IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 737/2005 With OA No. 266/2009

Date of Order: 20th March, 2012.

C O R A M
HON'BLE MR. NARESH GUPTA, MEMBER[A]
HON'BLE MRS. BIDISHA BANERJEE, MEMBER[J]

1. O.A. No. 737/2005

Arun Kumar Mishra, son of Late Rama Kant Mishra, aged about 54 years, resident of New Paharpur, P.O. -Anisabad P.S.- Gardani Bagh, Dist.- Patna and at present posted as PA to Commander as Stenographer Grade -I office of the Commanding Jharkhand Orissa and Bihar Sub Area Danapur Cantt., P.S.- Danapur Cantt., Dist.- Patna.

..... Applicant.

By Advocate: - Shri Satyendra Prasad

-Versus-

1. The Union of India through the Secretary to the Govt. of India, Ministry of Defence, South Block DHQ, PO, New Delhi – 110011.
2. Adjutant General Army Headquarters DHQ PO, New Delhi.
3. The Director General Staff Duties, Army Headquarters, DHQ PO, New Delhi:- 110011.
4. The Deputy Chief of Army Staff (T&C) Army Headquartrer DHQ PO, New Delhi – 110011.
5. The Office Commanding JOB Sub Area Danapur Cantt., P.O.- Danapur Cantt., Dist.- Patna.
6. The Controller of Defence Accounts (CDA) Patna- 800019.

..... Respondents.

By Advocate: -Shri S.K. Tiwary

2. O.A. No. 266/2009

Arun Kumar Mishra, son of Late Rama Kant Mishra, aged about 54 years, resident of New Paharpur, P.O. -Anisabad P.S.- Gardani Bagh, Dist.- Patna and at present posted as PA to Commander as Stenographer Grade -I office of the Commanding Jharkhand Orissa and Bihar Sub Area Danapur Cantt., P.S.- Danapur Cantt., Dist.- Patna.

..... Applicant.

By Advocate: - Shri A.N. Jha

-Versus-

7. The Union of India through the Secretary to the Govt. of India, Ministry of Defence, South Block DHQ, PO, New Delhi – 110011.
8. Adjutant General Army Headquarters DHQ PO, New Delhi.
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11. The Office Commanding JOB Sub Area Danapur Cantt., P.O.- Danapur Cantt.,

Dist.- Patna.
12.The Controller of Defence Accounts (CDA) Patna- 800019.

..... Respondents.

By Advocate: -Shri S.K. Tiwary

ORDER

Naresh Gupta,Member [Administrative] :- The two OAs have been filed by one Arun Kumar Mishra- OA No. 737 of 2005 seeking a direction to the respondents to fix the pay of the applicant in the scale of Rs. 6500 – 10,500 in the grade of Stenographer Grade I w.e.f. August 1999 with all consequential benefits and to pay the arrears, and OA No. 266 of 2009 for quashing the PPO dated 4th December 2007 [Annexure A/5 of that OA] issued by the Controller of Defence Accounts [CDA], Pensions [respondent No. 7] and seeking a direction to the respondents to refix the retrial benefits on the last basic pay of Rs. 7,600 instead of on Rs. 7,250, provide other consequential benefits and to refund the amount of Rs. 83,295 plus Rs. 1,000 which was recovered from the gratuity of the applicant with 12% interest thereupon. As the applicant is the same and the reliefs sought in the two OAs are interlinked, the two OAs are dealt with together and a common order is passed.

2. The facts of the case briefly are that the applicant was appointed as Stenographer Grade II under the Ministry of Defence in the pay-scale of Rs. 1,400- 2,600 w.e.f. 1st August 1988. This was upgraded w.e.f. 1st January 1992 to Rs. 1,640- 2,900 [Annexure R/4 of WS] in pursuance of the letter dated 29th October 1993 of the Ministry of Personnel, Public Grievances and Pensions, GOI [Annexure A/1 of OA No. 737 of 2005= R/5 of WS] for bringing at par all Stenographers serving under GOI with the Stenographers of the Central Secretariat. This was said to have ordered following the OAs bearing Nos. 2865/ 1991 and 529/ 1992 and CCPs 262/ 1993 and 263/ 1993 filed by the Stenographers of the Central Administrative Tribunal. Based on the recommendations of the 5th Pay Commission, the pay-scale of Rs. 1,400- 2,600 was revised to Rs. 5,000- 8,000 and the pay-scale of Rs. 1,640- 2,900 was revised to Rs. 5,500- 9,000 w.e.f. 1st January 1996. He was promoted in situ as Stenographer Grade I w.e.f. 1st August 1999 vide order dated 18 May 1999 [Annexure A/2 of OA No. 737 of 2005= R/1 of WS] and put in the pay-scale Rs.

