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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,  
J O D H P U R

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Date of order : 9.5.2000

O.A.NO.294/97

Amar Lal Bhati S/o Shri Lala Ram Bhati aged 49 years, Assistant Central Ground Water Board, Division XI Jodhpur.

.....Applicant.  
versus

1. Union of India through the Secretary to the Government, Ministry of Water Resources, New Delhi.  
2. Director Administration, Central Ground Water Board, Faridabad, Haryana.  
3. Executive Engineer, Central Ground Water Board, Division XI, Jodhpur.

.....Respondents

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Mr.Vijay Mehta, Counsel for the applicant.  
Mr.K.S.Nahar, Counsel for the respondents.

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CORAM :

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

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PER HON'BLE MR.JUSTICE B.S.RAIKOTE :

This Application has been filed challenging the proceedings (Annex. A/l) vide Office order No.933 of 1997 dated 26.8.97/by which his pay was reduced. The applicant's claim is that whatever pay scale has been given to him for the last 30 years, has been in accordance with the rules and there is no mistake in fixing the pay and pay scale of the applicant from time to time, therefore, the impugned proceedings is liable to be set aside. He further states that the applicant may be continued in the pay and pay scale he has been drawing all along.

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2. By filing the counter, the respondents have denied the case of the applicant. They have stated that in the year 1983 when the applicant was promoted as UDC he had wrongly exercised his option under FR 22(a) (i) at the lower stage and applicant has been given Special Pay of Rs.30/- in addition to the pay scale, only on the ground that he was handling cash but his service book did not contain this entry. Therefore, the fixation of pay as Rs.330+8 in 1983 was wrong and consequently, . . . further equated on the basis of the Fourth Pay Commission, would be incorrect. Hence, by the impugned proceedings, the authorities have rightly directed to make recovery by refixing the pay of the applicant at lower rate.



3. The learned counsel for the applicant reiterated the allegations made in the application. He further stated that the impugned order has been issued without giving any show cause notice or opportunity of hearing and thus it is contrary to the principles of natural justice. On the other hand, the learned counsel for the respondents submitted that whatever recovery now sought to be made on the basis of Annex.A/1, is on the basis of audit objection raised in the year 1997, therefore, no notice was required to be issued to the applicant. He further submitted that whenever a wrong calculation and mistake is found, necessary recovery from the concerned employee can be made, therefore, no illegality has been committed. The impugned order, therefore, does not call for any interference by this Tribunal.

4. From the pleadings and also from the contentions raised by both the sides, we find that few facts are admitted. It is admitted that the applicant was drawing pay 330+8 from 7.6.83. This pay scale was fixed on the ground of his exercising certain option and on the basis of his handling the cash. The audit objection was to the effect that the applicant was handling the cash, has not been

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clearly noted in the service book of the applicant and the applicant could not have opted in the lower stage at the time of his promotion in terms of FR 22(a) (1) (i). But, in our opinion, it is too late in the day to consider what the applicant should have or should not opted 30 years back. Moreover, if the applicant was handling cash, he was entitled to special pay of Rs. 30/- along-with his pay scale, is not in dispute. But the audit objection is that, this aspect has not been noted in the service book, therefore, he was not entitled. The fact also remains that for all these 30 years, there were number of audits from time to time. In none of the audit report, this objection was raised at any point of time. It is not the case of the respondents that there was any mis-representation or fraud on the part of the applicant for claiming special allowance of Rs. 30/- in the year 1983. Notwithstanding the fact that service book entry does not mention whether the applicant was really handling the cash or not, He was paid Rs. 30/- per month as special allowance, shows that he was in fact handling the cash. The applicant has been allowed 30/- rupees in that year on that basis of refixation of his pay, is effected from time to time. If that is so, it is inequitable to hold after 30 years that, special allowance of Rs. 30/- given in the year 1983, was erroneous. As held by Hon'ble the Supreme Court in Shyam Babu Verma and Ors. V. U.O.I. & Ors., reported in (1994) 2 SCC 521, that if a higher scale was given without there being any mis-representation on the part of the employee, it would be unjust and improper to recover the alleged excess amount already paid to them. It is not the case of the respondents in the present case that applicant had, any time misrepresented for getting the special pay of Rs. 30/-. By following the judgment of Hon'ble Supreme Court and Hon'ble High Court of Rajasthan in an unreported judgment in D.B.C.Special Appeal (Writ) No.272/2000 decided on 7.4.2000, has held that such recovery would be illegal. The Hon'ble High Court has further pointed-out that if



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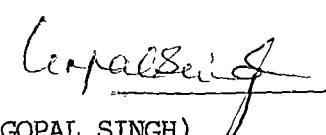
some of the officials have made certain wrong payments, they should be found responsible for the alleged wrong payment but not the bonafide employee, who has simply received the same on the basis that he was entitled to it according to rules. Even according to this judgment of Hon'ble Rajasthan High Court, it is clear that the alleged recovery would be illegal.

5. At any rate, on the basis of the admitted facts, it is clear that the applicant was not issued any show cause notice or an opportunity of hearing, before passing the impugned order. The impugned order would have civil consequences on the applicant. Therefore, the impugned action of the respondents is contrary to the principles of natural justice. We, thus, find that the impugned order is liable to be quashed on this ground also.

6. For the above reasons, the impugned order cannot be sustained and accordingly, we pass the order as under :-

The impugned order dated 26.8.97 (Annex.A/1) is hereby quashed. The respondents are further directed to continue the present stage of pay and pay scale of the applicant.

7. No orders as to cost.

  
(GOPAL SINGH)  
Adm.Member

  
(B.S.RAIKOTE)  
Vice Chairman