

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 141/2008

This the th05 day of June, 2009

Hon'ble Mr. M. Kanthaiah, Member (J)

Amarjeet Singh aged about 61 years, son of late Shriram Singh, resident of 1/105, Vikas Nagar, Lucknow.

Applicant.

By Advocate: Sri R.K.Upadhyaya

Versus

1. Union of India through the Secretary, Ministry of Information & Broadcasting, New Delhi.
2. Director General Doordarshan, Copernicus Marg, Doordarshan Bhawan, New Delhi.
3. Deputy Director General, Doordarshan Kendra, Lucknow

Respondents.

By Advocate: Sri S.P. Singh for Sri A.P.Usmani

ORDER

By Hon'ble Mr. M. Kanthaiah Member (J)

The applicant has filed the Original Application to quash the impugned order dated 28.11.2007(Annexure A-1) in respect of recovery of Rs. 1,53,212/- from the leave encashment of the applicant and also to refund of the same with interest on the ground that there was no misrepresentation from the applicant in getting benefit of wrong fixation and further that the excess payment made on the basis of wrong pay fixation in the past cannot be recovered from his post retiral benefits.

2. The respondents have filed counter affidavit denying the claim of the applicant stating that there was wrong fixation of pay of the applicant in the year 1.7.1978 to 30.6.2007 for an amount of Rs. 1,53,212/- which has been recovered from the payment of leave encashment of the applicant and as such there is no illegality on the part of the respondents.

3. The applicant has filed rejoinder denying the stand taken by the respondents and also reiterated the pleas taken in O.A.
4. Heard both sides.
5. The point for consideration is whether the applicant is entitled for the relief as prayed for.
6. The brief facts of the case are that the petitioner retired from service on 31.7.2007 after attaining the age of superannuation and he was entitled for an amount of Rs. 2,11,333/- towards leave encashment, but the respondent authorities have deducted an amount of Rs. 1,53,212/- and paid balance of Rs. 58,121/- . The respondents have deducted the said amount of Rs. 1,53,212 on the ground that there was wrong fixation in the pay and allowances of the applicant from 1.7.1978 to 30.6.2007, which comes to 1,53,212 which they came to know when objection raised by the Pay and Account Officer vide order dated 19.6.2007. It is also the case of the respondents that the pay of the applicant had been inadvertently fixed in the year 1.1.78 Rs. 550 and thereafter, he had received next increment on 1.7.78 i.e. Rs. 575/-. Actually the applicant was not promoted in the pay scale of Rs. 552-900/- as such his pay was fixed as per the order of revised pay scale but not on promotion. Thus, there was wrong fixation of pay and allowances of the applicant from 1.1.78 to 30.6.2007 and as such, they have deducted the same from leave encashment amount payable to the applicant.
7. It is not the case of the respondents that there was any misrepresentation or fraud played by the applicant while fixation of his pay on 1.1.78 till is retirement. Admittedly, the said wrong fixation was made by the respondent authorities, without any knowledge to the applicant. Though the respondents have contended that they have communicated the objection raised by Pay and Accounts Office to the applicant on 14.6.2007, but they have not

placed any such material to substantiate their claim. From this it is clear that the authorities have deducted the amount of Rs. 1,53,212/- from of his leave encashment after his retirement and without giving any opportunity to him. Admittedly, there was no fault on the part of the applicant in the said wrong fixation made in the month of July 1978 which continued till his retirement. In such circumstances, it is not open to the respondents to blame the applicant and recover the amount from his leave encashment after his retirement and that too without any intimation and as such, the applicant is justified in questioning the validity of such deductions and claiming for refund of the same with interest thereon.

8. Following citations, relied by the applicant are also supporting his stand:

(i) **1995 Supp (1) Supreme Court Cases 149-Gabriel Saver Fernandes and Others Versus State of Karnataka and Others- Service law-Pay-Different pay scales, on the basis of qualifications-validity-higher pay scale for Talatis and Village Accountants possessing SSLC qualification and lower pay scale for those without such qualification-Held, does not involve invidious discrimination-Appellants although not eligible to the higher scale, since had already retired, payment made to them in the higher scale during service period restrained from being recovered.**

(ii) **1997 (2) LBESR 38 (Allahabad High Court) in Dr. Vijay Narain Singh Versus State of U.P. through Secretary to U.P. -Service laws-Re-employment after aged of superannuation-if a person has been paid an amount of which he was not entitled under the law, and there was no misrepresentation or fraud on his part, said amount not to be recovered from him as he could not be held responsible for extra-payments made to him.**

(iii) **2002 (1) LBESR 834 (SC) PH. Reddy Vs. N.T.R.D. and Ors. Service laws-pay scale-Re-fixation of pay on employment of defence personnel in**

civil service-erroneous fixation of pay held can be corrected-repayment of excess pay drawn however not allowed.

9. In view of the above circumstances, the applicant is entitled for refund of deducted amount of Rs. 1,53,212/- from his leave encashment amount with interest as admissible and with this direction to the respondents, this O.A. is allowed. No costs.


(M. Kanthaiah)

05-06-09

Member (J)

v.