5,500- 9,000 [Annexure R/2 of WS]. The upgradation of his pay-scale to Rs. 6,500- 10,500 w.e.f. 1st August 1999 [date of his in situ promotion] was not approved by the CDA vide letter dated 15.12.2004 [Annexure A/6 of OA No. 737 of 2005= R/7 of WS]. The office of the CDA pointed out that according to the aforesaid letter of GOI dated 29th October 1993, only the pay-scale of Assistants/ Stenos Grade II had been revised from Rs. 1400- 2,600 to Rs. 1640-2900 w.e.f. 01.01.1992 and it did not authorize the grant of pay-scale of Rs. 6,500- 10,500. Further, the grant of higher pay-scale proposed under FR 22(1)(a)(i) was not in order as there was no change of duty and responsibility of a higher order. Consequentially the order [DO Part II order dated 13th November 2004] for the higher pay-scale of Rs. 6,500- 10,500 was cancelled. The respondents have stated that the pay-scale of Rs. 5,500- 9,000 granted to the applicant in the post of Stenographer Grade II was by oversight and, therefore, granting him pay-scale of Rs. 6,500 – 10,500 was not in order.

3. The applicant has stated that he had received the payment towards arrears for the period from 01.01.1996 to 31.03.2004 amounting to Rs. 58,203 consequent to fixation of his pay in the scale of Rs. 5500-9000 w.e.f. 01.01.1996 [Annexures A/3 & A/4 of OA No. 737 of 2005] and on this basis, this Tribunal dismissed on 29th December 2004 the OA bearing No. 105/2002 [Annexure A/5 of OA No. 737 of 2005]. Also, vide letter dated 22.02.2005, the applicant was granted the higher pay-scale of Rs. 6,500 -10,500 w.e.f. 1st August 1999 [Annexure A/8 of OA No. 737 of 2005]. The applicant preferred representations dated 25.02.2005 and 11.03.2005 seeking monetary benefit of the promotion. He has contended that the recruitment process, duties and responsibilities of Stenographer Grade II were the same and similar as of the corresponding posts in the Central Secretariat and the Central Administrative Tribunal.

4. After filing of the OA bearing No. 737 of 2005, the arrears amount already paid to the applicant was recovered from the gratuity of the applicant without issue of any show cause notice necessitating the filing of another OA [No. 266 of 2009] against the recovery by quashing of the PPO dated 4th December 2007 [Annexure A/5 of OA No. 266 of 2009]. It has been claimed that the retiral benefits of the applicant be fixed on the last pay drawn [basic pay] of Rs. 7,600 instead of on Rs. 7,250. The respondents have submitted that

when the applicant was Stenographer Grade II in the pay-scale of Rs. 5,000-150-8,000, his pay was erroneously revised to Rs. 5,500-175-9,000, which is applicable to the Stenographer Grade II employees of the Central Secretariat and CAT only. Further, the applicant sought, when promoted as Stenographer Grade I, the higher scale of pay of Rs. 6,500-200-10,500, applicable to CAT employees but the CDA Patna did not allow this pay-scale pointing out that the applicant was authorized the scale of Rs. 5,500-175-9,000 and accordingly recovery was ordered. The applicant, while working as personal Assistant to the Commander, HQ, JOB had represented his case to him and moved the CDA Patna for fixation of his salary which was applicable only to the Central Secretariat and CAT employees. He also filed OA No. 105 of 2002 before this Tribunal wherein due to some mistake, the CDA, Patna accepted and fixed his pay as desired by the applicant for Steno Grade II. Having obtained this fixation for the post of Stenographer Grade II held by him earlier, he moved for fixation of his pay for Stenographer Grade I at par with that applicable for CAT employees. This was thwarted by the CDA, Patna who did not enhance his pay to the scale he wanted and also took steps to correct the mistake made earlier and asked for recovery of the excess pay allowed to him as Stenographer Grade II. The applicant has moved this Tribunal in OA No. 737 of 2005 for fixation of his pay at par with that applicable for Central Secretariat and CAT employees. The CDA, Patna has confirmed that the pay authorized to the applicant was Rs. 7,250 only [and not Rs. 7,600] as per the revised data sheet as well as PP dated 04.12.2007 and the over-payment due to irregularity in payment was recovered correctly.

