for receiving ISDA. The eligibility being no longer dependent upon all India Transfer Liability, initial appointment to any place in Andaman & Nicobar Island etc. ~~and thus~~ the employees became eligible for payment of ISDA. But this order was made effective prospectively only from **01.09.2008**. The cases which were ineligible during the period between 6.10.2001 and 31.8.2008 could not therefore, derive any relief from the latest instructions of the Ministry of Finance. The authorities of the ICAR, however, took further steps with the Ministry of Finance by pleading waiver of recovery of overpayment in respect of the ineligible cases between **6.10.2001 and 31.8.2008**. But the Ministry of Finance reiterated its earlier decision, leaving no other option for the ICAR than to initiate the process of recovery of overpayment. Therefore, this process of recovery is wholly justified and also is in compliance of the judgment of the Hon'ble Apex Court as communicated in the OM dated 29.5.2002. With regard to the



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question of recovery of excess payment, the Respondents have cited the decision of the Hon'ble Apex Court in ***Civil Appeal No.5899 of 2010 (arising out of Special Leave Petition (C) No.30858/2011) and I.A.Nos. 2 and 3 decided on 17.08.2012 (Chandi Prasad Unyual & Ors.) vs. State of Uttrakhand & Ors.***), in which the Hon'ble Apex Court has held as under:

"Any payment paid/received without authority of law can always be recovered barring few exceptions of extreme hardship, but not as a matter of right. In such situation law implies an obligation on the payee to repay the money; otherwise it would amount to unjust enrichment".

5. By citing the above decision, Respondents have submitted that in the present case, ISDA amount paid to the applicant being contrary to Rules is recoverable.

6. I have heard in ~~at~~ ^{separately} considerable length the submissions made by the learned counsel for both the sides and perused the records.

7. Learned counsel for the applicant in the written note of submission that has been filed after the hearing was concluded, has attracted the notice of the Tribunal to the effect that similar matters were before the Hon'ble High Court of Calcutta ~~in its Circuit Bench at Port Blair~~ ^{in their Circuit Bench at Port Blair} vide W.P. (C) No.1352/11. After hearing the case, the Hon'ble High Court vide their order dated 28.2.2012, quashed the order of recovery and directed the Respondents that if the recovery has already been done, the same shall be refunded back to the applicants. Based upon the above orders, the Hon'ble High Court has also disposed of a batch of matters vide order dated 7.3.2012. The learned counsel for the

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applicant has also enclosed copy of this order of the Hon'ble High Court of Calcutta along with his written note of submission.

8. On a perusal of the judgment of the Hon'ble High Court of Calcutta, I find that the Hon'ble High Court has cited the decision of the Hon'ble Apex Court in Syed Abdul Qadir & Ors. vs. State of Bihar & Ors. [2009 ²(3) SCC 475]. Paragraphs 57, 58 & 59, which are relevant for the purpose are quoted hereunder.

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equality, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. **But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess See. Sahid Ram v. State of Harayana, ShyamBabuVermav.Union of India, Union of India vs.M.Bhaskar, V.Gangaram v. Director, Col. Bj.Akkara (Retd.) v.Government of India, Purshottamlal Das v. State of bihar, Punjab National Bank v. Manjeet Singh and Bihar SEB vs. BijayaBahadur.**



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59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the appellant teachers submitted that **majority of the beneficiaries have either retired or are on the verge of it.** Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made"

9. The Hon'ble High Court after considering the facts and circumstances of the case and the law laid down by the Hon'ble Apex Court, allowed the Writ Petition and prohibited the Respondents from making any recovery from the writ petitioners and further directed in the event if any amount has already been recovered, the same shall be



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refunded to the petitioner within three months. The Hon'ble High Court in the Circuit Bench at Port Blair, after hearing a batch of Writ Petitions in similar matters passed an order on March, 7, 2012 agreeing with the earlier judgment in W.P. 1352/11 and allowed the WPs.

10. Learned counsel for the applicant in his written note of submission has submitted that the present case before the Tribunal is similarly circumstanced and therefore, the Tribunal may allow the case of the applicants based upon the judgment rendered by the Hon'ble High Court of Calcutta.

11. In this matter there are two issues to be decided.

The first issue is whether the amount paid to the applicant on account of ISDA is a legitimate claim or not.

12. As has been already mentioned in detail, the admitted position is that the applicant was ineligible to receive this amount as per the direction of the Ministry of Finance dated ^{29.5.02}20.9.2002, which was issued on the basis of the judgment of the Hon'ble Apex Court. Therefore, this issue is answered in the negative and the payment made to the applicant cannot be held as a legitimately due to him.

