

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.74/2002.

Thursday this the 18th day of March 2004.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

(By Advocate Shri T.A.Rajan)

V. 5

1. Union of India represented by the
Secretary to Government,
Ministry of Finance, New Delhi.

2. The Joint Commissioner of Income Tax,
Range II, Ernakulam.

3. The Administrative Officer,
Office of the Joint Commissioner of
Income Tax, Range II,
Ernakulam. Respondents

(By Advocate Shri C.B.Sreekumar, ACGSC)

The application having been heard on 18th March 2004, the Tribunal on the same day delivered the following:

ORDER

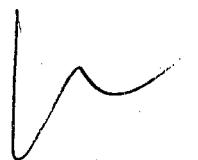
HON'BLE MR. KV. SACHIDANANDAN, JUDICIAL MEMBER

The applicant is working as Notice Server under the respondents 2 and 3. Prior to the implementation of the recommendations of the 5th Central Pay Commission the scale of pay of Notice Servers was Rs.800-15-1010-20-1150. The applicant was drawing Rs.1090/- in the above scale of pay. On implementation of the recommendations of 5th Pay commission the above scale of pay was revised to Rs.2752-70-3800-75-4400 w.e.f. 1.1.96. As per the recommendation, the Notice Servers are also entitled to get two advance increments with effect from 1.1.96. Accordingly the applicant's pay was refixed in the revised scale and he was also granted the two advance increments. Later the

pay scale of Notice Servers were upgraded from the pay scale of Rs.2750-70-3800-75-4400 to Rs.3050-75-3950-80-4590 w.e.f. 10.10.1997. The applicant's pay was also refixed in the upgraded scale with effect from 10.10.1997. The 3rd respondent has issued an order dated 30.10.2001 stating that the applicant has drawn excess pay and allowances for the period from 1.1.1996 to 31.7.2001 due to a mistake happened during fixation of pay and the excess pay and allowances drawn by him for the above period has been calculated to Rs.8692/- and it is decided to recover the above said amount from the pay of the applicant by A-1 order. The statement of fixation is also enclosed along with A-1. Applicant's pay has been revised based on the order dated 5.12.2000 issued by the Central Board of Direct Taxes (A4). As per A-4 Notice Servers are entitled to get the two advance increments only at the initial entry stage and not at every stage of the pay scale at the time of fixation. Based on the alleged wrong fixation the applicant was asked to recover Rs.8692/- by the impugned order A-1. Aggrieved by the impugned order the applicant has filed this O.A. seeking the following main reliefs:

- i) Call for the records leading to Annexure A1 and set aside the same to the extent it orders recovery from the pay of the applicant.
- ii) direct the respondents not to recover the excess pay and allowances drawn by the applicant by way of wrong fixation of pay..

2. The respondents have filed a detailed reply statement contending that the excess payment made as a result of wrong fixation of pay is justified. While implementing the recommendations of the Vth Pay Commission Report the applicant's pay was fixed by granting two advance increments w.e.f. 1.1.96 in accordance with the Ministry of Finance, Department of

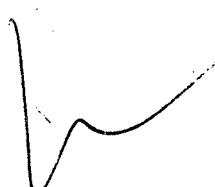


Revenue, Central Board of Direct Taxes letter dated 17.3.1999 which is Annexure R-1 and the pay and allowances of the Notice Servers in the revised scale has to be fixed in terms of Board's above letter granting two advance increments and the applicant's pay was fixed accordingly. Applicant's pay was also fixed in the upgraded scale with effect from 10.10.1997. The Department of Expenditure vide letter dated 5.12.2000 clarified that it is not correct that two advance increments would be available at every stage of pay scale at the time of fixation. The intention is that the benefit will be admissible only at the initial entry stage. Only such Notice Servers whose pay is fixed at the entry stage of Rs.3050/- and the next stage of Rs.3125/- in the revised scale of Rs.3050-75-3950-80-4590 will be entitled to the benefit of advance increments and the pay in their case as on 10.10.97 will be fixed accordingly at Rs.3200/-. (A copy of the letter dated 5.12.2000 is Annexure R-2.) Annexure R-3 is an undertaking made by the applicant is as follows.

"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."

3. Therefore, it is contended that the recovery of pay from the applicant is neither unjust or illegal. Therefore the O.A. does not have any merit.

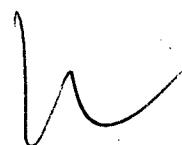
4. We have heard Shri T.A. Rajan learned counsel for the applicant and Shri C.B. Sreekumar, ACGSC for the respondents. Learned counsel for the respondents have taken us through various pleadings and material placed on record. The counsel for the applicant vehemently argued that the applicant has been given the



excess payment due to wrong construction of relevant orders that the authority considered the same and not on any misrepresentation made by the applicant. In the circumstance the recovery is unjust and illegal. The excess payment if any made is not of any fault on the part of the applicant. He has already drawn money and the recovery ordered from the pay will cause undue hardship and irreparable loss in case it is sought to be recovered.

5. Learned counsel for the respondents on the other hand argued that the excess amount was sought to be recovered on a wrong fixation made and the applicant is benefited by granting the same earlier and now could not have been sought for any relief.

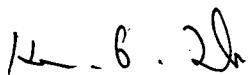
6. We have given due consideration to the arguments made by the counsel on both sides. One of the argument that advanced by the respondents that an undertaking has been given by the applicant to the fact that if any excess payment have been made the respondents are at liberty to recover the same on the basis of the undertaking (Annexure R-3) dated 27.10.97. Since the benefit that has been granted to the applicant and the pay has been re-fixed in the upgraded scale with effect from 10.10.97, we are of the view that this undertaking could not be related to upgraded fixation. Since we find that the undertaking is not relevant to the context that the refixation has been made without any misrepresentation from the part of the applicant, we are of the view that the recovery that has been sought on the pretext of mistaken refixation cannot be a ground for recovering the excess payment.



7. Learned counsel for the applicant has also brought to our notice the decision in Satyapalan Vs. Deputy Director of Kerala Education 1998 (1)KLT 399 in which the Hon'ble High Court of Kerala has declared that any pay fixation made without any misrepresentation cannot be a cause for recovery of the same. Another decision in Shyam Babu Verma and others Vs. Union of India and others (1994) 2 SCC 521 in which the Hon'ble Supreme Court has categorically laid down the law to the effect that any erroneous fixation of pay will not call for any recovery process.

8. Considering the legal position that has been laid down by the Apex Court, we are of the considered view that the recovery that has been sought by A-1 is not issued in true spirit of law, procedure and rules and therefore the impugned order is to be set aside with reference to the recovery position and we do so. We set aside A-1 and since no recovery has been made in furtherance of our interim order, no further direction is required. Recovery is set aside and the O.A. is allowed. In the circumstance no order as to costs.

Dated the 18th March, 2004.


H.P.DAS
ADMINISTRATIVE MEMBER


K.V.SACHIDANANDAN
JUDICIAL MEMBER

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