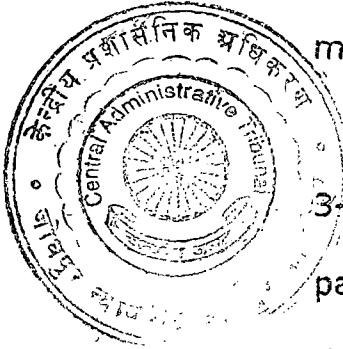


(2)

c) Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.

d) Costs of the application may kindly be awarded in favour of the applicant.

2- The applicant is the wife of late Shri K.L. Chouhan, an employee under the respondents. Shri Chouhan passed the Inspector's examination, while working as Head Clerk. He was allowed two advance increments w.e.f. 23.06.1995. He was later on promoted as Inspector. He died in service on 02.05.2007. When the pension papers of the applicant were submitted, the Principal Controller of Accounts pointed-out vide his letter dated 23.08.2007 (Annex.A/3) that the advance increments could not have been allowed and suggested re-fixation of pay as indicated therein. The administration requested the Accounts Wing vide letter dated 31.08.2007 (Annex.A/5) to follow the judgement of Jodhpur High Court in the case of **N.K.Gehlot** and not to insist on re-fixation. The Accounts Wing informed I.T.O. (Admin) that the said decision is a decision in an individual case and that orders of Ministry will be required (Annex. A/6). The pay of the deceased employee was refixed vide order dated 01.10.2007 (Annex.A/4). It was also indicated that excess may be recovered. The payment of gratuity was authorized vide Annex. A/1 and the over-payment was recovered. The family pension was fixed keeping the revised pay in mind (Annex.A/2).



3- The applicant is aggrieved by unilateral orders of re-fixation of pay and recovery of overpayment. The grievance of the applicant is that the husband of the applicant was never put to any notice by the

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department. This issue is concluded by the decision of Tribunal in OA 127/2001 and decision of Honourable High Court in Civil Writ Petition arising out of that order. The Apex Court has held in **Shyam Babu Verma** and **Sahib Ram's** case that no recovery can be made if there is no mis-representation. The question of re-fixation and recovery does not arise.

4- The respondents have defended their action. It is stated that CBDT vide its letter A26017/44/94-Ad IX dated 17.11.2000 has clarified that Head Clerks and Stenographers Grade II were not entitled to two advance increments. Reference is given to the said Scheme. When the mistake came to their notice the error was rectified. The applicant is not an employee of the department and cannot assail the order.

5- We have heard the learned counsels.

6- A Five Member Bench of the Tribunal presided over by the then Hon'ble Chairman Mr. Justice Ashok Agrawal in the case of **Mrs. Chandra Kala Pradhan Vs. Union of India & Ors.** (ATFBJ 1997-2001 Pg. 410) has held as under :-

"Mr. De concedes that an heir of deceased employee is entitled to initiate proceedings in respect of service matters of the deceased employee. He, however, submits that this Tribunal would not have jurisdiction to entertain such a claim. In support of his contention, he has placed reliance on provisions of Section 3 (q), 14 and 19 (1) of the Administrative Tribunal Act, 1985. According to him though an heir is entitled after the death of the deceased employee to initiate a lis, such a lis will not lie and cannot be entertained before and by the Tribunal. In our judgment, we do not find any merit in the aforesaid contention. The aforesaid issue, in our view, has already been answered by the Apex Court in the case



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of Sudha Srivastava (Smt) Vs. Comptroller and Auditor General of India, (1996) 1 SCC 63 which decision had arisen out of a claim filed before the Central Administrative Tribunal. Application in that case had been filed by widow of a deceased Government employee before the Central Administrative Tribunal and the decision of the Supreme Court in this behalf has already been reproduced in para 8 of the aforesaid order. The Supreme Court in that case has implicitly upheld the jurisdiction of the Tribunal to entertain an application filed by an heir of a deceased Government employee. The contention of Mr. De in the circumstances, is rejected."

7- The contention regarding locus standi of the applicant has to be rejected.

8- The Hon'ble Rajasthan High Court in D.B. Civil Writ Petition No. 5179/2004 - **Union of India & Four Ors. Vs. R. S. Sarasar and Ors.** and Other D.B.Civil Writ Petitions has held as under :-

"..... Though these orders are administrative one but as they ensures the civil consequences the petitioners are to observe and make compliance of the principles of natural justice before passing the same.

