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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1817/2015 & C. M. APPL. 3250/2015

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Date of Judgment : 03.08.2015

INDIAN TRADE PROMOTION ORGANIZATION

..... Petitioner

Through : Mr. Piyush Sharma, Advocate

versus

ANIL KUMAR KHANNA

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. Challenge in this writ petition is to the order dated 27.09.2004 passed by the Central Administrative Tribunal (CAT).
2. The facts which gave rise to the filing of the OA are as under:

“The applicant was appointed as Financial Adviser and Chief Accounts Officer (FA & CAO) in India Trade Promotion Organization (ITPO) on 07.02.1994 in the pay scale of Rs.5500 – 175 – 7075 (DA). After his joining, he was granted three advance increments in terms of G.I., M. F. O. M. No. F.10 (2) Estt.III/55 dated 15.02.1955, thus his pay was fixed at Rs.6025/-. Subsequently, the pay scale of the post was revised to Rs.8500-300-10300 w.e.f. 01.01.1992. The relevant portion of Office order No. 179/96 dated 19.03.1996 whereby the approval of the competent authority was accorded to the revision on pay scale reads as under:-

‘Approval of the competent authority is hereby accorded to the revision of pay scales of officers in ITPO (Ex-TFAI) below Board level including non-unionised supervisors w.e.f. 01.01.1992, as per details

given below:-

<u>Designation</u>	<u>Existing Scales</u>	<u>Revised Scales w.e.f. 1.1.1992</u>
xxx General Manager	xxx Rs.5500-175-7075	Rs.8500-300-10300

Accordingly, the pay of the applicant was fixed at Rs.8950/- w.e.f. 01.01.1997. The Audit Team raised an objection that once the pay scale of the post held by the applicant had been revised to Rs.8500-300-10300 with effect from 01.01.1992 and from a date earlier than the date of his joining, the applicant had got the pay higher than the pay drawn by him in Asian Group (Private Ltd.), he was not entitled to the advance increments and an amount of Rs.40,950/- could be over paid to him. Nevertheless, subsequently the administration could find that the amount over paid to the applicant was Rs.6,33,338/- and is liable to be recovered from him. In fact, as per the calculation by the respondents the applicant was over paid w.e.f. 01.02.1994, as on said date his pay was to be fixed at Rs.8500/- and not Rs.9100/- as fixed earlier.”

3. During the course of the employment, an audit objection was raised in the year 2008-09 with regard to the advance increments granted to the respondent by the petitioner at the time of his joining. In January, 2013, the Accounts Department directed that the recovery to be made from the respondent.
4. The respondent submitted a detailed reply to the office of Principal Director Commercial Audit and Ex-Officio Member, Audit Board-I. The reply was not accepted and vide letter dated 22.11.2012, it was directed that the amount be recovered from the respondent.
5. The Central Administrative Tribunal has considered the rival submissions of the parties and allowed the OA filed by the

respondent herein. The Tribunal has recorded a specific finding that the fixation of pay of applicant on his joining in ITPO w.e.f. 07.02.1994 was ramification of bonafide interpretation of G.I. F.D., No. 752, C. S. R. dated 6.07.1919, G.I.,F.D. letter No. F.69, R.1/28 dated 22.05.1928 and G.I.M.F.OM No.F.10(2)-Estt.III/55 dated 15.02.1995. Reference has been placed on the judgment *Chandi Prasad Uniyal and Ors. Vs. State of Uttrakhand and Ors. : AIR (2012) SC 2951* wherein it has been held that once the applicant has retired, the payment made to him cannot be recovered.

6. We have heard learned counsel for the parties and find no error in the reasoning adopted by the learned Tribunal. We find no reason to take a different view in the matter. No ground is made out to interfere in the order passed by the learned Tribunal in the present proceedings under Article 226 of the Constitution of India. Let order be complied with within four weeks from today.
7. With these observations, the Writ Petition and application stand dismissed.

G. S. SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

AUGUST 03, 2015

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