

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 8 of 1997

Date of order : 23.3.2005

Present : Hon'ble Mr.A.S.Sanghvi, Judicial Member

PARITOSH KAYAL

VS

UNION OF INDIA & ORS.

For the applicant : Mr.A.Chakraborty, counsel

For the respondents: Ms.S.Banerjee, counsel

ORDER (ORAL)

The applicant a retired Govt. employee has moved this OA seeking direction upon the respondents for the refund of the amount deducted from his DCRG with interest. According to his case, though he was drawing the salary of Rs.2120/- in the pay-scale of Rs.2000-3200/his pay was suddenly reduced by the respondents to Rs.2060/- without giving him any show cause notice. On his retirement w.e.f. 30.9.95 an amount of Rs.15,500/- was deducted from his DCRG on the ground that there was an over-payment of this amount. He had submitted a representation against the said deduction but his representation was answered that he had availed 106 days LWP during the working period from August 1962 to September 1995. Since the LWP period is not counted for increment and required deferment, his pay was reduced from Rs.2120/- to Rs.2060/- per month involving an overpayment of Rs.15,500/-. The applicant being aggrieved by this reply has moved this OA contending inter alia his pay could not have been reduced without any show-cause notice to him and the amount of Rs.15,000/- could not have been recovered from his DCRG even if that amount was paid erroneously to him. He has prayed for the refund of the amount with interest.

2. The respondents in their reply have pointed out that the applicant had availed 106 days LWP during the period August 1962 to September 1995 and though the LWP as per the rules cannot be counted for increment, by mistake the applicant was allowed to draw the increments. During the review of the Service Sheet at the time of preparing his settlement dues this mistake was detected and hence a fresh 'As drawn' and 'To be drawn' statement was prepared in favour of the applicant and the over-payment of Rs.15,500/- was recovered from his DCRG. The applicant was intimated about this fact by a letter dated 22.4.96. They have, however, stated that the applicant being Office Superintendent Gr.I, knew very well that LWP do not count for increment, but he kept silent and availed all the increments wrongly. He therefore now cannot make any grievance about the refund of his pay and pension as well as deduction of the excess amount of the salary paid from his DCRG. The respondents have prayed for dismissal of the OA.

3. I have heard the 1d.counsel for both the parties and duly considered the rival contentions. The short question that arises for determination is whether the amount of the one increment inadvertently paid to the applicant could have been recovered at the time of his retirement. It is clear from the representation dated 6.12.95 of the applicant that he does not dispute about the availing 106 days LWP and also does not dispute that though 106 days LWP were availed by him he had continued to draw increments for this period. He has himself in his representation stated that the said period had been treated as un sanctioned LWP with deferment of increments by a Reviewing Authority under FA&CAO, Garden Reach. This clearly implies that he had the knowledge about one increment having paid to him erroneously or inadvertently by the respondents. He cannot therefore now be heard to complain when his pay was reduced by one increment at the time of his retirement. However, there is justification in his grievance about

the amount of Rs.15,500/- recovered from his DCRG. It is quite evident from the reply of the respondents that it was the departmental inadvertance in releasing one increment in his favour or not defering one increment though he had availed 106 days LWP but then it cannot be said to have been done on the misrepresentation of the applicant or the applicant having perpetuated fraud. The respondents are therefore not justified in recovering the excess amount paid to the applicant on the premises of rectifying the mistake committed. In the case of Shyam Babu Verma -vs- Union of India & Ors. reported in 1994 (27) ATC 121, the Supreme Court dealing with the question of recovery of over-payment made, has laid down that where the employees were not responsible for the over-payment of pay made to him, the order for recovery of the ovr-payment cannot be sustained. The same view is also taken in the case of G.S.Fernandes -vs- State of Karnataka reported in 1994 (5) SLR 625 and B.H.Reddy & Ors. -vs- National Institute of Rural Development reported in 2002 (20) ATJ 208. The action of the respondents in recovering the amount from the DCRG from the applicant cannot be sustained and the respondents are required to be directed to refund the same with interest.