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5. Heard the learned counsels of the applicant and the respondents and perused the entire record. It is seen that the applicant had sought fixation of pay in the post of Stenographer Grade II and later in the post of Stenographer Grade I at par with that applicable for Central Secretariat and CAT staff holding corresponding posts. A perusal of the letter dated 29th October 1993 of the Ministry of Personnel, Public Grievances and Pensions, GOI [Annexure A/1 of OA No. 737 of 2005= R/5 of WS] indicates that the benefit of parity in pay-scale was limited to the Assistants and Stenographers Grade 'C' in the Central Administrative Tribunal [CAT] whose pay-scale was revised from Rs. 1400- 2600 to Rs. 1640- 2900 w.e.f. 01.01.1992 as applicable

to the Central Secretariat staff subject to the condition that the recruitment rules for the posts of Assistants and Stenographers Grade 'C' in the Tribunal be brought at par with those in the Central Secretariat. This had been done following the order of this Tribunal in OA Nos. 2865/91 and 529/92 dated 04.02.1993. There is no indication in the above letter of its applicability to the corresponding staff in other Departments of GOI.

6. It is axiomatic that the pay-scales are determined/ revised based on the recommendations of Pay Commissions which are set up periodically by the Government comprising of experts. If any anomaly arises out of the recommendations [and their acceptance], the aggrieved staff-members are supposed to represent their grievance for consideration by the Government. In State Of Haryana & Ors vs Charanjit Singh & Ors., the Hon'ble Supreme Court held on 5 October, 2005 as follows:

> *17) Having considered the authorities and the submissions we are of the view that the authorities in the cases of Jasmer Singh, Tilak Raj, Orissa University of Agriculture & Technology and Tarun K. Roy lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a Court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities made a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal*

pay for equal work should be required to raise a dispute in this regards. In any event the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a Court, the Court must first see that there are necessary averments and there is a proof.

7. The next issue which arises for determination in this case is whether recovery could be effected once re-fixation of pay-scale had been done due to the mistake, as indicated by the respondents, on their part and this recovery could be made after retirement of the applicant from his retiral dues like gratuity. The learned counsel for the respondents cited the decision of this Tribunal in OA No. 703 of 2002, date of order 27th May 2009, in which on examination of record by the Department soon after retirement of the applicant in that OA, it was found that the pay had been wrongly fixed and subsequently by an order, the mistake was rectified and the amount paid in excess was adjusted against the payable DCRG. The applicant had challenged this order. The Tribunal referred to the judgment dated 15.01.2009 of a 5-member Bench of the Tribunal in OA No. 1227 of 2005 [Sudhir Kumar Pal vs. UOI & Ors.] along with connected OAs wherein it was held as follows:

"Overpayments, received irrespective of the manner in which they came into operation, are recoverable and are debits of the concerned person to be repaid to Administration."

The Tribunal also referred in the above case [OA No. 703 of 2002] to the decision of the Hon'ble Kerala High Court in P.J. Samutha Kumari vs. UOI: 2006(1) ATJ 321 and dismissed the OA. This question has come up for consideration before various High Courts in which they have referred also to the decisions of the Hon'ble Supreme Court, to which we shall advert to now.

8. The Hon'ble Jharkhand High Court in Grace Chaudhary vs The State Of Jharkhand & Ors on 12 December, 2008 held as follows:

10. I have considered the pleadings, submissions and the rival arguments of the parties. The learned counsel for respondent No.4 has referred to and relied upon the following judgments (2000)9 SCC page-187 [Union of India V. Sujatha Vedachalam (SMT)], (2001)4 SCC page-309 (Union of India V. Rakesh Kumar) and (2008)2 SCC page- 229 (Union of India V. S.R.Dhingra) to support his case that the petitioner being erroneously paid higher amount by mistake and thus they were entitled to recover the same. In (2000)9 SCC page-187 [Union of India V. Sujatha Vedachalam (SMT)] the matter related to recovery of excess payment on account of wrong fixation of pay and the Hon'ble Supreme Court directed that recovery of excess payment may be recovered in easy installment spread over for 15 years or till the date of retirement. This was a case where the concerned officer was actually in service and had not retired and it was in these backgrounds that the Hon'ble

