

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 49 of 2006

Thursday, this the 28th day of September, 2006

C O R A M :

HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

T.V. Purushan,
Notice Server,
Income Tax Office,
Thoudpuzha, Idukki,
Residing at "Sultan Manzil",
Kanikkode, Thodupuzha (E) P.O.,
Idukki.

... Applicant.

(By Advocate Mr. P.Santhosh Kumar)

v e r s u s

1. Union of India represented by
The Secretary to Government,
Ministry of Finance, New Delhi.
2. The Additional Commissioner of Income Tax,
Range - I, Ernakulam.
3. The Administrative Officer,
Office of the Additional Commissioner of
Income Tax, Range - II, Ernakulam.
4. The Income Tax Officer,
Ward - I, Thodupuzha.

... Respondents.

(By Advocate Mr. P. Parameswaran Nair, ACGSC)

The Original Application having been heard on 28.09.06, this Tribunal
on the same day delivered the following:



ORDER
HON'BLE MR. KBS RAJAN, JUDICIAL MEMBER

The applicant, Notice Server, in the office of the Income Tax Officer, Ward-1, Thodupuzha, on implementation of the report of the 5th Central Pay Commission got his pay fixed in the scale of Rs. 2750-4400 at Rs. 3380/-. By order dated 7.9.1998 he had been granted two advanced increments. Based on the same, the applicant's pay was refixed at Rs. 3520/- with effect from 1.1.1996. He had given an undertaking on 22.10.1997 that if any excess payment had been made the same would be refunded. However, pursuant to upgradation of the pay scale of the Postman to scale Rs. 3050-4590, an order was issued to bring out parity in scale of postman and Notice Server and accordingly, the applicant's pay was further revised and refixed in the scale of Rs. 3050—4590. However, while refixing his pay in the higher grade again the benefit of advance increments was given for fixation. Subsequently, noticing that grant of two additional increments at each stage was not warranted and intended, action was taken to recover the excess payment of Rs. 11,184/- from the pay and allowances of the applicant. The applicant was served with Annexure A3 order dated 14.11.2005 informing him of the proposal to recover this amount. Aggrieved by that the applicant has filed this application mainly on the ground that he is in no way responsible for the alleged excess payment and he having not given any undertaking in that regard the action is unjustified.



2. The respondents in their reply statement seek to justify the proposal for recovery on the ground that the loss caused to the State Exchequer on account of the over payment made to him and the action was perfectly in order and the applicant has given Annexure R3 undertaking dated 22.10.1997.

3. I have gone through the pleadings and all the materials placed on record and have heard the learned counsel on either side. It has been held in a large number of cases by the Apex Court that over payment, if any, made by the Department to low paid employees who were in no way responsible for such over payment may not be recovered from their pay and allowances. Probably taking note of the judicial advice the respondents seek to justify their action in recovering the over payment on the ground that the applicant had himself undertaken to refund the over payment, if any. The question is whether Annexure R3 undertaking pertains to the excess payment in this case. It is evident from the pleadings and materials on record that the undertaking R3 did not cover payment made after 22.10.1997. It is profitable to extract the undertaking given by the applicant:

"I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise."

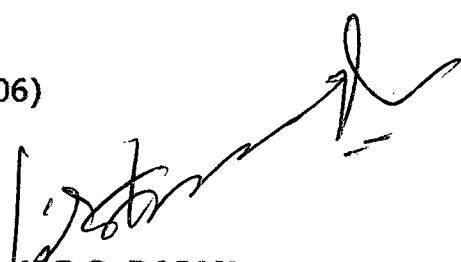
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4. It is evident that the undertaking covers payment already made as on 22.10.1997 and it relates only to payment on fixation of pay in the scale Rs. 2750-4400 and did not pertain to future revision to the higher scale of Rs. 3050-4590 which came only in December, 2000. Since the applicant was not responsible for the mistake and consequent overpayment, I hold that the respondents are not justified in making recovery from the low paid employee.

5. An identical issue was decided allowing O.A. No. 140/2002, C.V. Viswambharan vs. Union of India and 3 Others, vide order dated 21.04.2004 by a Division Bench. As such, the said order forms a binding precedent.

6. In the light of what is stated above, , the application is allowed. The respondents are directed not to make any recovery from the applicant of the amount of Rs. 11,184/- proposed in Annexure A3 order. No order as to costs.

(Dated, the 28th September, 2006)



K B S RAJAN
JUDICIAL MEMBER

cvr.