

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 75 of 2002

Tuesday, this the 13th day of April, 2004

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. K.P. Bharatharajan,
Notice Server, Office of the
Joint Commissioner of Income Tax,
Range-II, Ernakulam.Applicant

[By Advocate Mr. T.A. Rajan].

Versus

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-2, Ernakulam.Respondents

[By Advocate-Mr. C. Rajendran, SCGSC]

The application having been heard on 13-4-2004, the
Tribunal on the same day delivered the following:

O R D E R

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The applicant, a Notice Server drawing pay at Rs.1090/in the scale of Rs.800-1150 prior to the Vth Central Pay revision, got his pay fixed in the scale of Rs.2750-4400 with effect from 1-1-1996 and also two advance increments. However, later the pay scale of Notice Server was upgraded to that of Rs.3050-4590 on parity with Postmen with effect from 10-10-1997. The applicant's pay in the scale of Rs.3050-4590 was fixed giving him two advance increments again. Now, noticing that the grant of advance increments in fixation of pay with effect from 10-10-1997 was a mistake, Annexure A1 order has been issued for

recovery of the overpayment of Rs.10067/-. The applicant is aggrieved by the decision to recover the amount of Rs.10067/for the reason that the excess payment, if any, is not on account of any misrepresentation on his part and therefore it cannot be recovered. Hence, the applicant seeks to have the impugned order Annexure A1 set aside and a direction to the respondents not to recover any excess payment drawn by the applicant.

2. Respondents in the reply statement contend that the applicant was not entitled to have two advance increments given at every stage of pay fixation and the mistake of granting advance increments at a second time having come to light the action for recovery of overpayment has been made with a view to save loss to public exchequer. Respondents also contend that as the applicant had given an undertaking on 23-10-1997 (Annexure R3) to refund any amount, if found paid in excess, the action cannot be faulted.

3. We have gone through the pleadings and materials placed on record and have heard the learned counsel on either side. An identical issue was considered by this Tribunal in OA.No.74/2002. It was noticed that the undertaking given in that case on 23-10-1997 similar to Annexure R3 in this case did not cover the wrong payment made while the pay was refixed in the upgraded scale. Since the undertaking does not cover the second fixation of pay and grant of two advance increments, which was not really called for and the applicant not being responsible for the alleged overpayment in view of the decision of the Apex Court in Shyam Babu Verma & Others vs. Union of India & Others [(1994) 2 SCC 521], this Bench held that recovery was not justified. The facts are identical. The pay fixation which resulted in overpayment was not covered by the undertaking given by the applicant in this case. The undertaking was in

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regard to fixation of pay on implementation of the Vth Central Pay Commission report. The present overpayment arose on account of fixation of pay in the scale of Rs.3050-4590 regarding which the applicant had not given any undertaking. Therefore, we respectfully follow the decision of this Tribunal in OA.No.74/2002 and hold that the respondents are not entitled to recover the overpayment in this case.

4. In the result, the Original Application is allowed and Annexure A1 order is set aside. No order as to costs.

Tuesday, this the 13th day of April, 2004.

H. P. Das

H.P. DAS
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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