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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.

Date of Decision : 1.5.03

O.A. No.340/2001.

Hari Vallabh Sharma S/o Shri Banshi Lal, aged 57 years, APM Accounts, Head Post Office Chittorgarh, r/o Sector - 4, Gandhi Nagar, Chittorgarh.

...Applicant.

Versus

1. Union of India through the Secretary to Government Department of Communication (Post), Sanchar Bhawan, New Delhi.
2. Post Master Head Post Offices, Chittorgarh.
3. Senior Accounts Officer CIS, Office of Dy. Director of Accounts (Postal), Jaipur.

...Respondents.

Mr.Vijay Mehta counsel for the applicant.
Mr.Vijay Bishnoi for Mr.B.L.Bishnoi counsel
for Respondents.

CORAM

Hon'ble Mr.Justice G.L.Gupta, Vice-Chairman,
Hon'ble Mr.A.P.Nagrath, Member (A)

: O R D E R :

(Per Hon'ble Mr.Justice G.L.Gupta)

Applicant was Clerk in the year 1973. He was qualified to be posted as Accountant and therefore was given the charge of Accountant. He was being paid Special Pay in addition to his substantive pay in the pay scale of Rs. 110-240 (260-480) from 1.1.1976. On the implementation of the IIIrd Pay Commission from 1.1.1973, his pay was fixed keeping in view the Special Pay as per his option. However, a letter (Annexure A-3) came to be issued on 7.2.2001 i.e. 28 years after the fixation whereby a

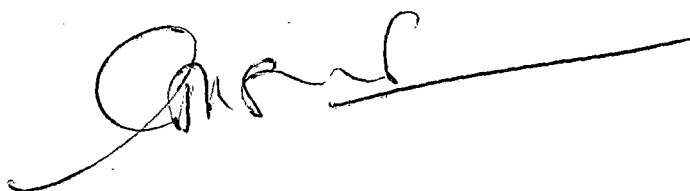


sum of Rs. 31,816/- was held to be recoverable from the applicant. When the applicant came to know about the letter (Annexure A-3) he made representation, but without any result.

2. The case for the applicant is that no recovery can be made on account of the alleged wrong fixation of pay done 28 years ago. It is prayed that the letter (Annexure A-1), whereby recovery has been ordered, should be quashed.

3. In the counter, the Respondents case is that there was error when the applicant's special pay was taken into consideration while fixing his pay on the substantive post of clerk. It is stated that the respondents have a right to correct the mistake and recover the amount.

4. We have heard learned counsel for the parties and perused the documents placed on record. During the course of argument learned counsel for the applicant was fair enough to say that there seemed a mistake when the applicant's pay was fixed at Rs.332/- instead of Rs.316/- with DNI 1.7.1976. His contention was that the alleged over-payment was not made to the applicant because of his mis-representation and therefore, recovery should not be made at such a late stage. He pointed out that the applicant is a low paid employee and if the amount is recovered from his salary it will hit his family. Relying on the cases of Sahib Ram Vs. The State of Haryana and Ors. [JT 1995 (1) S.C. 24], Shyam Babu Verma & Ors. Vs. Union of India & Ors. [(1994) 2 SCC 521] and Alam Ali Vs. State of Rajasthan and Ors. [D.B. Civil Special Appeal (Writ) No.272/2000] decided



by the Rajasthan High Court on 7.4.2000, he canvassed that the respondents be restrained from recovering the amount.

5. Learned counsel for the Respondents, on the other hand, contended that mistake has to be rectified and the applicant should not be allowed to retain the amount which he was not entitled to receive. He placed reliance on the case of O.K.Udayasankaran & Ors. Vs. Union of India & Ors. [JT 1996 (4) S.C. 420].

6. We have given the matter our thoughtful consideration. It is no more in dispute that there was mistake committed in the fixation of the pay of the applicant way back in the year 1975. It can be safely presumed that during the period from 1975 to 2001 various audit agencies must have audited the Accounts Department. It is rather surprising that the mistake could not be detected. Be that as it may, it has to be accepted that there was no fault on the part of the applicant when an error was committed in the fixation of his pay in 1975. The applicant had not made any mis-representation before the Respondents.

7. It is the consistent view of the Hon'ble Apex Court that where some amount was paid to an employee erroneously long back and without any fault on his part it is not just and proper to recover excess amount already paid to him.

7.1. In the case of Shyam Babu Verma & Ors. (supra) it was held that when the petitioners had received the higher pay scale due to no fault of theirs, it was not just and proper to recover the excess amount paid to them.



7.2. So also in the case of Sahib Ram (supra) the court restrained the recovery of the payment already made as it was not on account of mis-representation made by the applicant therein.

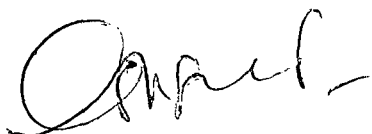
7.3. A Division Bench of the Rajasthan High Court also in the case of Alam Ali (supra) held that the Respondents were not justified in recovering the excess amount paid to the appellant therein.

7.4 Keeping in view the decisions referred to above, it has to be held that it is just and proper that the Respondents are restrained from recovering the amount under the letters at Annexure A-3 and A-1.

8. As to the case of O.K.Udayasankaran & Ors. (supra) relied on by the Respondents, it may be stated that in that case the Court has decided as to whether the petitioners were entitled to the fitment as per the negotiations which took place between the LIC and the employees. In that case their Lordship did not consider this matter as to whether the recovery should be made or not.

8.1. We have referred to the cases of the Apex Court as well as Rajasthan High Court wherein it has been held that recovery should not be made in the situation which exists in the instant case.

9. Consequently, the Respondents are restrained from making any recovery under the order/letter Annexure A-3 and Annexure A-1. It is however, made clear that the mistake can



be corrected prospectively w.e.f. the date of Annexure A-3 dt.
7.2.2001 was issued.

10. The O.A. stands decided accordingly. No order as to costs.


(A.P.NAGRATH)
MEMBER(A)


(G.L.GUPTA)
VICE-CHAIRMAN

B.

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8/5

Part II and III destroyed
in my presence on 28-7-2008
under the supervision of
section officer (I) as per
order dated 5/9/08
NCA
Section officer (Record)