Supreme Court has directed to recover the amount in easy installment which may be spread over for 15 years or till the date of retirement. Thus, this judgment does not support the contention raised by the counsel for respondent No.4. The second case referred to and relied upon i.e. (2001)4 SCC page-309 (Union of India V. Rakesh Kumar) is related to installment of pensionary benefit. This was a case where pensionary benefit was granted to an ineligible employee in violation of the statutory rules and the facts of this case does not apply to the present case. The third case referred to and relied upon is (2008)2 SCC page- 229 (Union of India V. S.R.Dhingra) which is against the respondents and in favour of the petitioner and at paragraph 28 the Hon'ble Supreme Court held as under:-

"However, any amount already paid to the respondents and other similarly situated persons shall not be recovered from the ....."

11. The fact remains that this is a case where admittedly the respondent authorities have committed the mistake and thus they cannot take benefit of their own default. It is not a case where any excess payment was made to the petitioner by making any false representation or committing fraud, it was a bonafide case of pension fixed on the basis of last pay drawn and thus petitioner cannot be blamed or put to fault. It is well settled that any action which is punitive in nature and involves civil consequences has to necessarily comply with the cardinal principle of natural justice otherwise such action is violative of Article 14 of the Constitution of India. The petitioner was entitled to at least a show cause and explanation before making the recovery.

12. Considering the aforesaid facts and circumstances of the case, the amount already paid towards pension to the retired petitioner cannot be recovered. However, the respondents are entitled to make necessary correction in the pay scale last drawn after giving due notice to the petitioner and thereafter can fix the revised pension in accordance with law for further payment.

13. This writ petition is partly allowed but without any order as to costs.

9. In C. Ponnammal vs Indian Bank, the Hon'ble Madras High Court held on 19 February, 2009 as follows:

*15. It is well settled that when the employee had not misrepresented or is in no way responsible for the excess payment which was discovered by way of audit objection or otherwise, there can be no recovery. In (1994) 2 S.C.C. 521 [**Shyam Babu Verma vs. Union of India**], the Supreme Court held that where excess amount had been paid due to no fault of the employees, there can be no recovery and that any excess amount drawn by the writ petitioner cannot be recovered from her. In 2009 (1) SCALE 36 [Syed Abdul Qadir vs. State of Bihar], the Supreme Court has observed as follows : This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.* ***The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong***

payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. *See Sahib Ram vs. State of Haryana, 1995 Suppl. (1) SCC 18, Shyam Babu Verma vs. Union of India, (1994) 2 SCC 521; Union of India vs. M. Bhaskar, (1996) 4 SCC 416; V. Ganga Ram vs. Regional Jt. Director, (1997) 6 SCC 139; Col. B.K. Akkara (Retd.) vs. Government of India & Ors., (2006) 11 SCC 709; Purshottam Lal Das & Ors. vs. State of Bihar, (2006) 11 SCC 492; Punjab National Bank & Ors. vs. Manjeet Singh & Anr., (2006) 8 SCC 647; and Bihar State Electricity Board & Anr., vs. Bijay Bahadur & Anr., (2000) 10 SCC 99. In 2008 (15) SCALE 486 [State of Bihar vs. Pandey Jagdishwar Prasad], it was held by the Supreme Court as follows: It has been held in a catena of judicial pronouncements that even if by mistake, higher pay scale was given to the employee, without there being misrepresentation or fraud, no recovery can be effected from the retiral dues in the monetary benefit available to the employee. This Court in the case of Kailash Singh v. The State of Bihar and Ors. 2004 (1) PLJR 289 (SC), held that recovery sought to be made from the salary of the employees on the ground of alleged over stay in service on the basis of age assessed or considered, despite the fact that the employee has worked during the period of alleged over stay could not be made. In Sahib Ram v. State of Haryana and Ors., 1995 Supp. (1) SCC 18, this Court has held that even if by mistake, higher pay scale was given to the employee, without there being misrepresentation or fraud, no recovery can be effected from the retiral dues in the monetary benefit available to the employee.*

10. In Ram Binod Singh, Shabbir Alam, Sri ... vs The Bihar State Electricity Board ... on 4 July, 2007, the larger Bench of Hon'ble Patna High Court had occasion to refer to different decisions of the Courts on the subject. The relevant paras are extracted below.

