

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH : PATNA

Date of Order:-4.9.2006

Registration No. OA-47 of 2006

C O R A M

Hon'ble Km Sadhna Srivastava, Member (J)

Md. Masoodul Haque

.....Applicant

-By Shri M.P.Dixit, Advocate

Versus

The Union of India & Others

.....Respondents

-By Shri B.N.Gupta, Advocate

O R D E R

(Pronounced in open Court
through dictation)

Hon'ble Km Sadhna Srivastava, Member (J) :- With consent of the counsels for the parties the case has been taken up for final decision. The applicant was working in the Postal Department and on the basis of Fourth Central Pay Commission the applicant was granted higher pay scale, and ultimately he retired on 31.7.2003. Thereafter it appears that on the basis of Audit Objection the order dated 20.9.2005 as contained in Annexure-A-3 was issued, after review of the case of stepping up of pay of the applicant and others. The order of recovery of over payment of pay + DA + I.R. + HRA was issued against the applicant as well as some other persons. A sum of Rs. 9,740/- in the case of applicant was ordered to be recovered. Counsel for applicant, Shri M.P.Dixit, submits that a similarly situated person, Shri



Girja Nand Ram against whom also recovery of Rs. 19,450/- was ordered by the same impugned order dated 20.9.2005 (Annexure-A-3) had filed OA-791 of 2005 which was allowed by this Tribunal and the recovery has been quashed by this Tribunal by order dated 5.5.2006.

2. On the other hand the counsel for respondents, Shri B.N.Gupta submits that in the Audit report excess payment was found and the matter was reviewed by High Power Committee. By the impugned order mistake has been corrected by the department and the order for recovery has been issued. It is not the case of respondents that over-payment was made due to any fraudulent practice on the part of the applicant or on misrepresentation made by him. Obviously the mistake, if any, was committed by the authority who had fixed the pay.

3. The Apex Court in the Gorakhpur University Vs. Director, Sitala Prasad, 2001 SCC (L&S) 1032 has held that if there is no misrepresentation on the part of the applicant recovery is bad in law.

4. In case of Saheb Ram Verma Vs. State of Haryana, 1995 SCC (L&S) 248 (Supra) Hon'ble Supreme Court had considered the matter in which an employee to whom upgraded pay was given due to wrong consideration of relevant rules by the authority concerned, when no misrepresentation was made by the employee concerned their Lordships held that the applicant, therefore, should not be held responsible for the mistake and the amount paid till date should not be recovered from him.

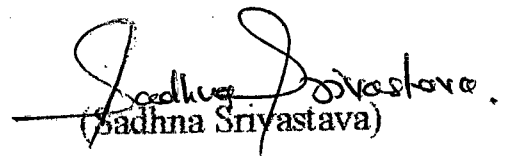
5. In the case of P.H. Reddy Vs. NTRD; 2002(4) ESC page 20, three Judge Bench of the Apex Court has considered a similar issue. In that case higher pay in the pay scale fixed to ex-service man on his re-employment. Subsequently the pay was correctly fixed. The question that arose was whether the excess pay drawn should be recovered. Their Lordships held

that the excess payment should not be recovered, but it was erroneous fixation made by the authority and not by the applicant.

6. The instant case is on similar footing. In this case also excess payment has been made to the applicant years back due to erroneous fixation made by the authority concerned and the recovery was ordered after retirement.

7. In view of the aforesaid discussions I am of the opinion that the recovery is bad in the eyes of law.

The application is allowed. The recovery order as contained in Annexure=A-3 in so far as this applicant is concerned is hereby quashed. The amount already recovered shall be refunded to the applicant within 2 months from the date of receipt of a copy of this order. There will be no order as to costs.


(Sadhna Sriyastava)

Member (J)

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