

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH**

O.A. No. 240 of 2006

Date of order : 03.01.2008

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member (J)

Kailash Chandra Yadav, S/o Late Dhiraj Prasad adav, r/o village & P.O. Banka, District – Munger.

....Applicant

By Advocate : Shri J.K. Karn

Vs.

1. The Union of India through the Secretary, Ministry of Human Resources Development [Education Department] Government of India, New Delhi.
2. The Commissioner, Kendriya Vidyalaya Sangathan, Shaheed Jeet Singh Marg, 18 Institutional Area, New Delhi.
3. The Dy. Commissioner [Personnel] Kendriya Vidyalaya Sangathan, Shaheed Jeet Singh Marg, 18 Institutional Area, New Delhi.
4. The Asstt. Commissioner, Kendriya Vidyalaya Sangathan, Shaheed Jeet Singh Marg, 18 Institutional Area, New Delhi.
5. The Joint Commissioner [Admn } Kendriya Vidyalaya Sangathan, Regional Office, Kolkata -54
6. The Asstt. Commissioner, Kendriya Vidyalaya Sangathan, Patna Region, Lohia Nagar, Kankarbagh, Patna.
7. The Principal , K.V., Garhara.

....Respondents

By Advocate : Shri G.K. Agarwal.

O R D E R [Oral]

Sadhna Srivastava, M [J]:- This application involves two points for adjudication – firstly, to refund Rs. 46537/- recovered from the gratuity on account of over-payment of salary and secondly, fixation of pension and payment of pensionary benefits @ Rs. 8650/, instead of Rs. 8300/-



2. The facts are that the applicant retired on superannuation on 31.12.2005 after rendering 32 years, 3 months and 27 days of service, while holding the post of Head Master at Kendriya Vidyalaya, [K.V in short] Garhara. On being promoted to the post of Principal, the pay of the applicant was fixed vide order dated 30.12.01 in the scale of Rs. 5500-175-9800/- [Annexure A/1]. His basic pay was fixed at Rs. 7425/- with effect from 16.12.2000, and Rs. 7950 with effect from 1.2.2001. Thereafter, the applicant was transferred from Lucknow Region to Patna Region. His pay was again fixed at Rs. 7300/- with effect from 1.2.2000 and Rs. 7300/- with effect from 16.12.2000 vide order dated 3.11.2003, issued by Audit and Accounts Officer, K.V. [Annexure A/2].

3. Aggrieved by order dated 3.11.2003, the applicant filed representation. It is alleged in the OA that the order dated 3.11.2003 has never been given effect to, and at the time of retirement, the applicant was getting his salary as fixed by order dated 30.10.2001 [Annexure A/1]. After retirement, the pension of the applicant has been fixed, treating his last salary drawn @ Rs. 8300/- and all the pensionary benefits have been calculated and released to the applicant accordingly. Further, the amount of Rs. 46537/- has been deducted from the retiral benefits of the applicant. It is submitted by the applicant that his pensionary benefits as well as pension should have been fixed , treating his last salary drawn @ Rs. 8650/-.

4. The respondents have filed written statement stating therein that the



applicant's pay was wrongly fixed by order dated 30.10.2001, which was subsequently rectified by order dated 3.11.03. Therefore, the amount of Rs. 46537/- which was over-paid to the applicant was recovered from his retiral benefits.

5. The applicant feeling aggrieved has approached the Tribunal. He has sought two reliefs - [i] to refund Rs. 46537/- and [ii] for fixation of pension and pensionary benefits on the basis of last pay drawn i.e. Rs. 8650/-

6. As regards the relief claimed by the applicant regarding refund of gratuity amount, the law is well settled that if the excess payment has been made without there being any misrepresentation on the part of the applicant, it is not open to the employer to recover the same. In the case of Saheb Ram Vs. State of Haryana, 1995 Supp. [1] SCC 18, the upgraded pay scale was given due to wrong consideration on the part of the employee. The Apex Court held that the excess payment to the employee cannot be recovered. Relying on the law laid down by the Supreme Court, Patna High Court in the case of [A] Raghbir Prasad Singh vs. BSEB, 1996 BBCJ page 15 [b] Gupteshwar Prasad vs. State of Bihar, 93 PLJR 572 and [c] Mahendra Prasad vs. State of Bihar, 2006 [1] PLJR 139, have also held that if the excess payment has been made without there being any misrepresentation on behalf of the employee, it is not open for the employer to recover the same.

7. The second question is about pension and pensionary benefits on the



basis of pay drawn for the last 10 months @ Rs. 8650/- or Rs. 8300/-. The respondents have calculated the pension and pensionary benefits treating his salary as Rs. 8300/-. The applicant's pay was re-fixed in the year 2003 without giving any show cause notice to the applicant. His representation filed against the order dated 3.11.2003 has also not been disposed of. It is settled law that no order bearing civil consequences can be passed without affording opportunity of hearing to the employee. Therefore, the respondents have to grant an opportunity to the applicant to make the representation and then to pass a reasoned and speaking order regarding fixation of pension and pensionary benefits. Thus, the OA is disposed of with the following directions :-

[i] The respondents shall refund the amount of Rs. 46,537/- to the applicant with interest at the rate of 9 % per annum from the date of recovery of the amount till the amount is actually paid.

[ii] The respondents will pass reasoned and speaking order regarding fixation of pay for the purpose of pensionary benefits, after giving due opportunity to the applicant, within four months from the date of receipt of copy of this order.

8. This OA stands disposed of, accordingly without any order as to the costs.


[Sadhna Srivastava] M [J]

/cbs/