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CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO: 57/2003

DATE OF ORDER: **05.12.2006**

Suresh Chandra Ajmera : Applicant (s)

Mr. Kamal Dave : Advocate for the Petitioner (s)

VERSUS

Union of India & Ors. : Respondent(s)

Mr. M. Godara, Advocate brief holder for
Mr. Vinit Mathur : Counsel for the Respondents.

CORAM:

**Hon'ble Mr. Kuldip Singh, Vice Chairman.
Hon'ble Mr. R.R. Bhandari, Administrative Member.**

1. Whether Reporters of local papers may be allowed to see the Judgement ? *No*

2. To be referred to the Reporter or not ? *Y*

3. Whether their Lordships wish to see the fair copy of the Judgement ? *Y*

4. Whether it needs to be circulated to other Benches of the Tribunal ? *Y*

R.R. Bhandari
(R.R. Bhandari)
Administrative Member

Kuldip Singh
(Kuldip Singh)
Vice Chairman

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 57/2003
Date of order: 05.12.2006

**HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN,
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER**

Suresh Chandra Ajmera S/o Shri Kaser Lal Ji, aged about 60 years, R/o 13-A, Umaid Bhawan Road, Near Circuit House, Official Post Rtd. Inspector, Income Tax Department, Jodhpur.

...Applicant.

Mr. Kamal Dave, counsel for the applicant.

VERSUS



1. Union of India through the Secretary, Government of India, Ministry of Finance, CBDT, 150, North Block, New Delhi.
2. Chief Commissioner of Income Tax, Ayakar Bhawan, Paota 'C' Road, Jodhpur.
3. Commissioner of Income Tax, Aya Kar Bhawan, Paota 'C' Road, Jodhpur.
4. Pr. Chief Controller of Accounts, Zonal Accounts Office, Central Board of Direct Taxes, Statute Circle, NCR Building, Jaipur.
5. Pr. Chief Accounts Officer (CDN), Central Board of Direct Taxes, 9th Floor, Lok Nayak Bhawan, Khan Market, New Delhi.

...Respondents.

Mr. M. Godara, Advocate brief holder for
Mr. Vinit Mathur, counsel for respondents.

**ORDER
(By Mr. R.R. Bhandari, Administrative Member)**

The brief facts as presented by the applicant are as below: -

(i) The applicant, Shri Suresh Chandra Ajmera, joined as UDC in Income Tax Department on 05.04.1965. He, subsequently, qualified the Inspector's Examination in the year 1976 and was promoted to the post of Inspector, Income Tax, in July 1981.

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(ii) The applicant was dismissed from service in the year 1993. He approached this Bench of the Tribunal by filing an O.A. No. 26/1995. This Bench of the Tribunal partly accepted the O.A. and vide its judgement dated 31.08.2000 quashed the dismissal order and directed the respondents for reinstating the applicant in service on the same post from which he was dismissed, without any back wages. This Bench of the Tribunal also directed that the period of dismissal of the applicant "*shall only count for pensionary benefits and no other*". (emphasis provided).

(iii) The applicant superannuated on 31.08.2002.

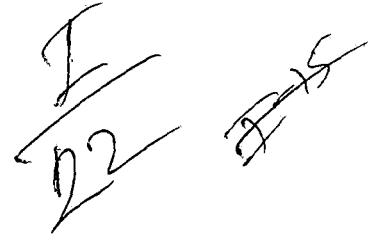
(iv) Vide Annexure A/1, A/2 and A/3, certain directions were issued from the Income Tax Department for fixing the pension, re-fixation of pay etc. The applicant further mentioned that the respondents affected the recovery of Rs. 29576/- and also adjusted some refunds for which the applicant was entitled without affording him the opportunity of representation.

2. The applicant asked for the following reliefs: -

(i) Quashing of orders regarding re-fixation and recovery as a result of disallowing increments granted on account of his passing the Income Tax Inspector Examination vide Annexure A/1, A/2 and A/3.

(ii) Quashing of orders disallowing few increments granted to him during his dismissal from service (Annexure A/1, A/2 and A/3).

