

FORM NO. 21.

(Sec. Rule 114 .)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH. HYDERABAD .

MADRASAP.

IN

O A / P A 1304 1998

..... N. Satyavathi Applicant(s)

Versus

..... The Secretary, M/o Finance

..... New Delhi: & others Respondent(s)

INDEX SHEET

Serial No.	Description of documents and dates.	Pages.
Docket orders.		1 to 5
Interim orders	1-10-97	to 60
Orders in M A(S)		
Reply statement		28 to 42
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Orders in (Final orders)	7-4-98	43 to 53

Certified that the file is complete
in all respects.

Signature of

Sealing Hand.

in record section

Signature of S.O.

Date: 6-4-1998

Reserved judgment in O.A 1304/97 as dictated
by Hon.Member(A-II) is placed below for perusal
and approval.

W
PS to M(A-II)

Hon'ble Member(A-II)

May be posted for pronouncement in the open
court on 07.04.98

8
~~6/4~~
HHRP
M(A)

C.A.V. SLIP

CBY
10/3/88 (2)

1. Circulated to Hon'ble Sri H. M. A.

2 Case No. CA. 1304/87

Date of Hearing 10/3/88

Date when reserved for judgement 10/3/88

Cases cited by the Counsel for Applicant(s) :

- i) 1995 SCC (LAW) 248
- ii) 1995 SCC (LAW) 522
- iii) 1994 (1) SLR. Sc. 827
- iv) - 1997 (1) ST. Jaipur. 383
- v) - 1996 (2) SLR. VAT (Calcutta) 401
- vi)

Xerox Copies

Cases cited by the Counsel for Respondent(s) :

Circulated :

Additional files if any :

Ver

D. Surender Rao
COURT OFFICER

OA 1304/97

3

DATE OFFICE NOTE ORDERS

6.2.98

List it on 9.2.98.

~~for 6/2
HBSJP
M(S)~~

Heard Mr. P.P. Vital, Counsel for
for the applicant & Mr. V. O'Brien & Mr.
Sic for Defendant.

OA is reserved for Judgment.

~~HARO
m(S)~~

7/4/98.

The OA is disposed of, vide
order on separate sheet. no
costs.

~~8
HARO
m(S)~~

DSW

av1/

Central Administrative Tribunal Hyderabad Bench: Hyderabad.

O.A. No.

1304

of 1997.

Smt. N. Satyanathi

Applicants(s).

VERSUS.

The Secretary, min. of Finance, New Delhi & anoth

(Respondents).

Date	Office Note	ORDER
1-10-1997		<p>Heard Mr. P.P. Vittal, learned counsel for the applicant and Mr. V. Rajesw. for Rao, learned standing counsel on behalf of the Respondents.</p> <p>in an O.A. is admitted. Counter 6 weeks. As interim measure it is directed that Letter No. S14/7/76-Accts. Dt. 31.07.97 (Annexure-I), if not already enforced till today, shall not be operated until further orders.</p>
		<p><i>8/10</i> HHRP M(A)</p> <p>KSM</p>
21.11.97.		<p>Two Weeks granted for filing Counter as requested by the Counsel for the Respondents. No further adjournments.</p> <p><i>8/11</i> HHRP M(A)</p> <p>KSM</p> <p>At the request of the respondent Counsel, list +/- on 30.12.97.</p>

HHRP
M(A)

Date	Office Note	ORDER
30.12.97		At the request of respondents allowable list it on 5.1.98
		<i>S. HHRP MD</i>
5.1.98		No counter has yet been filed. Mr. V. Rajeshwara has requested some more time. Respondents may file their counter on or before 20.1.98. This is the final extension granted and no further time will be available to the respondents to file their counter. List it on 23.1.98
		<i>S. HHRP MD</i>
28/1/98		At the request of the both the counsels for this O.A. on 21/2/98 Part-heard.
	<i>DSW</i>	<i>S. HHRP MD</i>

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: BENCHHYDERABAD.

Smt. M. Satyavathi DATE: 27/10/97
ORIGINAL APPLICATION NO. 1304 OF 1997.

(Applicants(s))

VERSUS

Union of India, Repd., By.

Scwry. N/o Finance Deptt. of Revenue

New Delhi & auction

Respondents(s))

The Application has been Submitted to the Tribunal by Shri P. P. Vittal.

in person Under Section 19 of the Administrative Tribunal Act. 1985 and the same has been scrutinised with reference to the points mentioned in the check list in the light of the provisions in the administrative Tribunal (procedure) Rules 1987.

The application is in order and may be listed for Admission No. ---

Scrutiny Asstt. 26/10/97

Anup
DEPUTY REGISTRAR (JUDL)

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD.

I N D E X - S H E E T

O A No. 1304 of 1997.

CAUSE TITLE N. satyarthi

V E R S U S

M. Suresh, M/o, Finance, N. Delhi & austt

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1.	Duplicate Application	1 to 11
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2.	Material Papers.	12 to 19
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4.		
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6.		
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Regd:- To set aside the order dt. 31-7-97 and
 pay the balance amount of DCRG. Rs. 11924/-
 as per order dt. 4-5-88. and for the 6
 family pension as per fixation done in the
 CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: HYDERABAD
 Post of Secretary OA No. 1304 OF 1997

BETWEEN:

Smt. N. Satyavathi
 W/O Late N Viswanatham
 D.NO: 9-348, Narasimha Nagar
 Gopalapatnam, Visakhapatna
 aged 50 years

.....APPLICANT

General

CE&C

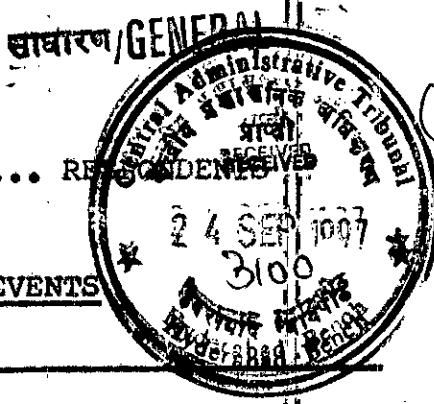
(15)

AND

Union of India rep by
 The Secretary, Ministry of Finance
 Department of Revenue, Govt. of India
 NEW DELHI and another

..... RESPONDENT

INDEX CUM CHRONOLOGICAL EVENTS



S.I. No.	DATE	DESCRIPTION OF THE DOCUMENT	ANNEXURE	PAGE NO.
1.	1997	Original application		1-11
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3.	4-05-1988	Lr.No: PAO/Bills/13-5(10)/20 21/22, authorisation letter for arranging payment of death- cum-gratuity		13-14
4.	16-11-89	Lr.No: S5/84/87-88-Ac addressed to the applicant demanding to pay excess amount of pay and allowances due to wrong fixation of pay		15
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8.	16-5-1994	Lr No: S5/84/87-88-A/C Lr. addressed to the applicant demanding repayment of Govt. dues.		21-22
9.	2-7-1997	ExFNo: S5/84/87-88-Accts addressed to the applicant directing the applicant to settle dues immediately		23

Hyderabad
 Dated:

My

COUNSEL FOR APPLICANT

UNDER SECTION 19 OF A.T. ACT 1985
CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH: HYDERABAD
O.A. NO: 1304 OF 1997

BETWEEN:

Smt. N. Satyavathi
W/O Late N. Viswanatham
D.No: 9-348, Narasimha Nagar
Gopalapatnam
Visakhapatnam aged 50 years APPLICANT

AND

1. Union of India represented by
The Secretary, Ministry of Finance
Department of Revenue, Govt.of India
New Delhi
2. The Commissioner of Customs
Customs House,
Port Area
Visakhapatnam-530 035. RESPONDENTS

DETAILS OF APPLICATION

1. PARTICULARS OF THE APPLICANT

The particulars of the applicant are as mentioned in the cause-title above. The address of the applicant for purpose of service of summons, notices, processes etc is as that of: her Counsel Shri P. P. V. NITTAI Advocate, 119, Lalikanagan, Hyderabad - 44.

2. PARTICULARS OF RESPONDENTS:

The particulars of the Respondents and their addresses for the purpose of service of summons, notices etc. are the same as mentioned in the cause title above.

3. ORDERS AGAINST WHICH THIS APPLICATION IS MADE:

The application is made to set-aside the office order No: S14/7/76-Accts. dated 31-7-1997 demanding to pay Rs.17,187/- (Rupees seventeen thousand one hundred

సమాచారాలు

and eighty seven only) failing which the mortgage deed would be enforced without further notice and consequential benefit of repaying of Rs.11,924/- as ordered vide letter No: PAO/Bills/13-5(10)/20/21/22, dated 4th May 1988 and fix the pension as Serung ignoring the revision of pay as Sepoy with arrears etc.

4. JURISDICTION OF THE TRIBUNAL:

The applicant declares that the subject matter of the OA she seeks redressal is within the jurisdiction of this Tribunal under the provisions of Section 14 of the Central Administrative Tribunals Act, 1985.

