

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 249/2004

.....FRIDAY...THIS THE 4th DAY OF AUGUST, 2006

CORAM

Hon'ble Mr. N.Ramakrishnan, Administrative Member
Hon'ble Mr. George Paracken, Judicial Member

- 1 K.M.Bhasi, Notice Server,
Office of the Additional Commissioner of
Income Tax, Range III,Ernakulam.
- 2 K.C.Jacob, Notice Server,
Office of the Additional Commissioner of
Income Tax, Range I
Ernakulam.
- 3 T.R.Michael, Notice Server,
Office of the Additional Commissioner of
Income Tax, Range I
Ernakulam.

.....Applicants

(By Advocate M/s Santhosh and Rajan)

Vs.

- 1 Union of India, represented by the
Secretary to Government of India,
Ministry of Finance,
New Delhi.
- 2 The Deputy Commissioner of Income Tax,
Company Circle I,Division I
Ernakulam.
- 3 The Additional Commissioner of Income Tax
Office of the Additional Commissioner of Income Tax,
Range I, Ernakulam.
- 4 The Additional Commissioner of Income Tax,
Office of the Additional Commissioner of Income Tax,
Range III, Ernakulam.

.....Respondents

(By Advocate Mr.P.J.Philip, ACGSC (rep.))

The application having been finally heard on 26.7.2006, the Tribunal on 4. 8.2006 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicants 1-3 have impugned the respective Annexure.A1 order dated nil, Annexure.A3 and Annexure.A5 orders both dated 27.1.2004 issued by the respondents re-fixing their pay in the scale of Rs. 2750-70-3800-75-4400 with effect from 1.1.1996 and in the scale Rs. 3050-75-3950-80-4590 w.e.f 1.1.96. At the time of fixation of their pay on both occasions the respondents have granted two advance increments due to an erroneous understanding of the instructions received by them in this regard which resulted in the excess payment of 10,145/- in the case of the applicant No.1 for the period from 1.1.1996 to 31.5.2002. Similar wrong fixations and excess payments have been done in the case of other two applicants Shri K.C.Jacob and T.R.Michael also and the overpayments so made to them were ordered to be recovered.

2 The facts are not in dispute. The applicants are working as Notice Servers. After the implementation of the recommendation of the Vth Central Pay Commission, the scale of pay of Notice Servers was revised from Rs. 800-15-1010-20-1150 to Rs. 2750-70-3800-75-4400 with effect from 1.1.96. In terms of the Department of Expenditure Notification No. SR 569(E) dated 30.9.97, the respondents have directed the concerned authorities to regulate the

pay of the Notice Servers in the revised scale granting two advance increments. Accordingly, the pay of the applicants have been revised with effect from 1.1.96. Later on, the pay scale of the Notice Servers was upgraded from the scale of Rs. 2750-70-3800-75-4400 to Rs. 3050-75-3950-80-4590 with effect from 10.10.97 and their pay was again regulated in terms of the aforesaid notification of the Department of Expenditure dated 30.9.97 by granting further two advance increments at the initial stage in the revised scale also. When the said unintended grant of double benefits to the Notice Servers came to the knowledge of the government, the Ministry of Finance, Department of Revenue, CBDT vide letter dated 5.12.2000 clarified that it was not correct to grant two advance increments at every stage of fixation and the intention of the Government was to grant advance increments only at the initial entry stage. On the basis of the aforesaid clarification, the pay of the applicants have been refixed in the revised scale with effect from 1.1.96 and the excess payment of pay and allowances received by the applicants from 1.1.96 onwards was ordered to be refunded.

3 When the matter was heard, the counsel for the applicants has fairly conceded that he had no objection in the matter of refixation of the pay of the applicants as ordered by the respondents in the respective impugned orders. However, he has submitted that the earlier pay fixations granting advance increments were done by the respondents themselves and neither there was

any demand nor any misrepresentation on the part of the applicants in this regard. They received the increased pay and allowance under the bonafide belief that they were entitled for the same. He has submitted that the applicants are low paid employees and any recovery at this stage will put them in great financial hardship. He has, therefore, submitted that the impugned orders may be quashed only to the extend that they direct refund of the excess payment received by the applicants.

4 We have heard Advocate Ms.Viji representing Shri P.J.Philip for the respondents and have also gone through their reply.

