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R.A. NO. 127/2004

IN

O.A. NO. 2719/2003

NEW DELHI THIS THE...^{25th}...DAY OF MAY 2004

HON'BLE SHRI JUSTICE V S AGGARWAL, CHAIRMAN

Briham Prakash - Applicant

VERSUS

Union of India & Others. - Respondents

O R D E R (IN CIRCULATION)

The applicant filed this RA No.127/2004 in QA No.2719/2003 which was disposed of on 26.3.2004 by passing following orders:

- 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.

2. Applicant pleads that the Tribunal has erred with regard to order at (b) because of the doctrine of precedent resulting from the Division Bench Jabalpur Judgement in **Pushpa Bhide Vs UOI & ors ATR 1989(1) CAT 391 (Jabalpur) 401** which had been cited at para 4.15 of the OA as under:

"there is large number of judicial dicta which bar correction of mistake, if any, after a lapse of 7/8 years. Therefore re-fixation of applicant's pay after 12/13 years even if it was fixed wrongly through mistake is barred by judicial dicta".

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3. In view of this doctrine order at (b) above requiring the re-fixation of pay is an error apparent on the face of the record and as such the applicant prays that the Tribunal may review order at (b) and direct the respondents not to re-fix the applicant's pay.

4. Para 7 of our order reads as under:

"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."

5. We have carefully considered and gone through the averments of the applicant made in the RA. From the above it is clear that the issue raised in this RA has already been taken into account and hence we find that there is no error apparent on the face of the record. Therefore, R.A. is accordingly dismissed in circulation.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

Patwal/