5. LIMITATION:

The applicant further declares that the application is within the limitation period prescribed in Section 21 of the CAT 1985 as she is aggrieved by the orders issued by the 2nd Respondent herein vide Letter No: S14/7/76-Accts. dated 31-7-1997.

6. FACTS OF THE CASE:

a) The applicant submits that her/husband/namely late Sri N. Viswanatham joined the department and had rendered 25 years of unblemished service. The husband of the applicant died on 28-2-1988 while he was in service. The husband of the applicant had been working as Sepoy at the time of his death and the deceased employee left behind 4 sons and one daughter and the applicant. The deceased employee was aged about 50 years at the time of his death. It is submitted that pursuant to the death of the husband of the applicant, the department

5000/- to 500/-

Issued letter No: PAO/Bills/13-5(10)/20/21/22, dated 4th May 1988 addressing to the Additional Collector, Visakhapatnam authorising therein to make payment to the applicant a sum of Rs:28,173/- less recoveries detailed below:

<u>NATURE OF RECOVERY</u>		<u>HEAD OF ACCOUNT CREDITABLE</u>
1. Immediate relief paid to the family of the deceased Government servant	Rs.1000/-	8550 Civil Advance other advances
2. Festival advance	Rs.200/-	2037 Customs A2 Prev. functions (Salaries)
3. Flood advance	Rs.125/-	7610 Loans to Govt. servants (other advances)
4. LTD Advance	Rs.240/-	2037 Customs A2 preventive functions (salaries)
5. H B A	Rs4,240/-	7610 Loans to Govt. Servants- HBA
6. Interest on HBA	Rs.10,444/-	0049 Interest on other Receipts - Interest on HBA
Total recoveries	Rs:16,249/-	

It is also stated therein at para-3 that net amount payable is Rs.11,924/- However the said amount was not paid so far. However another letter No: S5/84/87-88-Accts. dated 16-11-1989 addressed to the applicant stating that a wrong fixation was done in respect of the husband of the applicant and it was further stated therein that an amount of Rs.4,170/- is due from the applicant in addition to the balance of H.B.A. and directing the applicant to pay the amount at the earliest. The applicant immediately submitted a representation dated 24-7-1990 requesting to pay the amount as mentioned in letter dated 4-5-1988.

P.W.A. 1/2

However the respondent bent upon to reject the request of the applicant. The representation dated 24-7-1990 was followed by representation dated 29-10-1990 and the same was rejected vide letter No: S5/84/87-88-AC, dated 24-1-1991.

b) It is further respectfully submitted that the applicant has also got issued legal notice dated 12-4-1991 asking the respondent to pay the amount of Rs.11924/- with interest within 7 days from the date of receipt of the legal notice. The respondent did not reply to the said notice. However the respondent threatening to sell the house under pledge to the President. As per letter No: S5/84/87-88-A/C, dated 16-5-1994 issued by the respondent the respondent is contending that an excess pay and allowances was paid by the respondent to the deceased employee for the period from 23-9-1981 to 27-2-1988, for an amount of Rs.22,000/- and also overtime allowance to the extent of Rs.10,000/- and excess leave salary to the extent of Rs.288/-, The respondent for the first time in the year 1994 contending that the excess pay and allowance, overtime allowance and leave salary were paid to the husband of the applicant.

c) It is respectfully submitted that the employee was not in this world and the contention of the respondent that they have paid excess pay and allowances etc to the deceased employee at this juncture that is after lapse of six years is nothing but violation of the responsibility cast on the respondent. For any recovery i.e. regarding revision of pay and allowances etc, there must be a show cause notice to the concerned employee seeking an

22/670
16/284
32/788

500/- 25/- ad

~~xxxxx~~

explanation as to why the excess pay and allowance should not be recovered. Unfortunately, in the present case the employee was no more and the respondent in such a situation cannot recover the alleged excess pay and allowance etc and there by forcing the applicant to pay the amount and threatening to sell the pledged house. It may be relevant to submit here that the applicant agrees for reduction of HBA Rs.4,240/- and interest on HBA for Rs.10,444/- to be deducted from the DCRG and Bonus.

*10444
A 240
1684*

d) It is respectfully submitted that the respondent has no authority to revise the pay and allowances and overtime after the death of an employee and the action of the respondent is illegal and contrary to the settled principles as enunciated by different courts and it is also contrary to the principles of Natural Justice. The applicant cannot be put to financial disadvantage at this stage and the applicant cannot give any explanations for the reversion etc that was alleged to have happened during the working of the employee and the circumstances under which excess payment was made cannot be explained by the applicant. Without explanation from the employee, no order adversely effecting the applicants livelihood can be passed by the department and the same is illegal.

e) The applicant submits that the respondent issued letter No: F.No: S5/84/87-88-Accts, dated 2-7-1997 demanding to pay Rs. 25,570/- and it is followed by another letter F.No: S14/7/76-Accts. dated 31-7-1997 demanding to pay Rs. 17,187/-. These letters are contrary to the earlier orders given by the department.

பொருள்கால

(12)

It is respectfully submitted that my husband has worked as Serung and his basic pay was Rs.390/- as on 22-9-1981. Since the post of Serang was abolished wef 23-9-1981, because of the Launch of Visakhapatnam Custom House was dispensed with and he was accommodated as Sepoy. His pay was fixed at Rs.240/- as basic pay and Rs.150/- as PP by giving pay protection as per the instructions of Collector of Customs, Madras vide order No.55/1/78-Estt, dated 23.9.1981.

F) During the pay revision wef 1-1-1986 his pay was fixed at Rs.931/- instead of Rs.1025+285(PP) in the pay scale of sepoy Rs.775-12-955-EB-14-1025 without taking into account of his PP drawn by him. In this connection I have to submit that the total emoluments as on 31-12-1985 would have been taken for fixation of pay as on 1-1-1986 but not Rs.240/- (excluding PP Rs.150/-) maximum of the time scale. The correct pay fixation is shown below for your kind perusal. (Actual pay drawn as Serang Rs.390/-). But consequent on the abolition of Seran cadre he was accommodated as sepoy wef 23-9-1981. As ~~now~~ he was drawing basic pay of Rs.390/- and his pay was fixed as Rs.240/- as basic pay and balance of amount of Rs.150/- has been shown as PP by giving pay protection.

PAY	.....	240-00
P.P.	.....	150-00
D.A. & ADA	.....	731-60
IRI & II	.....	110-00
20% of basic subject		
to Minimum Rs.75/-	....	78-00
TOTAL		<u>Rs. 1309-60</u>

P. C. W. N. A. S. D.

(12)

As the above pay is more than the maximum of the time scale i.e. Rs.1025/- in the time scale of sepoy, it can be fixed as Rs.1025/- (basic pay) + Rs.285/- as pp to protect loss in emoluments.

7) In view of the above facts there is no question of excess payment of pay and allowances, over time and bonus as contended by the department. So the applicant is entitled for fixation of pension in view of the above terms and the pension now fixed Rs.375/- + D.A. required to be revised and it is to be fixed correctly.

7. GROUND FOR RELIEF WITH LEGAL PROVISIONS

a) The Rule 71 of CCS Pension Rules read as ~~is~~ under:

RECOVERY AND ADJUSTMENT OF GOVERNMENT DUES

1. It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.
2. The Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the (retirement gratuity) becoming payable.
3. The expression Government dues includes ---
 - a) dues pertaining to Government accommodation including arrears of licence fee, if any;
 - b) dues other than those pertaining to Government accommodation namely, balance of house building or conveyance or any other advance, overpayment

Sub, 125 ad

of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961)

RULE 80-C ADJUSTMENT OF GOVERNMENT DUES READ AS FOLLOWS:

The Head of Office shall, within one month of the receipt of intimation regarding death of a Government servant take steps to ascertain if any dues as referred to in Rule 71 excluding the dues pertaining to the allotment to Government accommodation were recoverable from the deceased Government servant. Such ascertainable dues shall be recovered from the amount of (death gratuity) becoming payable to the family of the deceased Government servant.

As per the above rule, the Head of the office shall
within one month on the receipt of the intimation regarding
death of an employee take steps to ascertain if any
dues as referred to Rule 71 as referred above. In this
the instant case, the respondent failed to take any
action to contend that any dues as referred to Rule 71
was due but the respondent is contending after lapse of
one and a half year that there is an excess payment of
pay and allowances, over time etc and this is contrary
to the above rule position.

8. DETAILS OF REMEDIES EXHAUSTED:

The applicant declares that she has no other immediate alternative and effective remedy except to approach this Hon'ble Tribunal by way of filing this OA seeking immediate redressal.

20/07/2022

9. MATTERS PREVIOUSLY FILED OR PENDING:

The applicant further submits and declares that she had not previously filed any application, Writ petition, or suit regarding the matter in respect of which this application has been made before any Court or any other authority or any other Bench of the Tribunal, nor any such application, Writ Petition or suit is pending before any Court.

