

Central Administrative Tribunal
Principal Bench

OA 541/99

New Delhi this the 17 th day of October, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri V.K. Majotra, Member(A).

(By Advocate Shri Naresh Kaushik)

Versus

1. Union of India through its Secretary, Department of Revenue, North Block, New Delhi.
2. The Chief Commissioner of Income Tax, Aayakar Bhawan, Hoshangabad Road, Bhopal (MP).
3. The Director of Income Tax, (Investigation) Aayakar Bhawan, Hoshangabad Road, Bhopal (MP). Respondents.

(By Advocate Shri V.P. Uppal)

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application seeking a direction to the respondents to appoint him in the post of Inspector, Income-Tax which is equivalent to the post of Headmaster in terms of Fundamental Rule (FR) 15-B.

2. The applicant had filed earlier an application (OA 358/87) which has been disposed of by the Tribunal (Jabalpur Bench) by order dated 8.2.1991 (Annexure A-2). As the relevant facts of the case have already been given in that O.A., it will not be necessary to repeat the same.

and only such facts as are relevant to the present application are referred to.

3. Shri Naresh Kaushik, learned counsel for the applicant has stated that when the respondents passed the Annexure A-3 order dated 17.10.1997 designating the applicant as UDC, in the substantive post of Headmaster, for the purpose of revising his pay scale and granting him also that pay scale which is applicable to the post of Headmaster, the applicant gets another cause of action. Hence, this O.A. to direct the respondents to treat the applicant as Inspector, Income-Tax which is the equivalent post to the post of Headmaster, which he claims he had held earlier and was given ~~him~~ the due pay scale of that post. According to the applicant, on his redeployment when declared surplus in the previous Organisation where he was working, namely, the Mana Camp, which was a Rehabilitation Division of the Govt. of India, he should have been posted in the corresponding post of Headmaster. These facts have been dealt with by the Tribunal's order dated 8.2.1991 and the Tribunal concluded that "The entry in the service book, which does not show him as LDC does not give any benefit to the applicant because right from 6.4.1971 he was working as LDC. He is not listed in the teaching department upto 1980 with whom he compares himself". It is relevant to note that even in that case, in paragraph 1, it is noted that the applicant had requested the Tribunal to direct the respondents to revise his pay as Headmaster w.e.f. 1.1.1973 when he was employed in the Mana Camp, and absorb him as Inspector of Income-Tax. In the present case, he has prayed in paragraph 8(a) that the application may be

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allowed with a direction to the respondents to post him as Inspector, Income-Tax, with effect from the date on which the pay scale of the Headmaster became equivalent to that post or in the alternative with effect from 1.8.1986. He has relied on the order passed by the respondents dated 17.10.1997.

4. The respondents in their reply have relied on the order of the Tribunal (Jabalpur Bench) in OA 358/87 dated 8.2.1991. They have submitted that by mistake the Tribunal's order, along with the order rejecting the Review Application dated 26.4.1994, ¹³ were omitted by them while fixing the salary of the applicant in the revised pay scale pursuant to the recommendations of the 5th Pay Commission, while issuing the order dated 17.10.1997. Shri V.P. Uppal, learned counsel has also submitted that the revision was made on the basis of the applicant's own claim that he held the post of Headmaster on substantive basis (R-4) which is also dated 17.10.1997. He has submitted that since the revision order now relied upon by the applicant is not correct or in accordance with the rules or the order of the Jabalpur Bench of the Tribunal (supra), the order dated 17.10.1997 has to be reviewed and rectified.

5. We have also seen the rejoinder filed by the applicant and heard Shri Naresh Kaushik, learned counsel in reply.

6. From the judgement of the Tribunal in OA 358/87 (Jabalpur Bench), it is clear that after looking into the relevant facts and the service book of the applicant, it was concluded that the applicant was working as LDC right

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from 6.4.1971 and was not listed in the teaching department upto 1980. That application was dismissed stating that the applicant was not entitled to get any relief, including employment as Inspector of Income-tax which is mentioned in Paragraph 1 of the order. Shri Naresh Kaushik, learned counsel has relied on Annexure A-I which he states is the extract from ^{the 18} service book which is neither signed nor attested by anyone as the true copy of the service book. Therefore, no reliance can be placed on this annexure. The respondents in their reply, have stated that the order now relied upon by the applicant dated 17.10.1997 had been issued by mistake based on the applicant's own option which he had exercised on the same date, i.e. 17.10.1997 in which he has stated that he held the substantive post of Headmaster with regard to the fixation of his pay. They have also stated that the applicant had been appointed as Headmaster (Primary School) on ad hoc basis and then he was selected as LDC on 6.4.1971. He had worked as Headmaster for a few months and no documents have been produced by the applicant to show that he held the post of Headmaster on substantive basis. Further, in the light of the findings of the Tribunal in OA 358/87, we are unable to agree with the contentions of the learned counsel for the applicant that the applicant is to be considered as holding the substantive post of Headmaster, which he had declared in the option dated 17.10.1997. On discovery of ^{a 18} mistake by the respondents, there is no bar to correcting the same in accordance with law and rules (See, A.K. Sharma & Ors. Vs. Union of India & Ors. (JT 1999 (1) SC 113). The applicant cannot rely upon an order passed by the

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respondents which is erroneous, particularly in view of the findings of facts by the Tribunal's order dated 8.2.1991 in OA 358/87.

7. In the result, for the reasons given above, we see no merit in this application. The same is accordingly dismissed. No order as to costs.

V.K. Majotra
(V.K. Majotra)
Member (A) 17.10.2000

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

'SRD'