1. Specific orders referring the relevant issues for decision by a larger Bench have been passed in CWJC No. 12181 of 2003 Ram Binod Singh v. the Bihar State Electricity Board and Ors. and in CWJC No. 8677 of 2003 Shabbir Alam v. Bihar State Electricity Board. The other matters have been listed because they are also dependent upon the outcome of answer to the issues under reference.

2. The orders making reference disclose that the learned Single Judges hearing the writ petitions noticed that the view taken by a Division Bench of this Court in case of Bihar State Electricity Board and Ors. v. Man Bahadur and Ors. reported in 2004 (3) PLJR 3 appears to be contrary to earlier Division Bench judgments of this Court, particularly in the case of Bihar State Electricity Board and Ors. v. Madan Mohan Prasad and Ors. 2001 (2) PLJR 58.

4. On behalf of the employees, who are the writ petitioners or respondent in the only LPA, a categorical stand has been taken that the Division Bench of this Court in the case of Bihar State Electricity Board v. Madan Mohan Prasad (supra) has taken a correct view of law in holding that" Law is well settled that money benefit paid to an employee in excess of his entitlement should not normally be recovered from Mm after a long lapse of time, particularly after his superannuation from service. It is, however, subject to two exceptions, namely, if the order granting the money benefit itself stipulates that the same is liable to be recovered if found erroneous at a later stage or is subject to approval by authorities. The second exception is that such a money benefit can be recovered if it is found at any later stage that the same had flowed to the employee on account of fraud, misrepresentation or the like attributable to him".

5. On the other hand on behalf of the Board and on behalf of the State of Bihar a stand has been taken that although the later Division Bench judgment in the case of BSEB and Ors. v. Man Bahadur and Ors. (supra) has missed to notice the earlier Division Bench judgment in the case of Madan Mohan Prasad but nonetheless it lays down the law correctly by holding that excess payment due to mistake in pay fixation grant of increment or the like leading to wrong calculation of salary of the employees can be recovered from the retrial or other dues and the recovery cannot be resisted on the ground that there was no fraud or misrepresentation on the part of the concerned employee.

.....

25. In view of aforesaid discussion of relevant judgments cited on behalf of the parties, it is noticed that in the case of ***Sahib Ram*** *(supra) decided by a Bench of two Hon'ble Judges on 19.9.1994, no recovery was permitted even from a serving employee on the ground that higher pay scale was wrongly given to the concerned employee by wrong construction made by the Principal for which employee cannot be held to be at fault whereas in the case of* ***V. Gangaram v. Regional Joint Director*** *(supra) another Bench of two Hon'ble Judges of the Supreme Court presided by the same senior Judge, on 25.4.1997, permitted recovery of excess payment even from pension where certain increments were found to be wrongly given. The two later judgments also by a Bench of two Hon'ble Judges i.e. in the case of* ***State of Punjab v. Devinder Singh*** *(supra) decided on 21.7.1997 and in the case of* ***Union of India v. Sujatha Vedachalam*** *(supra) decided on 7.4.2000, excess payment on account of wrong grant of pay scale and in case of wrong fixation of pay was permitted to be recovered in a phased manner or in instalments.*

26. ***The relevant provisions of the Indian Contract Act, particularly Section 72 cover cases of mistake of fact as well as law and provide for recovery. The principle of restitution in case of unjust enrichment is also an accepted principle for ensuring justice in appropriate case. Hence, in law, the position appears to be clear that there is no legal bar in ordering for recovery from retired employees where they have received money benefits on account of mistake at the ministerial level in the matter of fixation of pay, grant of increments or time bound promotion when the conditions precedent for such promotions were clearly non est.*** *However, it has been correctly submitted on behalf of the petitioners that the theory of simple mistake or error to justify recovery will not hold good where die grant did not suffer from patent illegality or perversity so as to attract the Wednesbury Principle or the vice of malafide in law. For example, where two interpretations of a provision were possible and one was consciously approved and adopted by the competent authority meant to be applied generally to all concerned, any error in such decision of the competent authority if corrected at a later stage may be ordered to apply only prospectively. More so, if the decision has been followed for many years. In other words, if on reinterpretation or adjudication the earlier view permitting the grant of monetary benefits is found to be by a competent authority and bonafide but wrong, mistaken or erroneous, then ordinarily no recovery should be made unless the excess payment already made is covered by the two exceptions pointed out in the case of Madan Mohan Prasad (supra). But if the grant was by way of undue favour, arbitrary, malafide, ultra vires and or void ab initio, recovery of public money should be the normal course. In such cases of clear disobedience of policy or rules by ministerial action or clear dishonest decision causing undue loss to public money, action against the concerned authority may also be justified to prevent and discourage plunder of public money by sheer disregard of clear law. The constitutional schemes of rule of law and fairness in public action support recovery in such cases unless law of limitation or waiver etc. are successfully invoked to show that they prevent such a course in the facts of any particular case.*