10. RELIEFS SOUGHT

MAIN RELIEF

In view of the facts submitted above the applicant prays that this Hon'ble Tribunal may be pleased to direct the respondent as follows:

- a) to set-aside the order No: S14/7/76-Accts, dated 31-07-1997
- b) to pay the balance amount of Rs.11,924/- as per order in PAO/Bills/13-5(10)/20/21/22, dated 4th May 1988 along with interest @ 24% p.a.

Wef February 1988.

*See also para 5/page 5 of the counter - Also *** on p. 637 of the counter*

- c) to fix the pension of the applicant correctly by taking into account the fixation done in the post of Sepoy duly giving pay protection to the post of Sepoy and pass such other order or orders as the Hon'ble Tribunal deem fit and just.

INTERIM RELIEF

- 1) It is further prayed that this Hon'ble Tribunal may be pleased to suspend the order No: S14/7/76-Accts, dated 31-7-1997 since the Respondent threatening to enforce the mortgage deed.

Now p. 637

10. DETAILS OF INDEX:

An index showing the details of material papers to be relied upon along with a chronology of events is enclosed.

11. PARTICULARS OF BANK DRAFT/IPO FILED:

13

a) Bank Draft/IPO NO:

b) Date of Issue :

c) Office of issue :

d) Amount :

e) In favour of :

is enclosed to this application

14 12. LIST OF ENCLOSURES:

The following are the documents which are enclosed to this application:

- 1) Vakalatnama
- ii) Bank Draft/IPO for Rs
- iii) Material papers with index
- iv) Chronology of events
- v) File pad
- vi) Addressed envelopes(5)

20/2/2020

DEPONENT

VERIFICATION

I, Smt. N. SATYAVATHI, W/O Late N. Viswanatham, aged 50 years, R/O D No: 9-348, Narasimha Nagar, Gopalapatnam, Visakhapatnam having temporarily come down to Hyderabad do hereby verify the contents of paras 1 to 6 are true to my knowledge and paras 7 to 13 are believed to be true on legal advice and that I have not suppressed any material facts and that the same are verified this day of August 1997 at Hyderabad.

Perumal Reddy

(SMT. N. SATYAVATHI)
A P P L I C A N T

Hyderabad,

Dt:

M. V. S.
Counsel for the applicant

OFFICE OF THE COMMISSIONER OF CUSTOMS : CUSTOM HOUSE:
PORT AREA :: VISAKHAPATNAM :: 530 005
% %

(2) READ

LAND 18

(12)

F.No: S.14/7/76-Accts.

Date: 31.07.97.

To
Smt. N. Satyavati,
W/o Shri N. Viswanathan(late),
Do.No: 9348, Narasimha Nagar,
Gopalapatnam,
VISAKHAPATNAM

Sir,

Sub: Payment of Govt. Dues- H.B.A. Sanctioned
to Shri N. Viswanathan- Dues outstanding- Reg.
% %

Please refer this office letter of even No: Dt:7.5.97
on the above subject.

You are requested to pay an amount of Rs.17,187
(Rupees seventeen thousand one hundred and eighty seven
only) towards H.B.A. and interest on H.B.A. (till 30.4.97)
which is to be recovered from the legal heir (s).
The amount should be paid within 10 days on receipt
of this letter failing which the mortgage deed will
be enforced to recover the same without any further notice.

H.B.A. : 4,240

Interest on
H.B.A? : 12,947 (till 30.4.97)

TOTAL : 17,187

Yours faithfully,

R. JAGANATHAN
ASSISTANT COMMISSIONER OF CUSTOMS
(ACCTS)

to the bill separately for each category of recovery.

True copy
R. JAGANATHAN
Advocate

OFFICE OF THE ADDITIONAL COLLECTOR OF CUSTOMS
CUSTOM HOUSE, VISAKHAPATNAM

(12) 19

DOORAO/RM/10/13-5(10)/60/11/22

MR43

Dated: 4th May '86.

To

The Additional Collector of Customs,
Custom House, Visakhapatnam.

Subject: Authorisation of Death-Cum-Gratuity for arranging
payment by the Head of Office- Issue - regarding,

Sir,

I have to authorise you to make payment to Sub.
B. Satyanath, V/O late B. Viswanathan, Sepoy, Custom House,
Visakhapatnam. Nominees a sum of Rs. 28,473/- (Rupees Twenty eight
thousand one hundred and seventy three only) less recoveries
detailed in Part (2) below, being the amount of Gratuity/DOA
conceded in letter No. C.O/5/87-23-10, dated 3-4-86 from
Custom House, Visakhapatnam.

2. The following recoveries should be offsetted from the
payment of gratuity authorised above.

Nature of Recovery	Head of Account creditable
1. Immediate Relief paid to the family of the deceased Govt. Servant.	Rs. 1,000/- 8530 Civil Advance other Advances
2. Survival Advance	Rs. 200/- 2037 Custom A.2 Penc. Advance (Balance 100)
3. Flood Advance	Rs. 125/- 7610 Local to Govt. servants Other Advances
4. LTQ Advance	Rs. 240/- 2037-Custom A.2 Provisional Advance (Balance 0)
5. House Building Advance	|| Rs. 4,240/- 7610 Local to Govt. servants - H.D.A.
6. Interest on H.D.A.	|| Rs. 10,444/- 0049 Interest on Other Advance Interest on H.D.A.
Total Recoveries	Rs. 16,249/-

3. Net amount payable is Rs. 11,924/- (Rupees Eleven thousand
nine hundred and twenty four only).

4. A bill may please be prepared in Form TR-37 B for the
amount payable as per this authorisation and present it to the
Pay and Accounts Officer, Custom House, Visakhapatnam for
getting payment by Cheque or Demand Draft duly encasing this
authorisation in original to the Bill and no due certification.

5. Necessary schedules may please be intropared and annexed
to the bill separately for each category of recoveries mentioned
above.

6. The gratuity is debitable to the Head of Account...

"2071- Pension & Other Retirement Benefits- Civil, 1.
(3) Gratuity (Total).

(14) 20

7. On receipt of the Demand Draft/Chque (enclosed to the payee) from the Pay and Accounts Officer, Custom House, Visakhapatnam the same may be handed over to the Person or persons entitled to receive the same after proper identification and after obtaining proper acquittance by the H.M.C. Office.

8. Before handing over the Cheque/Demand Draft, it should be ensured that the gratuity claimant to be qualified. If not, the fact should be reported immediately to the gratuity authority for issue of a revised sanction in favour of remaining members of the family.

9. After arranging payment as stated above the fact of such payment having been made alongwith details of Cheque/Demand Draft issued will also be noted in the concerned Service Records under proper attestation.

10. It should be noted that the Disbursing Officer should be held responsible for proper identification of the payee.

11. The payee is being informed of the issue of this order.

12. Please acknowledge receipt of this order.

13. Any dues other than those specified above may please be adjusted in the DCRG bill. Yours faithfully,

SL
Pay and Accounts Officer,
Custom House, Visakhapatnam.

Copy to:-

1. Sub: N. Satyanathi, W/O late N. Viswanathan, 2 Story, Dcor No. 9/125, Narasimha Nagar, Gopalapatnam, Visakhapatnam -530027. She is requested to contact the Accts. Collector, of Customs, Custom House, Visakhapatnam and to receive the payment of gratuity amount.

2. Copy forwarded to the Accts. Collector of Customs, Custom House, Visakhapatnam for information.

For [unclear]
PAY & ACCOUNTS OFFICER
Custom House, Visakhapatnam.

True copy

*Meiy
Admire*

OFFICE OF THE ADDITIONAL COLLECTOR OF CUSTOMS
CUSTOM HOUSE: : VISAKHAPATNAM.

21
14
15
S5/84/87-88-Ac

Date: 16-11-89.

To:

Smt. N. Satyavati,
W/o. Late Sri. N. Viswanatham,
Door No. 9/119, 9 - 348
Narasimha Nagar,
VISAKHAPATNAM.

Madam,

Sub:- Repayment of Excess amount of pay &
Allowances due to wrong fixation of
pay- Regarding.

On classification and fixation of the pay of your husband
Late Sri N. Viswanatham the entire pay and Allowances have been
received as per the Board Orders and an amount ^{of} Rs. 4,170/- is
due from you in addition to the balance of House Building advance.
Therefore you are requested to pay the above sum including the
House Building advance at the earliest.

Received a letter
on 30.11.89
1989
30.11.89

2/2-

Yours faithfully,
T.K. Jayaraman
ADDL. (T.K. JAYARAMAN)
COLLECTOR OF CUSTOMS

2
16/11/89.

The copy:

M.V.G.
Advocate

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Thorocat®, I had received a sample on Order No. PAO/AT118/13-5(10)20/21/22/18-13 dt. 4.5.88 (Copy enclosed) and a letter of thanks by the PAO to ADDITIONAL COLLECTOR for payment for an amount of Rs. 28,173/- less recovered amount deducted in respect of HVA amount due. 16.24/- (HVA). The net amount payable was forwarded to the PAO on 11.92/- (HVA). I was contacted by account of collection for the amount due but no amount was received up to January, 1990.

1. My husband and I live in Shiraz. Visiting our family, especially my mother, is a pleasure to me. 28.02.1988. I have been paid so far with following dues to me.

