

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ERNAKULAM BENCH**

**Original Application No. 211 of 2013**

**Wednesday, this the 4<sup>th</sup> day of December, 2013**

**CORAM:**

**Hon'ble Mr. Justice A.K. Basheer, Judicial Member**  
**Hon'ble Mr. K. George Joseph, Administrative Member**

N. Mulla Koya, S/o. Late T.P. Kunhikoya,  
 aged 47 years, Stenographer, Electrical Division Office,  
 Kavaratti, Union Territory of Lakshadweep,  
 Pin – 682 555.

..... **Applicant**

**(By Advocate – Mr. V.B. Hari Narayan)**

**V e r s u s**

1. The Administrator,  
 Union Territory of Lakshadweep,  
 Kavaratti – 682 555.
2. Union of India, represented by its Secretary,  
 Ministry of Personnel, Public Grievances & Pension,  
 New Delhi.
3. Assistant Executive Engineer (Ele.),  
 Electricity Division Office,  
 Kavaratti -682 555.

..... **Respondents**

**[By Advocates – Mr. S. Radhakrishnan (R1&3)**  
**Ms. Deepthi Mary Varghese (R2)]**

This application having been heard on 04.12.2013, the Tribunal on the same day delivered the following:

**ORDER**

**By Hon'ble Mr. K. George Joseph, Administrative Member-**

The applicant entered the Government service in a common cadre post on 14.3.1988 as L.D.C. Later he was appointed as Stenographer Grade-III. While he was working as Typewriting Instructor his pay was fixed on par



with that of school teachers in the wake of the implementation of recommendations of the Vth Central Pay Commission. From November, 2012 onwards the respondents started deducting an amount of Rs. 1,000/- from the salary of the applicant. Aggrieved he has filed this Original Application for the following reliefs:-

- "a) To declare that the action of the respondents in recovering amounts from the salary of the applicant without any order authorizing such recovery or giving due notice to the applicant is absolutely illegal and violative of the principles of natural justice.
- b) To declare that the respondents have no authority to recovery excess pay if any drawn by the applicant on the basis of a wrong fixation of pay.
- c) To issue a direction to the respondents not to recover any amounts from the monthly salary of the applicant and further to refund the amount already recovered.
- d) To issue a direction to the 1<sup>st</sup> respondent to consider Ann A7 representation as expeditiously as possible.
- e) To issue such other reliefs as are deemed fit and proper in the facts and circumstances of the case."

2. The applicant contended that he was not informed of any reason before deducting the amount from his salary. His representations as at Annexures A6 and A7 requesting to stop the recovery have not elicited any reply. It is illegal to deduct any amount from the salary of the applicant without affording him an opportunity of being heard or without passing an order. It is well settled law that excess pay drawn on account of wrong fixation cannot be recovered from an employee.

3. Per contra, the respondents contended that while applicant was working as Typewriting Instructor which was an interchangeable post, the Headmaster, GHS, Kalpeni had wrongly fixed his pay in the higher pay scale of Rs. 4500-7000/- applicable to teachers instead of fixing his pay in the



scale of pay of Rs. 4000-6000/-. However, he was awarded 1<sup>st</sup> ACP and 2<sup>nd</sup> MACP in the pay scale for ministerial staff and not for teachers. When the 3<sup>rd</sup> respondent prepared the arrear salary bill he found that an amount of Rs. 21,116/- have already been paid to the applicant in excess which needed to be recovered from his salary. The applicant was intimated of the same vide OM No. 28/01/201AC-II/762, dated 25.3.2013. The respondents rely on the decisions of the Hon'ble High Court of Kerala in 2005 (2) KLT 63 – United India Insurance Company Ltd. v. Roy, 2007 (3) KLT 446, Joy v. DEO, Kothamangalam, 2005 (4) KLT 649 – Santhakumari v. State of Kerala and the decision of the Hon'ble Supreme Court in 2000 (9) SCC 187 – Union of India v. Sujatha Vedachalam, in support of their contentions that recovery sought to be made from the applicant is correct.

4. We have heard the learned counsel for the parties and perused the records.

5. The applicant has not disputed the fact that his pay was wrongly fixed in the pay scale of Rs. 4500-7000/- instead of Rs. 4000-6000/-. Though his representations at Annexures A6 & A7 have not been directly replied to, he has already been informed that the order passed by the Director of Education allowing higher pay scale of Rs. 4500-7000/- to him is irregular and his pay scale of Rs. 1200-2040/- (pre-revised) (Revised Rs. 4000-6000/-) fixed by his parent department is only admissible. Therefore, it is clear that the applicant is well aware why an amount of Rs. 1,000/- is sought to be deduced from his salary by the respondents. The pay of the applicant was wrongly fixed in the wake of implementation of the recommendations of the Vth



Central Pay Commission. Normally an undertaking is taken from the employees to the effect that if any excess amount is paid on account of any mistake while revising the pay scale the same will be recovered. The applicant has no contention that any such undertaking, is not given by him. Considering the large number of employees whose pay is being revised in a time bound manner it is possible that there can be mistakes in fixing pay in the revised scale. Therefore, it is open to the respondents on the basis of the undertaking from the employees to recover the excess amount if any paid to them. It may not be possible or necessary to afford an opportunity of being heard in all such cases before effecting recovery. Excess payment on account of wrong fixation is not a legal entitlement. It is an illegal enrichment. Under certain circumstances judicial discretion is exercised in ordering not to recover the excess amount from the employee. It has been held in 2005(2) KLT 63 – United Insurance Company v. Roy that “Due to inadvertence or otherwise a mistake has been committed which can always be corrected”. Following the judgment of the Division Bench of the Hon'ble High Court of Kerala in 2005 (4) KLT 649 – Santhakumari v. State of Kerala, recovery is unassailable when grant of higher grade was a result of an error of the administration in the matter of applying the relevant government orders as held in 2007(3) KLT 446. In 2012 (8) SCC 417 – Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors., the Hon'ble Supreme Court has held as under:-

“15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case and in Col. B.J. Akkara case, the excess payment made due to wrong/irregular pay fixation can always be recovered.”



The settled law is that excess payment made on account of a mistake on the part of the employer in applying the relevant orders, can be recovered.

6. In the light of the above we do not find any merit in the contentions of the applicant. The Original Application is dismissed. However, the respondents may consider recovery of the excess amount in easy instalments if the applicant requests for the same. No costs.



**(K. GEORGE JOSEPH)**  
**ADMINISTRATIVE MEMBER**



**(JUSTICE A.K. BASHEER)**  
**JUDICIAL MEMBER**

**"SA"**