

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

O.A. No. 791 of 2005

Date of order : 5th May, 2006

C O R A M

Hon'ble Mr. Justice P.K. Sinha, V.C.

Girija Nandan Ram

Vs.

Union of India & Others.

Counsel for the applicant : Shri M.P. Dixit

Counsel for the respondents : Shri Rajesh Kumar

O R D E R (Oral)

By Justice P.K. Sinha, V.C.:-

This matter was listed for final hearing on stay.

However, written statement has been filed, and the matter being in a narrow compass, an agreement of the learned counsels for both sides, this case has been heard ^{is being} and disposed of at this stage.

2. The applicant was working in the postal department, and from the submissions and pleadings it appears that on account of 4th Central Pay Commission's Report, which was implemented with effect from 01.01.1986, the applicant was granted higher pay, and ultimately he superannuated on 31.01.2001. Thereafter, it appears that Audit took place, and the order at Annexure A/3 dated

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20.9.2005 was issued, after review of the case of stepping up of pay of the applicant and others, directing to recover the amount as mentioned against their names, a sum of Rs. 19,450/- in the case of this applicant. Through Annexure A/4 certain directions were sought in that regard. The learned counsel for the applicant submits that even if assuming for argument's sake that the pay of the applicant was fixed at higher stage than it should have been, recovery cannot be sought after almost 19 years of commencement of such payment, after the applicant superannuated from service.

3. On the other hand, the learned counsel for the respondents submit that in the audit report, excess payment was found, and that being government money, the order has been rightly issued for recovery.

4. On query, the learned counsel for the respondents has admitted that such over-payment does not involve any fraudulent practice by the applicant or any misrepresentation made by him to obtain excess payment. Obviously, the mistake, if any, was committed by the authorities who fixed the pay.

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5. In the case of Sahib Ram Verma vs. State of Haryana ; 1995 SCC (L & S) 248, their Lordships of the Apex Court had considered the matter in which to an employee, upgraded pay was given due to wrong construction of relevant rules by the authority concerned, without any misrepresentation made by the employee concerned. Their Lordships held that the appellant , therefore, should not be held responsible for the mistake and the amount paid till date should not be recovered from him.

6. In the case of P.H. Reddy vs. NTRD; 2002 (4) ESC 20, three Judges Bench of the Apex Court had considered a similar matter. In that case higher pay in the pay scale was fixed to an Ex-Service Man on his re-employment on the civil side. Subsequently, the pay was correctly fixed. The question that arose ^{was} whether the excess pay drawn could be recovered. Their Lordships held that the excess payment should not be recovered, because it was the erroneous fixation by the authority concerned.

7. In the case of Shyam Babu vs. Union of India and Ors; 1994 SCC (L & S) 683, higher pay scale was erroneously given to the petitioner since 1973, which was reduced in the year 1984. It




was held that since the petitioner had not received higher pay due to any fault of his, ^{it was} just and proper not to recover excess amount paid to him.

8. The instant case stands on ^a better footing in which excess payment made years back due to erroneous fixation done by the authority concerned, is sought to be recovered about four years after the applicant had superannuated.

9. In view of the aforesaid decisions and facts of the case, in my opinion, the recovery should not be allowed to be made.

10. This application is, therefore, allowed and Annexure A/3, in so far this applicant is concerned, is hereby quashed. The amount, if any, recovered so far should be refunded to the applicant within two months of the receipt of copy of this order.

11. This application is disposed of, accordingly. No order as to the cost.


[P.K. Sinha] V.C.

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