The learned counsel for the petitioners is wholly unsuccessful in his attempt and failed to satisfy us that before passing of the orders dated 13.1.1987 and 17.6.1996 a notice was given and an opportunity of hearing was afforded to the respondent no.1.

That apart it is not the case where the respondent no. 1 snatched away any money from the pocket of the petitioners or that he has made any misappropriation of the government money. It is not the case of the petitioners neither before the learned Tribunal nor before us that the respondent no. 1 has procured the order dated 16.9.1978 by playing any fraud or by concealing any fact. This order has been withdrawn almost after nine years of passing of the same.

The fact that for nine years the recovery of the alleged excess amount of the pay of the respondent no. 1 was not sought to be made, goes to show that the petitioners were not intended to recover the same. In view of the facts on which there is no dispute the learned Tribunal relying upon the decisions of the Hon'ble Supreme Court in the cases of Sahib Ram Vs. State of Haryana & Others, (1995 Suppl. (1) SCC 181 and Collector of Madras and Another Vs. K. Rajamanickam (1995) 2 SCC 98 has rightly



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held that the action of the petitioners herein to recover the amount of Rs. 23371/- from the gratuity of the respondent no. 1 is wholly unjustified. The amount of Rs. 23371/- deducted from the amount of gratuity of the respondent no. 1 has rightly been ordered to be refunded to him by the petitioners. It is a fit case where the learned Tribunal should have awarded interest to the poor respondent no. 1, a retired government servant, for withholding by the petitioner of Rs. 23371/- of his gratuity amount but that has not been done, still the petitioners have chosen to file the writ petition. We are also not of any help to the respondent no. 1 as he is not before us against the judgment of the learned Tribunal.

As a result of the aforesaid discussion all the writ petitions fail and the same are dismissed. Consequent upon the dismissal of the writ petitions, the stay applications, filed therewith, do not survive and the same are also dismissed."

9- Rule 71 of CCS (Pension) Rules is as under :-

"71. Recovery and adjustment of Government dues -

(1) It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

(2) The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the [retirement gratuity] becoming payable.

(3) The expression 'Government dues' includes -

(a) dues pertaining to Government accommodation including arrears of license fee, if any;

(b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of Income tax deductible at source under the Income Tax Act, 1961 (43 of 1961)."

10- In the instant case, the action for refixation has started twelve years after the same was sanctioned and seven years after the clarification was issued. It is initiated after the death of Government servant. The ratio laid down in above decision applies.



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11- Recovery on account of over-payment cannot be said to be ascertained and assessed dues unless the concerned person is put to notice. The over-payment could not, therefore, have been recovered.

12- The Department of Personnel & Pension Welfare O.M. dated 22.01.1991, quoted below Rule 68 of CCS (Pension) Rules, provides that if payment of DCRG is not made within six months of death, interest should be paid beyond the six month period. As per Department of Personnel & Pension Welfare letter dated 25.08.1994, the said interest is payable at the rate applicable for GPF deposits:

13- It is well settled that administration can take steps to set right a wrong. The said action has, however, to be taken in a reasonable period. The employee, who could have replied to such notice is no more.

14 In view of the decision of Hon'ble High Court, the overpayment could not have been recovered in this manner. The same could not have been done as per CCS (Pension) Rules also. In the facts and circumstances of this case, the administration has acquiesced in the order.

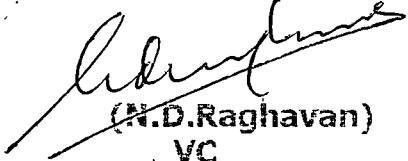


15- In conclusion, the family pension is required to be refixed as per the pay fixed earlier. This exercise be completed in one month and arrears paid within two months thereafter. The with-held DCRG along with interest thereon, as per para 12 above, be paid within three

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months. If these are not paid within the three months period, interest at 9% on these amount shall be payable till the date of actual payments. O.A. is disposed off accordingly with no order as to costs.

Shankar Prasad
(Shankar Prasad)
Adm.Member


(N.D.Raghavan)
VC

jr

Red Com
Recd
Kept

Right

(As per) 16-3-eg
Part
For V. Geffers
By

Part II and III destroyed
in my presence on 8/7/2015
under the supervision of
section officer () as per
order dated 07/07/2015

Section officer (Record)