

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2719/2003

New Delhi this the 26th day of March, 2004

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

Birham Prakash
S/O Shri Pirthi Singh,
R/O B-20, Jain Nagar Ext.
Karala, Delhi-81

..Applicant
(By Advocate Shri G.S. Chaman)

VERSUS

1. The Union of India through
Secretary, Ministry of Home Affairs,
Govt. of India, Central Sectt.,
North Block, New Delhi.
2. Director, Intelligence Bureau
Ministry of Home Affairs,
35, New Complex, Sardar Patel
Marg, New Delhi.

..Respondents
(By Advocate Shri S. M. Arif)

O R D E R (ORAL)

Justice V.S. Aggarwal: ..

By virtue of the present application, the applicant, (Birham Prakash) seeks quashing of the order dated 10.9.2003 and subsequent orders passed in this regard.

2. Some of the relevant facts are that the applicant joined the Intelligence Bureau on 18.8.1987 on deputation from Central Industrial Security Force (for short CISF). Subsequently, he was promoted to the rank of Junior Intelligence Officer, Grade II. His pay was fixed in that scale. It appears that while conducting Internal Audit, it was observed that pay fixation made by Intelligence Bureau Headquarter in respect of one

V.S. Aggarwal

N.Krishnan who came on deputation from CISF and whose pay was fixed in similar way as of the applicant, is not in order.

3. The Audit advised refixation of the pay and as a consequence thereto, the pay of the applicant was refixed.

4. The respondents refixed the pay and by virtue of the impugned order, it is claimed that recovery of excess amount made is effected.

5. The petition has been contested.

6. Learned counsel for the applicant contends that the pay was fixed for no fault of the applicant. He could not be called upon to pay the said amount and he should be allowed to continue drawing the same salary as has been fixed by the respondents.

7. So far as the first part of the arguments is concerned, the applicant indeed is supported by the decision of the Supreme Court in the case of **Sahib Ram Vs. State of Haryana and Ors.** (1995 SCC(L&S) 248). The Supreme Court held that where upgraded pay scale was given without any misrepresentation of the employee, in such event, the recovery should not be effected.

8. We are bound by the judgement. It must be held that recovery as such should not be effected.

Ms Ag

9. Learned counsel in that event stated that even for the future the applicant cannot be asked to refund the amount.

10. As sequal, as we have stated above, since the pay of the applicant had been fixed, it should be treated as personal to the applicant to be adjusted in future increments.

11. Accordingly, we dispose of the present application holding;

(a) the excess payment that has been made which was without any misrepresentation on his part cannot be directed to be refunded,

(b) the pay that has been fixed should be treated as personal to the applicant and it should be adjusted in his future increments; and

(c) recovery already made be refunded to the applicant.


(S.A. Singh)

Member (A)


(V.S. Aggarwal)
Chairman

sk