Specified Sir,

Subs: Repayment of excess amount of Pay & Allowance due to wrong extraction of Pay - Regarding.

Additional Commissions
Custom House, Port Area,
Visakhapatnam.

24.7.90
Vitoba Kharapatnam

BY R.P.A.

OFFICE OF THE COLLECTOR OF CUSTOMS & CENTRAL EXCISE
CUSTOM HOUSE ||| PORT AREA ||| VISAKHAPATNAM ||| 53

No. 85/84/87-88-Aa.

Date: 24.01.1991.

To

Smt. N. Satyavathi,
W/O. Late Shri N. Viswanathan,
Door No. 9/125, Narviniha Nagar,
Gopalapatnam,
Visakhapatnam-530 027.

Madam,

Sub:- Repayment of excess amount of pay and allowances
due to wrong fixation of pay - Regarding.

FCFC

Please refer to your letter dt. 29.10.1990, on the above
subject.

2. An amount of Rs. 4,170/- (towards excess payment of Pay & Allowances) is due to be recovered from Late Shri N. Viswanathan, excluding the recoveries of balances of House Building Advance and interest thereon. In addition to this, an amount of Rs. 1,560/- is also due towards the balance of immediate financial relief, Festival Advance, Flood Advance and Leave Travel Concession advance, as are detailed in the enclosed statement.

3. As regards your request for waiver of the recoveries, it is regretted to inform you that this office is not empowered for waiver of the above said excess payment. You are, therefore, requested that the excess payments indicated in the enclosed statement may please be settled by making early payment.

4. Regarding recovery of the balance of House Building Advance and interest thereon, you are hereby advised to come with a concrete proposal for recovery of the same by instalments under H.B.L. rules from your son's salary, who is now employed in this office. His consent letter to that effect may also be submitted to this office.

DISPATCHED

ON 11.1.1991
W. Encl.

Enclos- One.

Yours faithfully,

(T.K. JAYARAMAN)
ADDITIONAL COLLECTOR OF CUSTOMS.

C.N. NEELAKANTES
WAKA RT

Sub:
Smt. N. Satyavathi

True copy
Advocate

- AAI -
dt. 24.1.88
Enclosed sheet


STATEMENT SHOWING THE POSITION OF AMOUNTS DUE TO/
DUE FROM LATE SHRI N. VISWANATHAM WHO EXPIRED ON
28.02.1988

I. DUE TO:-

	Rs.
1. D.C.R.G. of Rs.	
2. Bonus for the year 1987-1988	27,465-00
3. G.O.E.O.I.S.	344-70
4. Leave Salary	10,729-00 ..
5. G.P..F. Final Withdrawal	4,963-00 ..
	1,318-00 ..
TOTAL	44,809-70
	44,809-70

NOTE:- Items 3,4 & 5 above have been paid to avoid hardship to the family of Late Shri N. Viswanath, Sepoy.

II. DUE FROM:-

1. Amount paid for immediate financial relief	1,000-00
2. Festival Advance	200-00
3. Flood Advance	125-00
4. L.T.C. Advance	240-00
5. Excess paid PAY and Allowances from 01.01.1986 to 28.02.1988	22,111-45
6. Excess paid Overtime	9,857-85
7. Balance of H.B.A. advance (as on 2/88)	4,240-00 ..
8. Interest on H.B.A. (as on 2/88)	10,444-00
TOTAL	48,218-00

True Copy

Alka

Advocate -

Rs.44,803.70 i.e. due is due to my client out of which my client received G.G.E.G.I. Rs.10,729/- and leave salary of Rs.4,963 and its.C.P.R.final withdrawl Rs.1,318/- and in your statement that you have mentioned that ~~thexdrex~~ an amount of ~~Rs.48,218/-~~ Rs.48,218/- is due to you by my client and my client instructs me to inform you that she is not at all liable for the excess paid pay and allowances from 1.1.86 to 28.2.88 which comes to Rs.22,111.45 Ps. and excess paid overtime Rs.1,857.85 Ps.. If these two amounts are deducted from Rs.48,218/- that you have to pay an amount of ~~Rs.48,218/-~~ Rs.11,924/- to my client. My client further submits that even assuming for a moment but not admitting your claim, my client states that a decision reported in AIR 1989 (2) Car 397, Jabalpur Bench wherein it is held seniority, emoluments and rank once conferred cannot be withdrawn ~~ever~~ ever, if they were given by mistake or oversight. As such ~~you~~ you are liable to pay an amount of Rs.11,924/- to my client with interest.

Please take notice that you are hereby called upon to pay an amount of Rs.11,924/- with interest within seven days from the date of receipt of this notice as otherwise my client is obliged to take necessary legal action against you for recovery of the amount and you will also be made liable for the expenses incurred by my client in the event of filing any suit.

T. J. S.
Advocate

True copy
Muhammed
Advocate

151A PAKA PAO

K. VISWANADHAM

ADVOCAKES

12.4.1991

Att VII

25
99

Under the instructions of my client - Smt. Neelapu Satyavathi w/o late Sri Viswanadham of Gopalapatnam, I give you the following registered lawyer's notice.

1. That my client's husband late Neelapu Viswanadham worked in your office as Sepoy and he expired on 20.2.88. After the death of my client's husband, you have passed an order No. No. PAO/Bills/13-5(10)20/21/22/TR-43 dated 4.5.88 authorising my client and directing the Addl. Collector ^{to pay} directions payment of Rs.28,173/- less recoveries including HRA amounting to Rs.16,249/- and ~~xxxtxxxxxxxxxxxxxxxxxxxxxx~~ an amount of Rs.11,924/- is payable to my client by you. My client instructs me to inform you that during the life time of my client's husband that you never informed my client's husband that an amount of Rs.4,170/- is paid by you to my client's husband towards excess payment of pay and allowances and this is the first time that my client came to know that you have paid excess towards pay and allowances. My client addressed a letter to the Addl. Collector, Customs dated 24.7.90 and she categorically mentioned that an amount of Rs.11,924/- is due to my client.

2. My client received a letter dated 24.1.91 addressed by the Addl. Collector of Customs along with the statement. In your statement, it is stated that

AN VIII
26
By RPAD
29

OFFICE OF THE COLLECTOR OF CUSTOMS & CENTRAL EXCISE
CUSTOM HOUSE :: :: VIS/KHAPATNAM

No.S5/84/87-88-A/C.

Dated: 16-5-1994

To
Smt. N. Satyavathi,
W/O. Late Shri. N.Viswanatham,
Door No. 9/125, Narasimha Nagar,
Gopalapatnam,
VIS/KHAPATNAM-530 027.

Madam,

Sub: Repayment of Government dues - Regarding.

Please find enclosed herewith a copy of the statement showing the amounts due to / due from late Shri. N.Viswanatham Ex. Sepoy. As seen from the statement, a sum of Rs.21,202-30 is recoverable.

2. You are hereby advised to come with a concrete proposals for recovery of the same by instalments from your son's salary, who is now employed on compassionate grounds in this Office. His consent letter to this effect may also be submitted to this Office. If no reply is received from you, within 10 days the house which is under pledge to the President has to be sold and amount recovered.

Yours faithfully,

—A.C. 16/5/94
ADDL. COLLECTOR OF CUSTOMS
CUSTOM HOUSE: VIZAG.

Encl: As above.

(6) 5/94

True copy
Mang
Adm. ver.

STATEMENT SHOWING THE POSITION OF AMOUNT DUE TO/
DUE FROM LATE SHRI. N.VISWANATHAN, WHO EXPIRED
ON 28-2-1988

924

I. DUE TO :

i) Adh. c Bonus	Rs. 334-70
ii) D.C.R.G.	27,000-00
	<hr/>
	Total Rs. 27,334-70

II. DUE FROM: XXXXXXXX.

i) Amount paid for immediate Relief	1,000-00 ✓
ii) Festival Advance	200-00 ✓
iii) Flood Advance	125-00 ✓
iv) L.T.C.	240-00 ✓
v) House Building Advance	4,240-00 ✓
vi) Interest on H.B.A.	<u>10,444-00 ✓</u>
vii) Excess pay & Allowance From 23-9-81 to 27-2-88	<u>33,285/-</u> } 22,000-00 X ✓
viii) Excess paid Over time	<u>10,000-00 X</u>
ix) Excess paid leave salary	288-00
	<hr/>
	Total Rs. 48,537-00

₹.

DUE FROM : Rs. 48,537-00

DUE TO : Rs. 27,334-70

NET DUE FROM RS. 21,202-30 ✓

48,537
32,000
16,537

27,334-70
16,537-00
10,797-70

IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL : AT HYDERABAD

M.A.NO/R. NO:

OF 199

IN

OA NO: 1304 OF 199

Extension of time/ Vacate Stay
applications filed under Rule
8(3) of CAT(P) Rules 1987

Review Application filed under
S 22(3)(f) of CAT ACT

FILED ON:

28/11/98

FILED BY:

V. RAJESWARA RAO
S.C. FOR RAILWAYS/
ADDL. CGSC, HYDERABAD

PH NO: 272585

Recd
Rao
28/11/98
Adm of Appar.

