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**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Original Application No. 111/2008

Date of order: 22.05.2008

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER.

Ahmed Hasan S/o Chand Khan, age 56 years, R/o Sarodiya Basti, Moharram Ki Chowki Ke Paas, Bikaner at present employed on the post of Pointsman 'A' under S S Lunkaransar N/W Railway, Bikaner Division, Bikaner.

...Applicant.

Mr. B. Khan, counsel for the applicant.

VERSUS

1. The Union of India through General Manager, North/West Railway, Jaipur.
2. The Divisional Railway Manager, North/West Railway, Bikaner Division, Bikaner (Raj.).
3. The Senior Divisional Personnel Officer, North/West Railway, Bikaner Division, Bikaner (Raj.).

...Respondents.

ORDER

The applicant, Ahmed Hasan, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 and prayed for the following reliefs:



"(i) It is, therefore, most respectfully prayed that the order dated 30.10.2007/01.01.2008 (Annexure A/1) may kindly be quashed and set aside qua the applicant and the respondents may kindly be directed to repay the amount already recovered.

(ii) That any other direction, or orders may be passed in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

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(iii) That the cost of this application may also be awarded to the applicants."

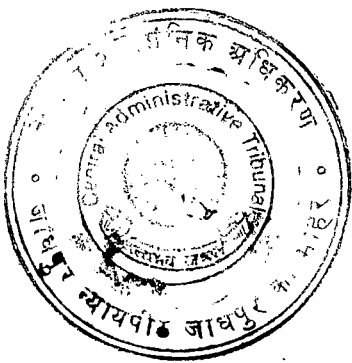
2. The facts as relevant to the case are that the applicant joined the service on 13.12.1974 and is still serving in the Department. The respondents issued an order dated 15.10.2001 (Annexure A/2) under which benefit of financial upgradation under Assured Career Progression (for short, ACP) Scheme is granted on completion of 12 and 24 years of service provided the employees have not got any regular promotion during the above period. The applicant was granted the above benefit of ACP Scheme vide order dated 15.10.2001 (Annex. A/2).
3. Subsequently, orders dated 01.01.2008 (Annexure A/1) have been issued under which the applicant has been informed that the benefit of ACP Scheme was wrongly granted to him as he could not qualify the written examination and, therefore, the above benefit has been withdrawn.
4. Against the above impugned order, the applicant filed a representation on 20.01.2008 (Annex. A/3) and submitted that the benefit of financial up-gradation was granted to him on the basis of scrutiny-cum-fitness and has nothing to do with the examination, therefore, the benefit is purely personal. According to the applicant, the above representation of the applicant is still pending before the competent authority and has not yet been decided. Notwithstanding the above, the



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respondents have recovered the amount from the salary of the applicant. In this regard, the applicant has enclosed pay slips for the month of January, 2008 and February, 2008 (Annexure A/4).

5. Aggrieved by the above, the applicant has filed this O.A. and prayed for the relief as given in para one above.
6. Learned counsel for the applicant has been heard and he has pleaded that the representation dated 20.01.2008 (Annex. A/3) submitted by the applicant has not yet been decided by the respondents. No show cause notice has been given before making the recovery. He pleaded that the total amount of recovery has not been ascertained so far. He prayed that the impugned order dated 01.01.2008 (Annex. A/1) may be set aside qua the applicant and the recovery may be stopped immediately. He also prayed that the amount already recovered may be refunded.
7. This case has been examined and documents perused. It is seen that the applicant was granted the benefit of financial up-gradation under ACP Scheme vide order dated 15.10.2001 which has been withdrawn vide impugned order dated 01.01.2008 (Annex. A/1). The applicant has made a representation dated 20.01.2008 (Annex. A/3), against the above impugned orders of withdrawal of the benefit of financial up-gradation under ACP Scheme and recovery of the



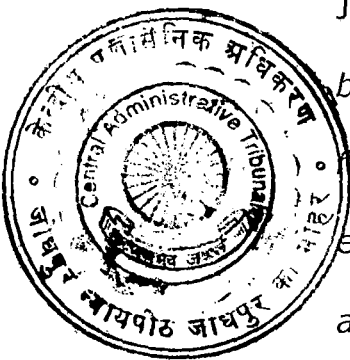
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amount. His representation dated 20.01.2008 has not yet been decided by the competent authority. The applicant has also not been given any show cause notice before making the recovery as alleged by the applicant. The total amount of the recovery has also not been ascertained so far.

8. The Hon'ble Apex Court has held in the case of **Shyam Babu Verma and others Vs. Union of India and others** (reported in 1994 (2) SLJ 99 (SC) and 1994 (2) SCC 521) that *"it shall only be just and proper not to recover any excess amount which has already been paid to them."* The Apex Court has reiterated the same principle in the case of **Union of India vs. K.B. Khare and others** (reported in 1994 Supp. (3) SCC 502 as well as in 1994 (3) SLJ 102 SC).

9. The Apex Court has further held in the case of **P. H. Reddy and others vs. National Institute of Rural Development and others** (reported in 2002 (2) Administrative Tribunal Judgments 208) that *".....the employees-appellants, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn, and therefore, that part of directions of the appropriate authority requiring reimbursement of the excess amount is annulled."*

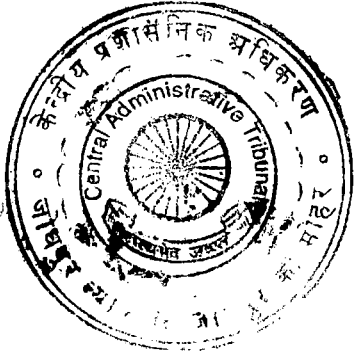
10. In view of the above discussion and settled position of law, the respondents are directed to decide the representation



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dated 20.01.2008 (Annexure A/3) of the applicant within a period of two months from the date of receipt of this order. Meanwhile, the recovery in respect of the applicant, Ahmed Hasan, be stopped with immediate effect as the same is resulting in financial hardship to him.



11. With these observations, the Original Application No. 111/2008 is disposed of. No costs.

Tarsem Lal 27.9.08
[Tarsem Lal]
Member (A)

nlk

Part II and III destroyed
in my presence on 15/12/14
under the supervision of
section officer (J) as per
order dated 19/8/2014
[Signature]
Section officer (Record)

C.T. sent to R1 to R3 with OA set
GW

R/copy
on 27/5
[Signature]

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