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Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2652/2003

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr.S.A. Singh, Member(A)**

New Delhi, this the 18th day of January, 2005

**N.P. Gautam,
R/o 3/182 Rajendra Nagar,
Sector 2, Sahibabad,
Ghaziabad (U.P.)**

....Applicant

(By Advocate: Shri S.D. Raturi)

Versus

Union of India, through its :

- 1. Secretary Govt. of India,
Ministry of Finance,
Department of Expenditure,
New Delhi-110001**
- 2. Hon'ble Lt. Governor,
Govt. of NCT of Delhi,
Rajpur Road, Delhi.**
- 3. Govt. of N.C.T. of Delhi
Through its Chief Secretary,
Delhi Secretariat,
New Delhi-2**
- 4. The Director of Education,
Old Secretariat, Delhi**
- 5. Dy. Director of Education,
(North-East) 'B' Block,
Yamuna Vihar, Delhi.**

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6. The Principal,
Govt. Boys Senior Secondary School,
J&K Block, Dlishad Garden,
Delhi

....Respondents

(By Advocate: Shri George Paracken, for respondents 2-6)

Order(Oral)

Justice V.S. Aggarwal, Chairman

During the course of submissions, the applicant confines his prayer with respect to the order passed whereby recovery of Rs.43,012/- is directed to be effected from him.

2. Some of the facts would precipitate this controversy because we are not delving into any other dispute.

3. The applicant superannuated as P.G.T. (Lecturer Hindi) on 30.9.2001. On an earlier occasion, he had filed O.A.No.1723/2002. He impugned the fixation of his pay at the level of Selection Grade of T.G.T. as well as at the level of P.G.T. His claim was that his pay should be fixed at Rs.2600/- and not at Rs.2540/- as indicated in the order of 21.12.2001.

This Tribunal had disposed of the said petition with the direction:

"3. Having regard to the submissions made by the learned counsel and the aforestated facts and circumstances, we find in order, fair and just, to dispose of the present OA at this very stage even without issuing notices with a direction to the respondents to consider the aforesaid representations filed by the applicant and to pass a reasoned and a speaking order thereon expeditiously and in any event within a period of three months from the date of receipt of a copy of this order. We direct accordingly. O.A. is disposed of in the aforestated terms."

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4. In pursuance of the directions of this Tribunal, the respondents have re-fixed the pay and have now stated that consequent upon re-fixation, Rs.43,012/- is due from the applicant in the form of overpayment of salary and pension.

5. The said payment is stated to have been made voluntarily.

6. The settled principle in law is that when some overpayment has been made voluntarily without any fraud having been practiced by the Government employee, the excess could not be recovered after a lapse of long period.

7. In the case of SHYAM BABU VERMA AND OTHERS v. UNION OF INDIA AND OTHERS (1994) 2 SCC 521, before the Supreme Court, the question of the employees to repay the excess amount came up for consideration. The Supreme Court held:

"11. 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. January 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 with effect from January 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."

8. Another Bench of the Supreme Court in the case of UNION OF INDIA v. K.B. KHARE AND OTHERS, 1994 Supp (3) SCC 502 was

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concerned with the same controversy. It held:

"20..... The question of law having been settled, we would only state that if any excess pension has been paid to the first respondent, than what he is legitimately entitled to, that may not be recovered. However, this does not mean that if the payment of higher pension has not so far been made, the appellant is required to pay the same....."

9. A year later in the case of SAHIB RAM v. STATE OF HARYANA AND OTHERS, 1995 SCC (L&S) 248, the Supreme Court again held that when upgraded scale was given due to wrong construction of relevant order without any misrepresentation of the employee, in such circumstances the recovery of payment already made should not be effected.

10. More recently, in the case of P.H. REDDY & ORS. v. N.T.R.D. & ORS., JT 2002 (2) SCC 483, while considering the same question, the Supreme Court again held:

"2.. In our view, therefore, the judgement of this Court in the Director General, ESI, represents the correct view, and consequently the order of re-fixation done by the appropriate authority in the case in hand, does not require any interference, but the employees-appellants, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to re-pay the excess pay drawn, and therefore, that part of the order of the authority is set aside. The direction of the appropriate authority requiring reimbursement of the excess amount drawn is annulled."

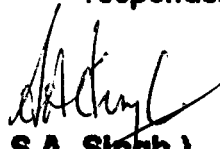
11. Identical indeed is the position herein. The excess payment has been made to the applicant voluntarily on re-fixation and if the said

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excess payment is to be recovered, indeed, in the absence of any fault of the applicant, the respondents should not be permitted to do so.

12. Resultantly, on this short ground, keeping in view the only request made by the learned counsel, we quash the order passed by the respondents to that extent. O.A. is accordingly disposed of.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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