28

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
HYDERABAD

OA NO. : 1304 OF 1997

BETWEEN :

Smt N. Satyavathi

..... APPLICANT

AND

Union of India rep by
The Secretary, Ministry of Finance
Dept. of Revenue, Govt. of India
NEW DELHI and another

..... RESPONDENTS

REPLY AFFIDAVIT FILED ON BEHALF OF RESPONDENTS

I, PIYUSHA PATNAIK S/O PURNA CHANDRA PATNAIK
aged 40 years, do hereby solemnly affirm and sincerely state
as follows :

1. I am working as DEPUTY COMMISSIONER OF CUSTOMS in the office of Commissioner of Customs, Vizag as such I am acquainted with the facts of the case. I am filing this reply affidavit on behalf of respondents and I am authorised to file the same.
2. The facts of the case are as follows:-
 - a) Shri N Vishwanatham was appointed as Lascar on 1.8.1958 in the scale of pay Rs. 30-1/2-35. He was confirmed as Lascar wef 2.6.64. He was appointed as a seaman wef 25.3.72 in the pay scale of Rs. 75-1-85-EB-2-95. He was appointed as Sarang wef 25.1.74 in the pay scale of Rs. 130-4-170-EB-5-200-5-225. However, the Customs Launch was disposed of and all the launch crew posts were abolished and persons were declared surplus. On the date of being declared surplus, Sri Vishwanatham was drawing a basic pay of Rs. 390/- in the pay scale of Rs. 330-8-370-10-400-EB-10-480 (revised) and had completed 7 years of service as Sarang.

25.8.1988

- b) Shri N Vishwanatham expired on 25-2-88 while in service. To settle the pensionary benefits a letter was addressed to CAO, Madras Custom House to certify the pay fixation of the individual in the cadre of Sepoy.

Asst. Commissioner of Customs

VISAKHAPATNAM

ATTESTER

Kurumuru M

DEFONENT

19.1.988

As instructed by the PAO, Vizag Custom House and to avoid further excess payment the Department withheld the payment of DCRG, pending receipt of clarification from Madras and processed family pension and other retirement benefits taking basic pay as Rs. 931/-.

c) The fixation of pay of Sri N. Vishwanatham was finally confirmed by the Under Secretary, Government of India, Ministry of Finance, Department of Revenue, New Delhi vide letter No A-26018/13/88-Ad. IIA, dated 2.4.88 (Annexure - RI) (the officer expired on 25.2.88) stating that the pay should be fixed as Rs. 907/- as on 1.1.86 in the scale of Rs. 775-1025, raising his pay to Rs. 919/- by granting next increment wef 1.9.86. Therefore it is evident that his pay as on 1.9.87 will be Rs. 931/-. Hence he should have drawn a basic pay of Rs. 931/- on the date of his death (25.2.88). However, the pay scale of Sepoy was subsequently revised vide circular 3/8 dated 5.4.89 of the Ministry as 775-12-871-EB-14-1025. As a result, the basic pay of the individual was once again revised as Rs. 899/- wef 1.1.86; Rs. 913/- wef 1.9.86 and Rs. 927/- wef 1.9.87. The resultant excess collections were computed and were to be recovered from the benefits due to the applicant.

DETAILS OF PAY FIXATION OF SHRI N. VISHWANATHAM

Date	Cadre	Scale of pay	Initial fixation	Revised fixation	Remarks
Prior to Sarang 23.9.89		330-8-370-10- 400-EB-10-480	390	-	Drawing a BP of Rs.390 as on date of appoint- ment as Sepoy
23.9.89	Sepoy	200-3-212-4- 232-EB-4-240	240 + 150 PP	224	As per Ministry's Lr. No. A- 26015/32/84 Ad. II.A dated 6.6.85 (Copy enclosed Annexure-RII)

ATTESTER

S. Krishnamurthy
Asst. Commissioner of Customs
VISAKHAPATNAM

Prakash Rao
DEPONENT 19.1.89

23.9.82	Sepoy	200-3-212-4 232-EB-4-240	240+150 PP	228/-	
23.9.83	- do -	- do -	-do-	232/-	
23.9.84	- do -	- do -	-do-	236/-	
23.9.85	- do -	- do -	-do-	240/-	
1.1.86	- do -	775-12-955-EB- 14-1025	931/-	907/-	Ministry 8s Lr. No. A-26018/13/ 88-Ad. IIA dtd 2.11.88 (copy enclosed) Appendure - RII
23.9. 87	-do -	- do -	943/-	919/-	X-X
Upto 27.2.88 - do -		- do -	955/-	913/-	Subsequent to his death
(till date of death)					

As per circular 3/8 dated 5-4-89 of Ministry the recommended pay scale of Gr. 'D' was revised to 775-12-871-EB 14-1025. Hence once again his pay was revised as follows :

1.1.86Rs. 899/-
1.9.86Rs. 913/-
1.9.87Rs. 927/-

d) In addition to the above while Sri N. Vishwanatham was in service as Sarang he has been sanctioned HBA of Rs. 24,400/- in four instalments during 11/76 to 4/78 the interest calculated at the rate of 6.5% worked out to Rs. 13,400/-. The total recovery on account of HBA was Rs. 37,800/- and it was decided by the CAO, MCH that the recovery should be in 210 instalments @ 180/- per month from 11/78 onwards. Due to the demise of Sri Vishwanatham in February, 1988 only 112 instalments could be recovered and that worked out to Rs. 20,160/-. Before settling the pensionary benefits the PAO was intimated to adjust the HBA of Rs. 4,240/- as Principle and Rs. 10,444/- as interest from the DCRG amount vide this office letter No. F. No. S14/77/76-AC. dated 15.4.88 (HBA interest calculated upto April, 1988), but this was done at the time, nor were any instructions given to recover excess payment in salary, OTA etc.

ATTESTER

S. K. M. M.
Asst. Commissioner of Customs
YISAKHAPATNAM

DEPONENT

Subba Rao
10.1.88

e) On account of excess payments towards salary and OTA and pending recovery of HBA and other dues the following amounts were to be recovered from the benefits due to the family of the individual :

Immediate relief	.....	1000-00	X
Festival Advance	.....	200-00	X ✓
Flood Advance	.....	125-00	X
LTC	.....	240-00	X
Excess Pay & Allowances from 23.9.81 to 27.2.88/...	.....	24354-00	
Excess paid OT	.....	9858-00	
Excess paid leave salary	.....	288-00	
HBA	.....	4240-00	
Interest on HBA (till December, 1997).....	.....	13131-00	✓
<hr/>			
		53436-00	

Can be upto
Feb 98

An amount of Rs. 27,682/- (Rs. 27,347/- of DCRG and Rs. 335/- towards adhoc bonus) was adjusted against the excess payments, leaving Rs. 25,754/- still to be paid to the Department.

3. In reply to para 6 (a) of OA, it is submitted that after death of the applicant's husband, the eldest of her sons was appointed as LDC in the Department on compassionate grounds. The amount of DCRG was withheld since all the excess payments towards salary and OTA and balance of HBA and interest on HBA were to be recovered. Though her son was appointed in the department, the applicant had refused to pay the amounts due to the department.

4. In reply to para 6 (b) of OA, it is submitted that the excess paid pay and allowances were to be recovered from the individual, and for that reason the applicant was served with a letter to deposit the amount on 24.1.91. Recovery of the amount by selling the house which is under pledge to President of India, in case of failure of payment, is the one of the terms

ATTESTER

S. Krishnamurthy
Asst. Commissioner of Customs
VISAKHAPATNAM

DEPONENT

Harsha Patel
19.1.98

under which House building advance was granted. Since excess paid amounts of Salary and other allowances were to be adjusted from DCRG due to the individual, the department had proposed to the enforcement of mortgage deed, which is justified under HBA Rules, to recover the balance HBA and interest on HBA. Information of the above mode of recovery, does not amount to threatening. It is not correct to state that the respondents have not communicated the issue of the excess payments until 1994. This was brought to the notice of the applicant in 1991 itself.

5. In reply to para 6 (c) of OA, it is not correct to state that the Government dues recoverable from the individual cannot be collected when the individual has died. In a similar manner as, arrears, if any, due are to be paid to the family after death of individual, amount due to the Government also can be recovered. Rule 80.C of CCS Pension Rules Provides for recovery of over payment of Pay/Allowances etc. from the gratuity of a deceased Government Servant. And when there is no other avenue left, HBA & interest thereon can be recovered by enforcing the mortgage deed as per rule 8 of HBA Rules. It may be mentioned that the action of respondent to recover amounts due from the applicant is not illegal and in no way reduces the applicant to penury since she is being paid family pension every month and moreover the eldest of her sons has been given compassionate appointment after the death of her husband and is presently working in the office of the respondent as UDC earning a monthly salary of Rs. 6,000/- (Approx.)

