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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.452/09

Friday this the 11th day of June 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

G.Damodaran Nair, Sree Nidhi,
Anandeswaram,
Chempazhanthy PO,
Thiruvananthapuram.

...Applicant

(By Advocate Mr.B.Krishna Mani)

V e r s u s

Union of India represented
by the Director, Central Tuber
Crops Research Institute, (Indian
Council of Agricultural Research),
Sreekaryam, Thiruvananthapuram.

...Respondent

(By Advocate M/s.Varghese & Jacob)

This application having been heard on 11th June 2010 the Tribunal
on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has retired from the respondent department with effect from 31.7.1996. At the time of retirement, his basic pension was fixed at Rs.359/- per month with dearness relief plus medical allowance, total of which amounts to Rs.1260/-. From September 1998, his basic pension was revised to Rs.1243/- plus dearness relief and medical allowance as Rs.253/- and 100/- respectively which amounts to Rs.1596/-. During the



said period he has also commuted his pension and the commuted value was Rs.296/-. Thereafter, he was entitled to receive Rs.947/- as his basic pension. However, the respondents continued to give him the basic pension at the rate of Rs.1243/- p.m. The aforesaid mistake was noticed by the Audit vide Note No.1439/96 dated 3.11.2008. Initially the respondents, vide Annexure A-3 letter dated 10.10.2008, informed the applicant that an excess amount of Rs.35,324/- at the rate of Rs.296/- per month from October 1998 to August 2008 was paid to him and asked him to either refund the amount or to permit them to adjust it from his future pension and arrears. Later on, they have issued the Annexure A-5 letter dated 3.11.2008 stating that the amount refundable was only Rs.25852/- for the period from September 1998 to December 2005. The applicant has, therefore, filed this Original Application seeking the following reliefs :-

- "i) Call for records leading to Annexure A5 and quash Annexure A3 and A5.
- ii) Issue a direction directing the respondents not to proceed ahead with Annexure A3 and A5 in any manner and further direct the respondent to refund the sum deducted from the pension of the applicant during the month of September 2008 and October 2008.
- iii) Issue a direction directing the respondent to grant all the benefits to the applicant in terms of the 6th pay commission forthwith.
- iv) Issue an interim direction directing the respondent not to deduct any amount from the pension of the applicant.
- v) Any other reliefs this Hon'ble Tribunal deems fit."

2. The learned counsel for the applicant has relied upon the judgment of the Hon'ble High Court of Kerala in Narayanan Vs. State of Kerala reported in 2008 (3) KLT 188 wherein it was held as under :-

"2. In Sivankutty Nair v. Secretary to Government (2005 (3) KLT 512) a learned single Judge of this court held that excess amount



paid on account of wrong fixation of pay cannot be recovered unless the employee has in any way contributed to the mistake. That view was overruled by a Division Bench of this court in *Santhakumari. v. State of Kerala* (2005 (4) KLT 649), but, even in that case it was observed that in certain cases sympathetic consideration may be required. At paragraph six of the above judgment it was observed as follows:

"6. Principle laid down by the learned Judge in *Sivankutty Nair's case* (2005 (3) KLT 512), in our view cannot be of general application. Reasoning of the learned single Judge that the excess amount paid on account of wrong fixation of pay cannot be recovered unless the employee has in any way contributed to the mistake, in our view, is an over statement of law. We may hasten to add, unless there is statutory bar in recovering the amount, any amount paid by mistake could be recovered depending upon the facts and circumstances of each case. To hold that only in a case where employee has contributed to the mistake amount could be recovered cannot be sustained. Facts situation may warrant a sympathetic consideration but cannot be accepted as a general principle of law."

So, even when *Sivankutty Nair's case* (supra) was overruled, it was held that in appropriate cases relief can be granted in not recovering the amount.

3. We note that the Hon'ble Supreme Court in *Babulal Jain v. State of M.P.* ((2007) 6 SCC 180) held that in the case of higher salary paid due to mistake, no recovery should be directed to be made. The Apex Court held as follows:

"15. We, however, are of the opinion that in a case of this nature, no recovery should be directed to be made. The appellant has discharged higher responsibilities. It is not a case where he obtained higher salary on committing any fraud or misrepresentation. The mistake, if any, took place on a misconception of law. He was at least entitled to some allowances. In refixing his pay, his claim to that effect has not been considered. He has since retired. A sum of Rs.22,000 has been recovered from him. Such recovery has been effected without issuing any show-cause notice. His case on merit in this behalf had not been considered by the Government and even by the Tribunal."

In *Aleyamma Varghese v. Secretary, General Education Department* (2007 (3) KLT 700 (SC)) the Hon'ble Supreme Court held as follows:

"A mistake apparent on the face of the record may be rectified but in a matter of this nature, we would expect the State to react more magnanimously and not resort to recovery



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proceedings after a period of 17 years. We, therefore, in the peculiar facts and circumstances of this case, are of the opinion that with a view to do complete justice to the parties, the amount sought to be recovered may not be recovered from the appellant and we direct accordingly. The impugned judgment is set aside and the appeal is allowed with the aforesaid observations and directions."

In that case also the appellant was appointed as a Lower Primary school assistant and recovery proceedings were initiated only after audit objection was raised . It is submitted that the petitioner herein received notional pay as a teacher. If the excess pay fixed in 1989 onwards is recovered from the petitioner's retiral benefits, it will be a very heavy blow on him. On the facts and circumstances of this case, we are of the view that the excess amount paid by the Government on mistake, on the basis of wrong fixation, should not be recovered.

The appeal is allowed to the above extent."

3. We have heard Shri.G.Haridas on behalf of Shri.B Krishna Mani for the applicant and Shri.Easo on behalf of M/s.Varghese & Jacob for the respondents. It is a well settled law that the overpayment made by the respondents department cannot be recovered at a belated stage unless such overpayment was caused due to the mis-representation of the employee concerned. The contention of the respondents is that the payment has been made according to the claim made by the applicant. However, pension is payable according to the rules as per the emoluments being drawn by the employee and not based on any of his claims. Therefore, there is no merit in the aforesaid contention of the respondents.

4. We agree with the arguments of the learned counsel for the applicant which are based on the judgment of the Hon'ble High Court of Kerala which in turn based on the law laid down by the Apex Court. We, therefore, quash and set aside the impugned Annexure A-3 letter dated 10.10.2008 and Annexure A-5 letter dated 3.11.2008. In other words, the amount of

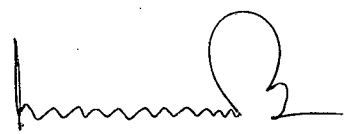


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Rs.25852/- stated to have been overpaid to the applicant shall not be recovered from his pensionary benefits. There shall be no order as to costs.

(Dated this the 11th day of June 2010)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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