27. Although judgments have been cited at the Bar from both the sides to highlight when an order or decision is void or voidable and relevant passage on this topic from the book Administrative Law by H.W.R. Wade and C.G. Forsyth (Seventh Edition.) has also been brought to notice of this Court, which runs as hereunder:

'Void or voidable' was a distinction which could formerly be applied without difficulty to the basic distinction between action which was ultra vires and action which was liable to be quashed for error of law on the face of the record. That distinction no longer survives since the House of Lords declared all error of law to be ultra vires. But formerly an order vitiated merely by error of law on its face was intra vires and within jurisdiction, but liable to be quashed because of the exceptional powers of control which the courts established three centuries ago. Such an order was voidable, being intra vires and valid and effective, unless and until the court quashed it. Although judges have suggested that these terms were borrowed from the law of contract and unsuited to administrative law, in fact, in their proper application, they are natural and apt.

It is not desirable to enter into this controversy in the present matters. In Administrative Law what defects will render the decision wholly incapable of implementation since inception must be left to be decided in the facts and circumstances of each case in accordance with established principles of law. The principle that action which was ultra vires is void and action which was liable to be quashed for other errors is voidable can only serve as a guiding factor in deciding such a vexed issue in the facts of each case.

28. ***In the result, it is found that the two exceptions pointed out by the Division Bench in the case of Madan Mohan Prasad (supra) are only illustrative in nature and not exhaustive. It is also found that in appropriate facts and situation of a case mistake, clear, plain and simple, leading to wrong grant of increment, time bound promotion or wrong fixation of pay can justify recovery from an employee who has already superannuated. Such recovery is not by virtue of any condition of service so as to warrant that the contract of service must subsist at the time of recovery. Submission to the contrary on behalf of petitioners is meritless. The harsh effect of recovery, in appropriate cases, should be mellowed by providing for reasonable instalments.*** *It is also found that the principle of law laid down in the case of Man Bahadur (supra) was without noticing the earlier Division Bench judgment in the case of Madan Mohan Prasad but nonetheless it suffers from no error and it can be applied in appropriate cases but keeping in view the principles discussed in the preceding paragraphs as to when an error of interpretation by a competent authority may not amount to mistake or error of a malafide nature and, therefore, ipso facto, may not justify recovery of monetary benefits already paid to the concerned employees. Both the aforesaid judgments and other judgments of this Court following them shall stand explained to that extent.*

29. In the order of reference passed in CWJC No. 8677 of 2003 an issue was raised that on account of disposal of most of the matters at the stage of admission by short orders there has arisen practical difficulties in eliciting and appreciating the worth of such orders as binding precedents. On this issue we can do no better than to refer to principle of law as to what is a good precedent as enunciated by the Supreme Court in the case of Union of India v. Dhanwanti Devi (1996) 6 SCC 44 and in particular, paragraphs 9 and 10 thereof. Besides describing the three basic postulates of every decision and what would constitute ratio decidendi, it has been clearly concluded that the enunciation of the ratio or principle on which a question before a court has been decided is alone binding as a precedent.

30. The reference is answered accordingly.

31. As already indicated earlier; the writ petitions are remitted back to the concerned Benches for decision in accordance with law and

keeping in view this judgment. So far as the Letters Patent Appeal No. 726 of 2004 is concerned it is found that by the order under appeal dated 23.3.2004 passed in CWJC No. 1689 of 2004 the order for recovery of the excess payment has been nullified without considering the relevant facts which require consideration in the light of this judgment. Hence, the order under appeal dated 23.3.2004 is set aside and the writ petition is remitted back for reconsideration by the learned single Judge in accordance with law and this judgment. The LPA is thus allowed to that extent only. There shall be no order as to costs.