6. In reply to para 6 (d) of CA, it is submitted that the anomaly in pay fixation of the applicant's husband was noticed during the life time of the individual and this matter was being referred to Madras Custom House & Ministry, when the individual suddenly expired. Later on revision of his pay, it was found that Rs. 32,288/- was to be recovered from the individual (towards

ATTESTER

S. K. M. M. M.
Asst. Commissioner of Customs
VISAKHAPATNAM

DEPONENT

19.1.94

excess paid pay, OIA etc.). The action of respondents to recover these excess paid amount from the dues payable to the applicant is just and proper. To term that the respondents have no authority to revise pay and allowances of employees working under them is highly rediculous. No principles of Natural Justice have been violated here and the action of respondents to recover the amounts, in no way puts to applicant to penury of financial disadvantage since the applicant and her son are being paid by the Department amounts to be tune of Rs. 7,500/- approximately towards, salary and family pension. When the applicant (wife) is enjoying the family pension and the son enjoying the benefit of compassionate appointment, they cannot throw away the responsibility of repaying the amounts due to Government saying that this is putting them at financial disadvantage. The action initiated by department to recover the Government dues is proper and justified.

7. In reply to para 6 (e) of OA, it is submitted that the first letter quoted by the applicant i.e. F. No. S5/84/87-88-Accts., dated 2.7.97 (for Rs. 25,570/-) includes all the dues payable by the applicant to the department. While the II letter i.e. F. No. S14/7/76-Accts., dated 31.7.97 (For Rs. 17,187) is only about HBA and interest on HBA, since this was a notice conveying the Departments decision to enforce the mortagage deed. The department had recovered a part of excess paid pay and allowances from DCFG due to be paid to the applicant. Since the applicant is not coming forth to pay the balance of HBA and interest on HBA (upto date) the department has decided to enforce the mortgage bond. And there is also a part of excess payments still to be recovered (i.e. Rs. 8,383/-) for which the pension drawing bank has been addressed.

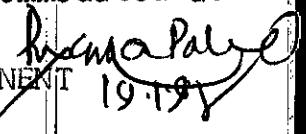
It is also submitted that the applicant's husband was who formerly worked as Sarang was declared surplus and was to be surrendered to the surplus cell after the launch of Vizag Custom House was disposed off. However he was accommodated as

ATTESTER


S. Kannan
Asst. Commissioner of Customs
VIZAKHAPATNAM

DEPONENT

19.1.98



Sepoy (i.e. in a lower grade). AT HIS OWN REQUEST. In terms of Ministry's clarification N. No. A-26015/32/84-Ad-IIA, dated 6.6.85 on the subject. Protection of pay scale is allowed only where the surplus cell is unable to arrange the placement of surplus employee in a post carrying matching scale, consequently redeploying him in a post carrying a lower scale of pay. The individual was not appointed in Vizag Custom House through surplus cell and had been appointed as Sepoy i.e. in a lower scale at his own request. The Ministry therefore had recommended the fixation of pay of the individual by allowing benefit for no of years of service that he had put in the higher scale i.e. as Sarang in terms of Department of Expenditure OM No. 6(23)/E.III/62 dt. 22.6.62. Hence, as per Ministry's clarification dated 6.6.85 the provisions of pay protection are in no way applicable in his case and hence no PP is allowable.

Consequent on the abolition of the post of Sarang, he had been accommodated as Sepoy w.e.f. 23.9.81 and his pay had been erroneously fixed at Rs. 240/- in the scale of pay of Rs. 200-240 taking the differential pay of Rs. 150/- in the old scale as personal pay. This case was referred to the Ministry and basing on the Ministry's order his pay was correctly fixed at Rs. 224/- on 23.9.81 as Sepoy in the scale of pay of Rs. 200-240 giving 7 years weightage to his service rendered as Sarang.

8. In reply to para 6 (f) of OA, it is submitted that the revised pay scales under CCS (RP) Rules 1986 came into force wef 1.1.86. Basing on the revision of the pay scales his pay was once again fixed wrongly Rs. 931/- on 1.1.86 in the scale of pay of Rs. 775-1025 and this matter was once again referred to CAO, MCH vide this office letter No. C8(2)/2/83-Ac. dt. 21.11.86 for confirmation. In reply to CAO, MCH had recommended that the pay of Shri N. Vishwanatham should be fixed at Rs. 907/- as on 1.1.86 and at Rs. 919/- as on 1.9.86 and Rs. 931/- as on 1.9.87.

ATTESTER

S. Krishnamurthy
Asst Commissioner of Customs
VISAKHAPATNAM

DEPONENT

Rama Palayam
(9.9.88)

9. In reply to para 6 (g) of OA, it is submitted that in reply to this Custom House letter S5/84/87-Ac. dtd. 14.1.1988 and 23.5.88, CAO, MCH has confirmed that the pay of Sri N. Vishwanatham was fixed at Rs. 224/- in the scale of Rs. 200 - 240 with effect from 23.9.81, after giving seven years of weightage to the service rendered by the individual as Sarang as per Govt. of India, Min. of Finance, Dept. of Revenue, letter F. No. A-26015/32/84/82-Ad. II, dated 6.6.85, in the cadre of Sepoy. In view of the over payments to the individual in 2 stages the excess payments of pay and allowances and OT was to be adjusted from the DCRG by making necessary endorsements in the LPC of the individual. The fixation of pay of the individual as 1.1.86 was confirmed by the Ministry vide letter No. A-26018/13/88-Ad. II A dt. 2.4.88 (Annexure-RI) stating that the pay shall be fixed as Rs. 907/- as on 1.1.86 in the scale of Rs. 775-1025, raising his pay to Rs. 919/- by granting the next increment wef 1.9.86 hence the question of wrong fixation does not arise. Since the individual had been accommodated as Sepoy at his own request provisions of pay protection are not applicable to him. The pay fixation indicated by the applicant in the para is wrong and the claim had been made without knowledge of the Rules.

10. In reply to para 6 (H) of OA, it is submitted that after refixing his pay as directed by CAO, MCH and the Ministry the following amounts towards pay and allowances were excess paid to the individual wef 23.9.81 (date of appointment as Sepoy) to 25.2.88 (date of expiry of the individual):

PAY	- 22,000/-
OTA	- 10,000/-
LEAVE SALARY	- 288/-

11. In reply to para 7 of OA, it is submitted that the departments action to recover excess pay and other allowances

ATTESTER

S. Krishnamurthy
Asst. Commissioner of Customs
VISAKHAPATNAM

DEPONENT

Prakash 19.1.88

from the EDCRG due to the individual is supported by Rule 71 of the CCS (Pension) Rules.

As regards HBA pending, as per the Rule 8 of HBA Rules the amount of balance HBA and interest on HBA are to be recovered where there is no other avenue, by enforcing the mortgage deed and accordingly action has been taken.

It is also wrong to state that the respondents have not been taking any action in this matter. Several letters of the respondents remain either unanswered or some vague pleas were put forth by the applicant requesting for write offs. Since the applicant, in the departments view, is in a very sound financial position, no write offs can be entertained in this case. Department had addressed a letter to the applicant on 16.11.89 itself, requesting her to pay the excess paid amount towards pay and allowances of her husband. The accusation of the applicant that the respondent had failed to take any action is not correct and Rule position has not been violated in any way.

In view of the above submissions, there are ~~not~~ no merits in the OA. The Hon'ble Tribunal may be pleased to dismiss the OA.

DEPONENT

19.1.98

Solemnly sworn and signed
his name on this day of
January, 1998 before me

BEFORE ME

ATTESTER

S Krishnamurthy
Asst. Commissioner of Customs
VISAKHAPATNAM

Copy of the letter F.No.A.26015/32/84 - Ad.II.A., dated 6.6.1985 from Government of India, Ministry of Finance, Department of Revenue, New Delhi, addressed to The Addl. Collector of Customs, Custom House, Visakhapatnam.

Sub: Abolition of Boat Staff consequent on disposal of Custom Launch, sanction of personal pay -
8 request regarding.
-X-X-X-X-X-

I am directed to refer to your letter No.8(2)/2/83-

Ac. dated 23.4.85 on the subject cited above and to say that the protection of pay scale in terms of O.M. dated 4.12.1968 is allowed only where the surplus cell is unable to arrange the placement of a surplus employee in a post carrying the matching scale and consequently re-deploy him in a post carrying a lower scale of pay. The official concerned was not appointment in the Visakhapatnam Custom House through the Surplus Cell. It is also observed that the employee in question had been appointed to the lower posts at their own request.

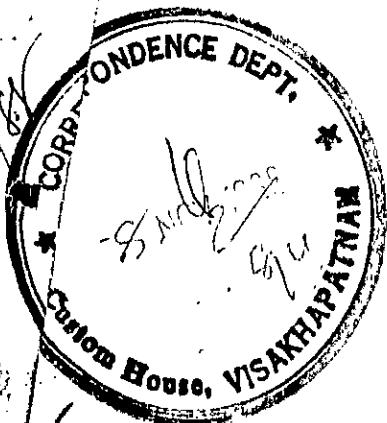
Since the employees were not surrendered and taken on the rolls of the Central (Surplus Staff) Cell, ex-post-facto approval to their re-deployment in a lower grade does not arise. Under the circumstances the only alternative would be to fix the pay of these employees by allowing them benefit/incentive for the number of years of service they had put in higher or equivalent scales in terms of Department of Expenditure's O.M. No.6(23)-E.III/62 dated 22.6.62 (appearing as Government of India decision No.5 below FR 27 in Swamy's compilation of FR Sr-7th Edition).