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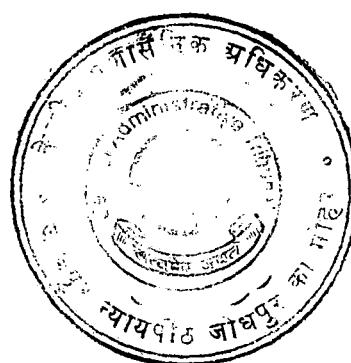
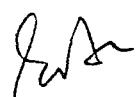
3. The respondents on their part gave detailed reasons for disallowing certain payments, such orders issued vide Annexure A/1, A/2 and A/3. The respondents clarified that these payments have been erroneously made and therefore the errors needed to be ~~ed~~ ^{be} corrected.

4. The applicant on their part was agreeing to the plea of respondents that the payment has been erroneously made but made it very clear that it was not on the behest of him. The applicant was not a party for asking these increments or erroneous payment and at no stage he had made any representation for getting this money. Since he was not a party for getting this extra payment, any deduction made thereof will be illegal and against natural justice.

5. In support of the claim of the applicant, learned counsel for the applicant cited a number of court cases. Few of the relevant court cases are mentioned below.

(i) In Shyam Babu Verma and Ors. Vs. Union of India and Ors. reported in JT 1994 (1) SC 574 – in this case, the Hon'ble Supreme Court has held that since the petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them.

(ii) In Sahib Ram vs. State of Haryana and Ors. – reported in 1995 SCC (Supp)(1) 18 – in this case, the Hon'ble Supreme Court restrained the recovery of the payment already made to the applicant as it was not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale

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was given to him, but by wrong construction made by the Principal for which the appellant cannot be held to be at fault.

(iii) In Nand Lal and Ors. vs. Rajasthan State Electricity Board and Ors. – reported in RLR 1999(2) 707 – in this case – the Hon'ble Rajasthan High Court relying on few Hon'ble Supreme Court judgements held that if a higher pay scale has erroneously been given to an employee long back and he had received it out of no fault on his part, it shall not be just and proper to recover the excess amount already paid to him.

6. The respondents on their part submitted a copy of judgement delivered by the Hon'ble Rajasthan High Court, Jodhpur, in the case of Abdul Salam & Anr. Vs. Maharana Pratap University & Ors. reported in 2004 Western Law Cases (Raj.) UC 621. In this judgement, Hon'ble Mr. Justice N.P. Gupta, discussed at length the cases of erroneous payment by the employer and whether such erroneous payment should be recovered or otherwise. He also discussed at length the pros and cons of number of cases including the three cases mentioned by the learned counsel for the applicant in this particular case.

7. Discussing at length various cases, Hon'ble Mr. Justice N.P. Gupta summarized the problem as below: -

"31. Keeping in view the above legal principles, it is to be examined, as to what is the law, that has been laid down by Hon'ble the Supreme Court, viz., as to whether, in all cases wherever payments has been received by the employee, from the employer, without any mistake of the employee, it should never be recovered back from the employee, or in what circumstances, and on what considerations, it cannot be recovered, and in what circumstances it can be recovered?

32. In my humble view, there is no legislative provision, as such, whether under any Act of the Parliament, or Legislature, or any Service Rules, which may have laid down as



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a universal rule, that any payment made to the employee, by the employer, without any fault of the employee, should never be recovered back from him. Of course, where the payment has been made to the employee on account of the active act of the employee, or with his connivance, obviously the things would stand on a different footing, but here I am concerned, precisely, with a situation, where the employee, as such, is not instrumental, in the payment being made to him, by the employer.

