IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 36111 of 2004 (Y)

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PETITIONER(S) :-

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P.MANI PAUL, PUTHOOR MELARAYIL HOUSE,
PERUMBADAVAM P.O., ELANJI, ERNAKULAM DISTRICT.

BY ADVS.SRI.C.P.SAJI
SRI.SUNNY ZACHARIAH

RESPONDENT(S) :-

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1. UNION OF INDIA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, MINISTRY OF FINANCE
NEW DELHI.

2. THE COMMISSIONER, CENTRAL EXCISE AND
CUSTOMS, I.S.PRESS ROAD, KOCHI-18.

3. THE ADMINISTRATIVE OFFICER (DDO)
OFFICE OF THE COMMISSIONER OF CUSTOMS
(PREVENTIVE), I.S.PRESS ROAD, KOCHI-18.

4. THE ASSISTANT COMMISSIONER
(ADMINISTRATION), CENTRAL EXCISE AND CUSTOMS
I.S.PRESS ROAD, KOCHI-18.

5. THE PAY AND ACCOUNTS OFFICER,
CUSTOMS HOUSE, KOCHI-9.

R1-R5 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

**WP(C).No.36111 OF 2004**

## APPENDIX

Petitioner's Exhibits :-

Ext.P1 :- True copy of the order No.C.No.11/25/10/2003/Accts.CCP/5114 dated 23.7.2004 of the 3rd respondent.

Ext.P2 :- True copy of the representation dated 9.8.04 of the petitioner submitted to the 3rd respondent.

Ext.P3 :- True copy of the order C.No.11/25/10/2004 Accts-CCP/6583 dated 29.10.04 of the 4th respondent.

Respondent's Exhibits :-

Ext.R1 :- True copy of the letter Dated 30.6.2004 issued by the 5th respondent.

Ext.R1(a) :- True copy of the letter C.No.II/10-A/2/84 Vig.Cx.562/563/2000 dated 28.9.2000 issued by the Addl. Commissioner (P&V) Central Excise and Customs, Kochi.

Ext.R1(b) :- True copy of the letter C.No.II/10A/2/84 Vig. Cx.442/01 dated 21.8.2001 issued by the Addl. Commissioner (P&V) Central Excise and Customs, Kochi.

Ext.R1(c) :- True copy of the Pay Fixation Order C.No.II/24/3/2000 dated 7.8.2001 issued by the Deputy Commissioner of Central Excise, Kottayam.

//True Copy//

P.A. to Judge

**A.V. RAMAKRISHNA PILLAI, J.**

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**W.P.(C) No.36111 of 2004**

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**Dated this the 5th day of January 2015**

**J U D G M E N T**

The petitioner is aggrieved by the order of the 5th respondent to recover the alleged excess payment made to the petitioner years back due to the alleged wrong fixation of pay by granting one increment to the petitioner. According to the petitioner, the said decision is violative of the Principles of natural justice and law settled by the Apex Court as well as this Court in various decisions.

2. The petitioner was working as a Havildar in the Central Excise and Customs. He demitted his office on 31.5.2004. The petitioner alleges that there was a wrong fixation of pay in the case of the petitioner during the period between 6.5.1984 and 29.9.1991 when he was placed under suspension. The petitioner points out that the entire DCRG, leave salary and bonus for the period of 2003-2004 were appropriated by the respondents towards the alleged overpayment of salary years back before the date of his retirement. This was ordered as per Ext.P3 of the 4th

respondent. The petitioner points out that before passing Ext.P3, the 4th respondent did not consider Ext.P2 representation filed by the petitioner pointing out the settled position of law. According to the petitioner, it is settled law that the salary once paid could not be recovered from the employee even if there is mistake in calculation and the employee had not contributed to the mischief. Therefore, according to the petitioner, the direction to refund the salary made in Ext.P3 is illegal and liable to be set aside.

3. The 4th respondent filed a detailed counter affidavit resisting the writ petition. According to the 4th respondent, the petitioner was a Central Government employee. He joined service as a Sepoy in Central Excise on 26.9.74 and demitted his office as Havildar on 31.5.2004. The verification of the service records of the petitioner proved that the 2nd financial upgradation granted to him was not proper as he had not completed the prescribed 24 years of regular service. Therefore, the Additional Commissioner (P&V) Central Excise, Cochin vide Order No.93/2004 issued from file C.No.11/3/3/2004 Estt IV dated 27.5.2004 cancelled the order of the IInd ACP granted to