Yours faithfully,

Sd/- (S.P.KUNNU)
UNDER SECRETARY TO
THE GOVT. OF INDIA.

// True Copy //

sp"



ANNEXUR - R2 28 REGISTERED

F.No. A.26018/13/88-Ad.II-A

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

New Delhi, the 20 November, 1988.

To

The Addl. Collector of Customs
VISAKHAPATNAM.

Subject : Fixation of pay of Shri N. Viswanatham,
Sepoy (Ex-Sarang) -Custom House,Visakhapatnam

Sir,

I am directed to refer to the correspondence resting with your office's letter No.S.5/84/87-88 AC, dated 10.6.88 on the above subject and to observe that the pay of Shri Viswanatham has been fixed at Rs.224/- in the pay scale of Rs.200-240 with effect from the 23rd September, 1981 in accordance with clarification given in this Department's letter F.No. A.26015/32/84-Ad.II-A dated 6.6.85. As per this pay fixation, Shri Viswanatham was drawing pay at the stage of Rs.240/- i.e. maximum of the scale on 31.12.1985. Since Shri Viswanatham was drawing pay at the maximum of the scale for a period less than one year as on 1.1.86, there is no question of granting him stagnation increment under proviso 4 to Rule 8 of CCS (RP) Rules, 1986. As such the pay of Shri Viswanatham shall be fixed at Rs.907/- in the pay scale of Rs.775-1025 with effect from 1.1.86 raising his pay to Rs.919/- by granting next increment from 1.9.1986.

Appropriate action may be taken accordingly.

Service Book of Shri Viswanatham is returned herewith. Receipt of the same may please be acknowledged.

Yours faithfully,

(TARSEM LAL)

UNDER SECRETARY TO THE GOVERNMENT OF INDIA.

Encl : Service Book.

40

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 1304/97.

Date of Order: 1-10-97.

Between:

Smt. N. Satyamati.

.. Applicant.

and

1. Union of India, rep. by
the Secretary, Ministry of Finance,
Dept. of Revenue, Govt. of India,
New Delhi.
2. The Commissioner of Customs
Customs House, Port Area,
Visakhapatnam-35.

.. Respondents.

For the Applicant: Mr. P.P. Vittal, Advocate.

For the Respondents: Mr. V. Rajeswar Rao, Addl. CGSC.

CORAM:

THE HON'BLE MR. H. RAJENDRA PRASAD : MEMBER (ADMN)

The Tribunal made the following Order:-

Heard Mr. P.P. Vittal, learned counsel for the applicant and Mr. V. Rajeswar Rao, learned standing counsel on behalf of the respondents.

O.A. is admitted. Counter in 6 weeks. As an interim measure it is directed that Letter No. S14/7/76-Accts. dt. 31-7-97 (Annexure-I), if not already enforced till today, shall not be operated until further orders.

Arb. + w/w
Deputy Registrar (J) CC

O.A. 1304/97.

To

1. The Secretary, Ministry of Finance,
Union of India, Dept.of Revenue
New Delhi.
2. The Commissioner of Customs,
Customs House, Port Area, Visakhapatnam-35.
3. One copy to P.P.Vittal, Advocate, CAT.Hyd.
4. One copy to Mr.V.Rajeswar Rao, Addl.CGSC.CAT.Hyd.
5. One spare copy.

pvm

Notice

Urgent

I Court,

TYPED BY:

CHECKED BY:

COMPARED BY.

APPROVED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE.
VICE-CHAIRMAN

And

THE HON'BLE MR.H.RAJENDRA PRASAD :M(A)

DATED:-

11/10/97

ORDER/JUDGMENT

M.A.,/RA.,/C.A.No...

in

O.A.No.

1304/97.

T.A.No.

(W.P.)

Admitted and Interim directions issued.

Allowed

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/rejected

No.order as to costs.

केन्द्रीय प्रशासनिक विधिकरण
Central Administrative Tribunal

DESPATCH

600

43

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
HYDERABAD

P.A. No. 1304/97 OF

DATE OF DECISION: 7-4-98

Smt. N. Satyavathi

PETITIONER(S)

Mr. P.P. Vittal

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

U.O.I. & anr.

RESPONDENT(S)

Mr. V. Rajeshwara Rao

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether the Judgement is to be circulated to the other Benches

JUDGEMENT DELIVERED BY HON'BLE Shri H. Rajendra Prasad, M(A)

44

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. No:1304/97

Date of decision: 7-4-1998

Between:

Smt. N. Satyavathi

.. Applicant

A N D

1. Union of India,
The Secretary,
Ministry of Finance,
Dept. of Revenue,
Govt. of India,
New Delhi.

2. The Commissioner of Customs,
Customs House,
Port Area,
Visakhapatnam - 530 035.

.. Respondents

Counsel for the applicant : Mr. P.P. Vittal

Counsel for the respondents: Mr. V. Rajeshwara Rao

Coram:

Hon'ble Shri H. Rajendra Prasad, Member(A) *Q 7/1**

..2/-

(Per Hon'ble Shri H. Rajendra Prasad, Member(A))

The husband of the applicant passed away in February, 1988, after rendering 25 years of service under the Respondents. Soon thereafter certain sanctions of terminal benefits were accorded, after deducting Rs.16,249/- by way of immediate relief (already) paid, festival, flood, LTC and HB Advances and interest on the last-named advance. An amount of Rs.11,924/- was the balance amount that was required to be paid and the same was communicated to the applicant. Eighteen months later the applicant was informed that the pay of her late husband had been wrongly fixed at an earlier stage, and further that some additional amounts were also found due from him by way of HBA. In 1997, the representations of the applicant for payment of Rs.11,924/-, as initially shown by the respondents, was rejected.

2. The case of the respondents is that a total of Rs.32,788/- had been paid to the deceased employee in excess of his actual entitlements during his service by way of pay and allowances, OTA and leave-salary. These alleged over-payments came to light and ^{were} communicated for the first time only in 1994.

3. The applicant contends that the plea of so-called excess payments was raised only after the demise of her husband and after the initial communication regarding the balance due to him; that she is unaware of any details in this regard; and that while she is agreeable for the deduction of Rs.14,684/- towards HBA and interest thereon from the DCRG of her deceased husband, she should not be burdened with other proposed recoveries. The applicant further complains that the authorities have been amending the alleged dues and excess payments often, and were seen to be citing different amounts at different times. She further contends that at the time of his conversion from Sepoy to Sepoy in 1981 the pay of her late husband was fixed at Rs.240 + 150 as PP and the total emoluments drawn by him amounted to Rs.1309.60 which was more than the maximum of the time-scale of Sepoys. There was, therefore, no excess payment and the question of any recovery could not arise. The applicant (as enjoined in Pension Rules) points out that it was the duty of the Head of the office to ascertain and arrive at the exact amount of dues, if any, within a

month of the receipt of intimation of the death of an employee, whereas, in the present case, they raised the issue of excess payments much after the stipulated one-year period. Therefore, the applicant prays for setting aside the order No. S14/7/76-Accts. dt. 31-07-1997 issued by respondent No.2 and for directing him to sanction the balance amount of Rs.11,924/-, as originally arrived at and conveyed to her, with interest.

4. The respondents in their counter-affidavit explain that the basic pay of the deceased employees was fixed at Rs.931/- on his conversion from Serung and absorption as Gr."D", consequent on the disposal and disbandment of the Customs Boat. This was in consonance with the orders of Ministry of Finance (Department of Revenue) that the pay of the applicant be fixed by allowing him the benefit/incentive in respect of the number of years of service he had rendered in higher or equal scale on his appointment in a post carrying lower scale of pay at his own request. His pay was thus fixed as on 1-9-87 at Rs.931/- in April'88, in the scale Rs.775-1025. However, the pay scales of Sepoys, were revised in April'89 and his pay was revised and refixed w.e.f. 1-1-1986 between Rs.899/- and Rs.927/- during 1-1-86 to 1-9-87. And this refixation resulted in certain excess payments. As regards the HBA, an amount of Rs.20,160/- only had been recovered from the pay of the official as against Rs.24,400/- sanctioned to him. A sum of Rs.4,440/- (principal) and Rs.10,444/- (interest) was seen to be due from him at the time of his demise, besides certain other amounts by way of LTC, Festival, and Flood Advances etc. It is intimated that the deceased employee's son was duly appointed in the department on compassionate grounds, that family pension had been fixed as per rules, and that the family was certainly not in a state of penury. They also state that they had intimated the fact of above amount being due in 1991 itself and not for the first time, as alleged by the applicant, in 1994. It is argued by the respondents that just as it is obligatory on the part of the authorities to sanction all claims which are due in favour of retired/deceased employees, it becomes equally incumbent on the part of the employees to settle and pay up if any dues, which may be found payable by them. It becomes necessary therefore to enforce the mortgage on the house of the deceased employee in terms of the loan sanctioned to him as the amounts due from the loanee remain unpaid.

