

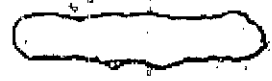
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 108/91.

Dt. of Decision : 29-7-94.

1. Smt. K. Durga Bhavani
2. Smt. A. Bhanumathi



.. Applicants.

Vs

1. Union of India rep. by
The Secretary,
Ministry of Finance,
Department of Revenue,
Central Secretariat,
North Block, New Delhi.
2. The Collector of Central Excise,
Post Box No. 331, Kannavarithota,
Guntur - 522 004.

.. Respondents.

Counsel for the Applicants : Mr. KSR. Anjaneyulu

Counsel for the Respondents : Mr. N.R. Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

THE HON'BLE SHRI A.B. GORTHI : MEMBER (ADMN.)

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DA 108/91.

Dt. of Order: 29-7-94.

(Order passed by Hon'ble Shri A.V. Haridasan,
Member (J)).

* * *

The two applicants has filed this application
for the following relief :-

" The applicants herein humbly pray
that this Hon'ble Tribunal be pleased to call
for the records resting with the case and
declare orders F.No.12/143/89-Coord (Circular
No.209/89) dt.11-9-89 of the Respondent
No.1 (Annexure-I) and C.No.II/24/41/89 A.3
dt.26-10-90 (Annexure-IV) ordering recovery
of the allowances from the pay of the
Applicants as arbitrary, illegal and set
them aside. The Respondents may also be
directed to treat the advance increments
granted to the Applicants prior to 11-9-89
(date of issue of the order) as part of
the scale of pay and to pay allowances due
on the advance increments as usual."

The applicants were granted two advance increments for
acquiring higher speed. ^{in 1989} These increments were treated
as part of the pay and the applicants were given allowances
on that increments also. Later a Government Order was
issue stating that treating the advance increments as
part of the pay was not intended and that they should
form a separate element not to be counted as pay for the
purpose of allowances. Action was taken to recover
the over payments by way of allowances ^{made} to the

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applicants. The applicants were directed by an order at Annexure A-IV dt.28-10-90 to credit Rs.550/- and Rs.167/- respectively. It is challenging this Government decision and also the order directing the applicants to refund the amount that this application is filed.

2. Though a reply has not been filed, Shri N.R.Devraj, learned standing counsel for the Respondents opposes the grant of the prayer and submits that the Government of India's decision dt.6-6-90 did not lay down a new point but it was issued for correcting an erroneous interpretation given to earlier G.O. and that, therefore the applicants have no legitimate right to have the advance increments treated as part of the pay or to get allowances on those increments.

3. We have perused the documents annexed to the O.A. and heard Shri KSR Anjaneyulu, counsel for the applicant, and Shri N.R.Devraj, learned standing counsel for the Respondents. Shri Anjaneyulu, brought to our notice that the direction that the advance increments would not be treated as part of pay was introduced in the year 1989 and till then advance increments for all purposes was part of the pay. As the advance increments were granted to the applicants long prior to the year 1989, according to him there is no justification to recover the allowances already paid. Having heard the learned counsel for the parties, we are of the view that as both the applicants have been promoted to higher cadres, the question of counting the advance

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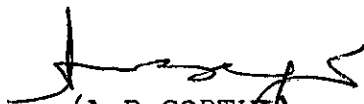
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increments as pay for the purpose of granting them allowances does not arise in future. What remains for our consideration is whether the applicants should refund the excess amount paid or not. As the amounts involved is only Rs.550/-, in the case of the first applicant and Rs.167/- in the case of the second applicant and as they had not been in any way responsible for the over payments we are of the considered view that it is too harsh to direct them to refund the amount which was received in piecemeal and they would have spent. In view of this, we dispose of the application with a direction to the Respondents not to make any recovery from the applicants pursuant to the impugned orders at Annexure A-1 and Annexure A-IV. No order as to costs.


(A.B. GORTHI)
Member (A)


(A.V. HARIDASAN)
Member (J)

Dt. 29th July, 1994.
Dictated in Open Court.

avl/


DEPUTY REGISTRAR(J)

- To
1. The Secretary, Union of India, Ministry of Finance, Dept. of Revenue, Central Secretariat, North Block, New Delhi.
 2. The Collector of Central Excise, Post Box No. 331, Kannavarithota, Guntur - 522 004.
 3. One copy to Mr.K.S.R.Anjaneyulu, Advocate,CAT,Hyderabad.
 4. One copy to Mr.N.R.Devraj, Sr.CGBC,CAT,Hyderabad.
 5. One copy to Library,CAT,Hyderabad.
 6. One spare copy.

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