the petitioner. Therefore, his pension papers were submitted to the 5th respondent. The 5th respondent raised audit objection vide her letter No.PAO/CUS/PEN/Manipaul/2004-25 dated 30.6.2004. A copy of the same was produced as Ext.R1. Accordingly, the 3rd respondent resubmitted the revised pension papers to the 5th respondent after refixing his pay and rectifying the mistakes. The dues to the Government to be recovered from the pensionary benefits of the petitioner were worked out as per Rule 71(3)(b) read with Rule 73(3) of CCS Pension Rules, 1972. As a result of the audit objection, the pay of the petitioner had to be re-fixed and excess payment made to the petitioner during the period from 6.5.1984 to 31.5.2004 was to be recovered. For this purpose, statements were prepared and sent to five different offices for verification and return. The delay occurred in preparing the due drawn statements for 20 years and getting back the verified statements from concerned offices was unavoidable due to considerable labour involved in the process. A total amount of ₹41,808/- towards retirement benefits (that is; ₹31,926/- as General Provident Fund and ₹9,882/- as Central Government Employees Group Insurance Scheme) was disbursed to the retired official on 18.6.2004, that is; within three weeks from the date of retirement. True copy of the letter C.No.11/10-A/2/84 Vig. Cx.562/563/2000 dated 28.9.2000 issued by the Additional Commissioner (P&V), Central Excise and Customs Commissionerate, Kochi is produced and marked as Ext.R1(a). True copy of letter C.No.11/10A/2/84/84/Vig. Cx.442/01 dated 21.8.2001 issued by the Additional Commissioner (P&V) is produced and marked as Ext.R1(b). True copy of the pay fixation order C.No.11/24/3/2000 dated 7.8.2001 issued by the Deputy Commissioner of Central Excise, Kottayam is produced as Ext.R1 (c). The respondents also contended that the petitioner has approached this Court without availing the statutory remedy before the Administrative Tribunal. It was pointed out that the petitioner was under suspension from 6.5.1984 to 29.9.1991. As per the disciplinary proceedings the employee was reverted to the post of Sepoy for a period of six years. There has been overpayment of subsistence allowance during the period of suspension. Subsistence allowance has been paid at 75% of pay giving annual increments for the whole period. This was incorrect. Since the period of suspension has not been treated as duty, no increment was admissible during the period. Therefore, the statutory authorities directed the recovery of excess payment. The period of interruption in service shall not be counted as qualified service unless otherwise as duty or leave. As per Rules the excess amount paid to the petitioner must be recovered from the pensionary benefits. Calculating the amount of government dues from different offices was a time consuming process and it was unavoidable. Thus, they prayed for a dismissal of the writ petition.

4. Arguments have been heard.

5. Ext.P3 order of the 4th respondent was to recover the excess payment made to the petitioner years back due to the alleged wrong fixation of pay by granting one increment to the petitioner. The petitioner demitted his office on 31.5.2004. As per Ext.P3, the petitioner was eligible for a sum of ₹86,788/-. The overpayment of pay and allowances to the petitioner during the period from 6.5.1984 to 31.5.1984 was calculated as ₹84,959/-. Therefore, according to the respondents, the balance amount of ₹1,829/- was only to be paid. It is relevant to note that the petitioner was placed under suspension for some time and

later on he was reverted to the post of Sepoy. During the period of suspension he was granted subsistence allowance at the rate of 75%. However, how the period of suspension has to be treated was not ordered and therefore, the stand now taken by the respondents is that the payment of subsistence allowance at the rate of 75% was illegal. There was no order prohibiting to exclude the suspension period from the qualifying service for pension. There was no order for withholding or postponing increments till the expiry of reduction to the lower post. The order was only to postpone the petitioner's future increments of pay for a period of three years after the expiry of reduction period. Therefore, the petitioner is eligible for annual increments. Even assuming that there was a wrong fixation of pay in the case of petitioner, the excess payment cannot be recovered after a lapse of so many years. The petitioner cannot be accused of for the wrong fixation of pay of the petitioner. He was employed in a lower post and had no hand in fixation of pay by his authorities. He was never informed about the alleged wrong fixation of pay while he was in service. Therefore, this Court is of the definite view that the petitioner cannot be penalised for the mistake if any committed by the authorities. Therefore, the respondents are not entitled to withhold the payment if any from the pensionary benefits of the petitioner. On a consideration of the entire materials now placed on record, this Court is of the definite view that the petitioner cannot be penalised for the lapses on account of the authorities concerned. Therefore, the action of the respondents to recover the excess salary if any on the basis of Ext.P3 is illegal and is liable to be set aside.

In the result, this writ petition is allowed. Ext.P3 is quashed. The respondents are directed to pay the entire eligible DCRG, leave salary, arrears of pension and bonus for the period 2003-2004 to the petitioner within a period of one month from the date of receipt of a copy of this judgment. Failure to pay the amount as directed above, shall make the respondents liable to pay interest at the rate of 12% per annum from the date of this writ petition till realisation.

**Sd/-**
**A.V. RAMAKRISHNA PILLAI**
**JUDGE**

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