11. The same issue was considered in Syed Abdul Qadir & Ors. vs State Of Bihar & Ors. wherein Hon'ble Supreme Court held on 16 December, 2008 held as follows:

27. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous. ***The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.*** *See Sahib Ram vs. State of Haryana, 1995 Supp. (1) SCC 18, Shyam Babu Verma vs. Union of India, [1994] 2 SCC 521; Union of India vs. M. Bhaskar, [1996] 4 SCC 416; V. Ganga Ram vs. Regional Jt., Director, [1997] 6 SCC 139; Col. B.J. Akkara [Retd.] vs. Government of India & Ors. (2006) 11 SCC 709; Purshottam Lal Das & Ors., vs. State of Bihar, [2006] 11 SCC 492; Punjab National Bank & Ors. Vs. Manjeet Singh & Anr., [2006] 8 SCC 647; and Bihar State Electricity Board & Anr. Vs. Bijay Bahadur & Anr., [2000] 10 SCC 99.*

28. Undoubtedly, the excess amount that has been paid to the appellants - teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.

29. Learned counsel also submitted that prior to the interim order passed by this Court on 7.4.2003 in the special leave petitions, whereby the order of recovery passed by the Division Bench of the High Court was stayed, some instalments/amount had already been recovered from some of the teachers. Since we have directed that no recovery of the excess amount be made from the appellant- teachers and in order to maintain parity, it would be in the fitness of things that

the amount that has been recovered from the teachers should be refunded to them.

12. Again, in Col. (Retd.) B.J. Akkara vs The Govt. Of India & Ors, the Hon'ble Supreme Court in its judgment on 10 October, 2006 spelt out the conditions in which relief should be granted against recovery of excess payment.

> *25. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7.6.1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/allowances from an employee, if the following conditions are fulfilled [Vide Sahib Ram vs. State of Haryana [1995 Suppl.1 SCC 18], Shyam Babu Verma vs. Union of India [1994 (2) SCC 521], Union of India vs. M. Bhaskar [1996 (4) SCC 416], and V. Gangaram vs. Regional Joint Director [AIR 1997 SC 2776]:*
>
> ***a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.***
>
> ***b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.***
>
> ***Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.***

13. Thus from the decisions cited, there is no legal bar in ordering for recovery from retired employees where they have received money benefits on account of mistake at the ministerial level in the matter of fixation of pay, grant of increments or time bound promotion when the conditions precedent for such promotions were clearly non est. If the grant was by way of undue favour, arbitrary, malafide, ultra vires and or void ab initio, recovery of public money should be the normal course. The principle of restitution in case of unjust enrichment is also an accepted principle for ensuring justice in appropriate case. The constitutional schemes of rule of law and fairness in public action support recovery in such cases unless law of limitation or waiver etc. are

successfully invoked to show that they prevent such a course in the facts of any particular case. However, if on reinterpretation or adjudication the earlier view permitting the grant of monetary benefits is found to be by a competent authority as bonafide but wrong, mistaken or erroneous, then ordinarily no recovery should be made unless the excess payment already made is covered by the exceptions, namely if the order granting the money benefit itself stipulates that the same is liable to be recovered if found erroneous at a later stage or is subject to approval by authorities or that if it is found at any later stage that the same had flowed to the employee on account of fraud, misrepresentation or the like attributable to him. These exceptions are illustrative and not exhaustive. In the instant case, the refixation of pay had been done on the basis of the pay-scale obtaining for the corresponding staff of the Central Secretariat Service and the Central Administrative Tribunal and the decision cannot be said to be due to fraud or misrepresentation on the part of the applicant. It was an erroneous decision on the part of the authorities but a bonafide one. In this view of the matter and considering that recovery would have caused hardship, recovery from gratuity need not have been made after retirement of the employee [although in the case cited by the learned counsel of the respondents, the excess amount was adjusted against the gratuity]. The authorities are accordingly directed to refund to the applicant the amount recovered from his gratuity. The pension can be revised based on the correct pay-scale applicable without the upward revision of pay-scale made wrongly. There is no need to pay interest on the amount ordered to be refunded as the applicant is not totally free from blame inasmuch as he had claimed refixation of pay-scale to which he was not entitled to without there being any decision or order in regard to parity with the employees of the Central Secretariat Service and the Central Administrative Tribunal. With this both the OAs stand disposed of. No costs.

B Banerjee

[Bidisha Banerjee]
Member[J]

Naresh 9.4

[Naresh Gupta]
Member[A]

srk.