5 There is no dispute regarding the refixation of the pay of the applicants and the excess payment received by them on account of such refixation. Their only grievance is against the refund/recovery of excess payments made to them from 1.1.1996, as arrears. Their contention that the excess payments were made to them due to the wrong construction of the relevant orders by the respondents and not due to any misrepresentation by them, was not refuted by the respondents. The applicants' counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of *Shyam Babu Verma and others V. Union of India and others*, 1994(2) SCC 521 and in the case of *Union of India and others Vs. Rekha Majhi*, AIR 2000 SC 1562 in support of their objection to the recovery of over payments. On the other hand the respondents have submitted that no such recovery can be waived as prayed for by the applicants

as the issue involved has already been settled by this Tribunal in OA 27/04 and also by the Hon'ble High Court of Kerala in the cases of *Santhakumari Vs. State of Kerala, 2005(4) KLT 649* and in the case of *United India Insurance Co. Ltd. V. Roy, 2005(2)KLT 63*.

6 In a recent case decided on 23.1.2006 in OA 887/04 – *K.Ramachandran Pillai and others Vs. Kendriya Vidyalaya Sangathan and others* we have considered the question of recovery of excess payment after the judgment of the Hon'ble High Court of Kerala in *Santhakumari's case (supra)*, in the light of the various judgments of the Apex Court from that of the one in *Shyam Babu Verma and others (supra)* onwards. The main thrust in all those judgments was that if the overpayment was due to no fault of the government servants it shall not be just and proper to recover the excess amount which has already been paid to them. In *Nandkishore Sharma and others Vs. State of Bihar and others, 1995 (Supp) SCC 722* the Apex Court has again considered the very same issue and quashed the order directing recovery of the amount paid to the appellants in that case. Same is the position in the case of *Sahib Ram Vs. State of Haryana and others, 1994(5) SLR 753, P.H.Reddy and others Vs. NTRD and others, JT 2002(2) SC 483, V.Gangaram Vs. Regional Joint Director and others, (1997) 6 SCC 139 etc.* This Tribunal has also been following the aforesaid dictum laid down by the Apex Court in its various orders like *Neelakanta Shaha Vs. Union of India and others, 1987(3) SLJ CAT 306, C.S.Bedi Vs. Union of*

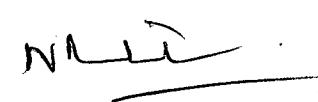
India, ATR 1988(2) CAT 577, *Vithal Dagdoo Marathe V. General Manager, Central Railway and others*, ATR 1989(2) CAT 65, *Govinda Sinha and others Vs. Garrison Engineer, Narangi Division, PO. Satgarh, Guwahati and others*, SLJ 1991(1) CAT 74, *K.S. Shridharan and others Vs. Union of India and others*, SLJ 1991 (1) 229, *Sri Chamel Singh Vs. Union of India and others*, SLJ 1992 (1) 315 etc. Various High Courts have also been following the principle laid down by the Apex Court in *Shyam Babu Verma's case* (supra) and *Sahib Ram's case* (supra). For example, the judgment of the Madhya Pradesh High Court in the case of *Mohd. Abdul Waheed Vs. APSEB Hyderabad and another*, 2000(1) Ssthan R 283, judgment of the Rajasthan High Court in the case of *State of Rajasthan Vs. Ram Narain*, 2002(4) SLR 793, the judgment of the Punjab and Haryana High Court (DB) in the cases of *Jatinder Kumar Grover V. State of Punjab and others*, 2003(1) SLR 669, *Tej Singh Retd. Superintendent Vs. The State of Punjab*, AIR 1997 SC 921 and the judgment of the Jharkhand High Court in the case of *Bharat Prasad Choudhary Vs. Jharkhand State Electricity Board and others*, 2003(5) SLR 319, can be cited.

7 In our considered opinion there is no other facts which would persuade us to deviate from our earlier order in OA.887/04. Accordingly, we partly allow this OA and quash the impugned Annexures A1, A3 and A5 orders only to the extent that they direct recovery of over payments made to the applicants. Since the

applicants themselves have not raised any objection regarding refixation of their pay, it goes without saying that it is upheld. There shall be no order as to costs.

Dated this the ^{4th} day of August, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

S