5. The facts of the case have been examined carefully. The contention of the applicant regarding the aspect of the re-fixation of the deceased employee's pay is ~~the result of~~ ^{due to} ~~an~~ ignorance of rules and procedures. It is noted here that on the closure of Customs Boat it was open to the authorities to have referred the question of re-deployment of the concerned staff to the Surplus Cell in the Home Ministry and, in such an event, an employee who was routed through the agency of the Cell for a fresh employment/absorption would be entitled to the protection of his pay. In the present case the deceased employee himself volunteered to accept a post which carried a lower scale and was accordingly accommodated as Sepoy in the same department. The re-fixation of the pay has therefore to be held to have done correctly. The arguments advanced on behalf of applicant in this regard are rejected.

6. As far as HBA is concerned, whatever amount has remained unrecovered, together with interest thereon, is due to be recovered from the deceased official's entitlements or from his legal heirs. The applicant, it is noted, is indeed willing to accept the recovery of such amounts from the DCRG payable to the deceased employee. Such recoveries should be effected.

7. The disclosure of the respondents that the applicant's son has since been appointed on compassionate grounds, and that the applicant is duly in receipt of family pension, have no relevance to the present case and do not affect its outcome in any way.

8. The amount representing the immediate relief that was granted to the family on the demise of the applicant's husband, besides festival and flood advances, and the advance of LTC, are also similarly due and recoverable from the DCRG.

9. The question that needs to be addressed in this case is whether the respondents need to recover any amount inadvertently fixed and paid in excess of the entitlements of the deceased employee by way of pay and allowances, OTA and leave salary.

10. The question has been discussed in various judgments arising out of similar situations in the past. While it may not be necessary to cite every such decision it would be sufficient to refer to the following :

(i) Sahib Ram vs. State of Haryana & Ors. 1995 SCC (L&S) 248, where it was held thus:

"Since the time of refixation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstance the amount paid till date may not be recovered from the appellant."

(ii) Shyam Babu Verma and Others vs. U.O.I & Ors. 1994(1)SLR (SC) 827

"Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1-1-1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973, due to no fault of theirs, and that scale is being reduced in the year 1984 w.e.f. 1-1-1973 it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

(iii) Nathi Lal vs. U.O.I. & Ors.
1997(1) SLJ (CAT) 383

"8. After judgment of Hon'ble the Supreme Court in the case of Sahib Ram v. State of Haryana and Others, 1995 SCC (L&S) 248, there remains no ambiguity that where a benefit of pay scale has been given to an employee and it is not actuated on account of any mis-representation by him and the employee has not been at fault, the amount paid may not be recovered from him. This principle has further been reiterated by Hon'ble the Supreme Court in the case of State of Orissa and Others vs. Adwait Charan Mohanty and others, 1995 SCC (L&S) 522 decided on

27-1-1995, wherein the employee even after the age of superannuation was allowed to continue till the age of 60 years and was also paid the salary and benefits throughout, but the respondents were restrained from making its recovery. In the instant case also the applicant has been receiving the benefits since the year 1986 and more particularly after his age of superannuation in the year 1991, the ratio laid down by Hon'ble the Supreme Court in the aforesaid cases applies squarely to the facts of the instant case.

(iv) Saroj Kr. Banerjee vs. U.O.I. 1996(2)SLR 401

"5. We have heard the 1d. counsel for the parties and have gone through the documents produced. No doubt, the recovery of this over-payment is admissible under the Railway Service Pension Rules as quoted by the respondents. The fact also remains that special pay had been given to the petitioner long back in 1979 by the respondent authorities and the petitioner had no hand in it. Moreover, they had all along granted the same and now they are proposing to recover the amount after so many years - at the fag end of the service career of the petitioner. Hon'ble Supreme Court in Shyam Babu Verma & Ors. vs. U.O.I. & Ors. (1994)27 ATC,121: (1994 (1) SLR 827(SC)) had decided that if excess payment is made due to the administrative error of the Department, the recovery of the same could not be made from the pay of the petitioner far less from the DCRG and that if the recovery is already made that should be refunded. In the instant case, intention of the respondents is to make recovery from the DCRG. This is clearly against the law settled by the Hon'ble Supreme Court. "

11. In addition to the above judgments, the following are relevant :

(a) In NARINDER MARWAH (SMT) vs. UNION OF INDIA((1994) 26 ATC 179) the Principal Bench of this Trbunal held that recovery from the pay or its reduction on the ground that the earlier fixation was erroneous was bad in law and violated

the principles of natural justice as well as the concept of Legitimate Expectation.

(b) In SWAPAN KUMAR SAHA & OTHERS VS. UNION OF INDIA (1993 (23) ATC 902) it was held that the recovery after a considerable lap of time of any over payments which has resulted due to erroneous fitment in a higher grade was arbitrary and violative of principles of natural justice.

In support of this finding the Hon'ble Members relied on the judgments reported in V.D. CHITALKA V. UNION OF INDIA : (1987) 2 SLJ (CAT) 305 Delhi, C.S.BEDI V. UNION OF INDIA: ATR (1988) 2 CAT 510(ND), PUSHPA BHIDE VS. UNION OF INDIA (1989) 10 ATC 90 (Jabalpur), T.R Sundararaja Iyengar vs. P.M.G. Karnataka Circle, (1989) 9 ATC 43 (Bangalore) & (1989) 1 SLJ (CAT) 238, Alphonso Louis Parayil vs. Secretary to Govt. of India (1992) 19 ATC 210 (Ernakulam): 1990 (4) SLR (CAT) 383.

(c) In MAHAVIR SINGH VS. UNION OF INDIA & ORS. (1996) 33 ATC 683 it was held that in cases where over payments were made due to a conscious decision of the Competent Authority which was later on considered to be wrong, any subsequent recovery of amount over-paid was not permissible, and the recovery order was therefore invalid. In the same case it was held that any reduction in the pension, on the ground that it was determined on the basis of wrong fixation of pay, was not permissible because the applicant had been in receipt of a particular level of pay, even though owing to an administrative mistake, which could not be rectified after his retirement when his pension was determined on the basis of average pay drawn by him during the 10 months prior to his retirement.

(d) In ARJUN SINGH V. UNION OF INDIA & ORS. (O.A. No.130/95) the Jodhpur Bench of this Tribunal held that the recoveries from the retiral benefits of over payments made during the preceding 13 years, solely due to an administrative error, would not be in conformity with the rules and

instructions and held further that such withheld amounts should be refunded with interest from the date they become due.

(e) In M. VENKATAPATHY VS. UNION OF INDIA (O.A. No. 894/96 of this Bench of the Tribunal held that an alleged erroneous fixation detected at the time of the official's retirement was not valid.

12. It would not be necessary to elaborate this point further. In view of the clearly settled position of law the following directions are issued.

(i) The respondents are free to recover from the terminal benefits of late N. Viswanatham the following :

- (a) the immediate relief granted on the demise of the official;
- (b) festival advance
- (c) flood advance
- (d) LTC ~~Advanced~~ ~~balance~~
- (e) HBA (~~outstanding balance of the principal~~)
- (f) Interest on HBA till 25-2-1988, the date of his demise.

(ii) They shall sanction the remaining amount, if any, to the applicant within 45 days of the receipt of a copy of this order.

(iii) They shall add an interest at the current government-approved rate from 25-8-88 till the actual date of payment.

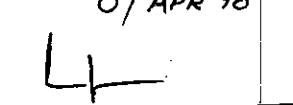
(iv) There shall be no change in respect of family pension, sanctioned to the applicant based on the pay re-fixation as already determined.

(v) No order as to costs.


(H. RAJENDRA PRASAD)
Member (A)

07 APR 98

MD


Deputy Registrar

O.A. 1304/97.

To

1. The Secretary, Ministry of Finance,
Union of India, Dept. of Revenue,
Govt. of India, New Delhi.
2. The Commissioner of Customs,
Customs House, Port Area, Visakhapatnam-35.
3. One copy to Mr. P.P.Vittal, Advocate, CAT.Hyd.
4. One copy to Mr.V.Rajeshwara Rao, Addl.CGSC. CAT.Hyd.
5. One copy to HHRP.M.(A) CAT.Hyd.
6. One copy to DR(A) CAT.Hyd.
7. One spare copy.

pvm

22/4/98
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR. H. RAJENDRA PRASAD : MJD

DATED: 7 -4-1998

ORDER/JUDGMENT

M.A.NO.

in
O.A.No. 1304/97

~~No Interim directions issued~~

Disposed of with directions

Dismissed.

No order as to costs.

Central Administrative
Tribunal, Hyderabad
Hyderabad
21 APR 1998

21 APR
Despatched
RECD
SAC/MPAL