33. The problem has various facets, viz., can it be said that a payment made to an employee at a time which has lost in its antiquity, and it is found after his retirement, rather or even after his death, to have been wrongly paid, should it be allowed to be recovered from the heirs, or from the estate, or from the family pension being paid to the family members. Likewise whether a huge amount, dimensions of the hugeness may be dependent upon facts and circumstances of each case, can, or cannot be allowed to be recovered. Conversely whether even in a case where the payment has been made to the employee, on the very next day, it is discovered to have been wrongly paid to him, should it not be allowed to be recovered? Then, whether a small amount should be permitted to be recovered or not? Likewise in case where the amount is liable to be recovered, has already been recovered, whether by deduction from his salary, or withhold part of his retiral benefits, can be directed to be repaid to the employee, by invoking the principles, that the recovery of the amount, paid to the employee, without any mistake on his part cannot be effected? And thereby indirectly creating a right in the employee, to recover amounts from the employer, simply because, it had once been paid to him, despite the fact that he is not entitled to the amount. There may be a case, where immediately after receiving the amount, the very next day, it may be found that the payment was wrongly made to the employee, still should he be allowed to retain the amount, more so when the amount may be substantially huge. A long list of such facts, and circumstances, may be there, which may be invoked, as consideration for deciding the question, whether recovery should be made or not. But then the principle that is argued before me is, on the authority of the aforesaid judgments of Hon'ble the Supreme Court, cited by the learned counsel for the petitioner, that as an absolute proposition, in no circumstances recovery can be made. In that view of the matter, I am to examine the question.

47. Thus, on a collective reading of the aforesaid judgments of Hon'ble the Supreme Court, it cannot be concluded, that Hon'ble the Supreme Court ever laid down, as an absolute proposition, that no recovery can ever be made from the employee, where the amount has been paid to him without any fault on his part. Similarly within the meaning of Article 141, in none of these judgments, has it been expressly laid down, as a legal proposition as to in what circumstances the

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recovery cannot be made, and in what circumstances recovery can be made."

8. Since the judgement given in the case of Abdul Salam (supra) by the Hon'ble High Court is binding on us, we have to follow the detailed analysis and views expressed therein. It is settled that time factor in between making an erroneous payment and its subsequent recovery is important. If the instance of erroneous payment is discovered after a lapse of very long period then it would be improper to effect recovery. Likewise, if the instance of erroneous payment is discovered within a short time (could be a few years), the erroneous payment should be recovered as soon as it is noticed.

9. After going through the applicant's case thoroughly, we conclude that there are two erroneous payments. One erroneous payment due to grant of two advance increments on passing of I.T.I. Examination. This increment was allowed in 1983 and the error was noticed only in 2002. We consider that this time is too long and therefore the excess payment whatsoever on this account should not be recovered.

10. Second erroneous payment is due to grant of increments during the suspension period from 1994 to 2000. These erroneous increments were granted only in 2000, after a judgement by the CAT. This erroneous payment was discovered at the time of superannuation of the applicant in 2002. We do not consider a lapse of 2 years being very long period and thus recovery of this excess payment is considered just and correct.



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11. Learned counsel for the applicant also drew our attention to a very recent judgement delivered on 14.11.2006 by this Bench of the Tribunal in the case of L. Sakhrani vs. Union of India and Ors. (O.A. No. 336/2005). In this case Shri L. Sakhrani was granted two advance increments after having qualified the examination held for the post of Income Tax Inspector (I.T.I.) in the year 1990. By two subsequent orders on 01.12.1997 and 08.11.2005, the department concerned directed to withdraw the increments. In the meantime, the applicant superannuated. By the same logic as discussed above, we feel that in that particular case too long time gap had lapsed between the erroneous payment and the passing of order for disallowing erroneous payment and its recovery. Since the time gap was considered too long, this Bench allowed the O.A. and quashed the impugned orders affecting recovery.

12. We partly allow this Original Application and direct the respondents not to affect recovery and refund in case already recovered the erroneous payments made for the two advance increments granted for passing I.T.I. Examination. The impugned orders Annexure A/1, A/2 and A/3 should be modified by the respondents accordingly and revised order be issued within a period of three months from the date of this order.

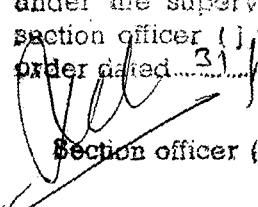
13. No order regarding to the interest payments or to the costs.

R R Bhandari
(R R BHANDARI)
ADMINISTRATIVE MEMBER

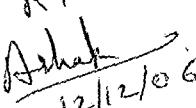
Kuldip Singh
(KULDIP SINGH)
VICE CHAIRMAN

Kumawat

Part II and III destroyed
in my presence on 31/12/14
under the supervision of
Section officer () as per
order dated 31/12/14.

Section officer (Record)

Amir

R/C

12/12/06