13. ***The 2nd issue for the decision is whether this amount is recoverable from the applicant.***

14. As has been brought to my notice by the learned counsel for the applicant, the Hon'ble High Court of Calcutta in the WP as cited above, has decided that the amount is not recoverable in view of the facts and circumstances of the case and also the law laid down by the Hon'ble



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Apex Court. It is not known whether the said decision of the Hon'ble High Court has been challenged in the Hon'ble Supreme Court by the Respondent-authorities therein and if so, the outcome thereof. Be that as it may, the Hon'ble High Court of Calcutta has passed the judgment based upon the law laid down by the Hon'ble Supreme Court in Syed Abdul Qadir (supra). However, the learned counsel for the ^{respondent} ~~applicant~~ has brought to the notice of the Tribunal the latest judgment of the Hon'ble Supreme Court in similar matter in the case Chandi Prasad Uniyal (Annexure-R/3). In this matter it is to be noted that the orders of the Hon'ble High Court of Calcutta are dated **28.02.2012 and 7.3.2012** whereas the judgment of the Hon'ble Apex Court in Chandi Prasad (supra) is subsequent thereto. ^{d.e 17.8.2012} The Hon'ble Supreme Court in the said case has also dealt with the judgment of the three Judge Bench in Syed Abdul Qadir case and has ***pointed out that in the Syed Qadir's case such a direction was issued keeping in view the peculiar facts and circumstances of that case that the beneficiaries had either retired or were on the verge of retirement so as to avoid any hardship to them.*** Observations of the Hon'ble Apex Court in Paragraphs-^{16 17} ~~14, 15~~ and ¹⁸ ~~16~~ read as under.

¹⁶ "16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situation. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by

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Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right. In such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J.Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.
16. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a ^{stipulation} situation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the Appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the Appellant's salary in twelve equal monthly installments starting from October, 2012. The appeal stands dismissed with no order as to costs. IA Nos. 2 and 3 are disposed of".

15. The latest judgment of the Hon'ble Apex Court is, therefore, very clear that whenever any amount is paid in excess, even due to a bona fide mistake, this amount is recoverable from the concerned employee. Since this is the tax payers' money any amount appropriated without any authority of law would amount to unjust enrichment.



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16. Last but not the least, two vital aspects which are more important need to be mentioned herein. Indisputably, the recovery of ISDA encompasses the period from 6.3.2003 to 20.8.2008 in so far as applicant in O.A.No.261/2012 is concerned. Prior to this period, the Ministry of Finance had already brought out OM dated 29.05.2002 putting a spanner on the grant of ISDA based upon the judgment of the Hon'ble Supreme Court, which unequivocally laid down that the amount already paid on account of Special Duty Allowance to the ineligible persons before **5.10.2001** will be waived and ^{amount} paid after **5.10.2001** is recoverable. Applicant, as it reveals from the record, joined as Senior Scientist in pursuance to OM dated 14.2.2003, which is much after the issuance of OM dated 29.5.2002 imposing restriction on ISDA. This by itself is self-evident that in spite of the awareness of OM dated 29.5.2002 imposing restriction on the payment of ISDA by the payer and the payee, ISDA was drawn and disbursed. Therefore, disbursement of ISDA to the applicant against the OM dated 29.5.2002 was very much within the knowledge of the applicant and the authorities drawing and disbursing ISDA. Over and above, no case of extreme hardship in case of recovery of overpaid amounts, appears to have been made out or substantiated in so far as applicants are concerned. Therefore, the inescapable conclusion that could only be drawn is that the ISDA paid to the applicants was without any authority and thus, the said payment was totally undue and inadmissible. These



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being the circumstances, the ratio of the decision of the Calcutta Bench (supra) as relied on by the applicants has scarcely any application to the facts of the present OAs.

17. In view of the discussions held above and having regard to the latest judgment of the Hon'ble Apex Court in Chandi Prasad(supra), I am of the view that the action of the Respondents in the matter of recovery is irrefutable and at the same time, order of recovery is justified. I also further hold and declare that OM dated 29.5.2002 in so far as applicants are concerned, spent its force only on 29.08.2008 when OM dated 29.08.2008 came to be issued by rationalizing the ISDA based on the recommendations of the 6th CPC. Therefore, the ISDA paid to the applicants illegally is liable to be recovered. In the circumstances, I am not inclined to interfere with the orders of recovery which are impugned herein.

18. In the result, both the OAs being devoid of merit are dismissed. Parties to bear their own costs.


(R.C.MISRA)
MEMBER(A)

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