



**Central Administrative Tribunal
Principal Bench, New Delhi**

**O.A. No.137/2021
M.A. No. 1904/2020**

This the 19th day of January, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Sh. Lav Kumar Saksena,
R/o U-15, Green Park Extension,
New Delhi.

(through Mr. Kumar Sameer, Advocate)

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Applicant

Versus

1. The Zonal Accounts Officer,
Central Board of Direct Taxes,
301 & 303, Amruta Estate,
Near Girnar Cinema,
Rajkot, Gujarat.
2. AO & DDO,
Office of Chief Commissioner of Income Tax,
Aaykar Bhawan, 6th Floor,
Racecourse Ring Road,
Rajkot, Gujarat.
3. Pr. Controller of Accounts,
Central Board of Direct Taxes,
Aaykar Bhawan,
M.K. Road,
Mumbai – 400020.
4. Central Board of Direct Taxes,
(through authorized representative),
Ministry of Finance, North Block,
New Delhi – 110001.

... Respondents

(through Mr. Manish Kumar, Advocate)

ORDER (Oral)**Justice L. Narasimha Reddy, Chairman:****MA 1904/2020**

This application is filed with a prayer to condone the delay of 6 month and 3 days in filing the O.A. For the reasons mentioned therein, the MA is allowed. With the consent of learned counsel for the parties, the O.A. is taken up for hearing today itself.

O.A. No. 137/2021

The applicant retired from service of the Income Tax Department as the Chief Commissioner of Income Tax on 31.07.2013. Before his retirement, he claimed certain relief in the form of stepping up of his pay on par with that of his junior, that amount to Rs.1,65,865/-. However, at the time of retirement of the applicant, the Department realised that the benefit ought not to have been extended, since the junior of the applicant joined the service earlier to him and, accordingly, recovered the same through order dated 08.07.2017. The applicant made a representation feeling aggrieved by the deduction.

2. Complaining that the respondents did not pass any order on the representation of the applicant, he filed O.A. No.4417/2018. That O.A. was disposed of on 03.12.2018 directing the respondents to pass orders on the representation of the applicant. Accordingly, the respondents passed an order dated 04.04.2019 stating that the benefit of stepping up of his pay was withdrawn on account of the fact that the applicant joined the promotional post subsequent to the date of joining of his junior and, accordingly, the benefit which was wrongly extended has been withdrawn. This O.A. is filed challenging the order dated 04.04.2019.

3. The applicant contends that the impugned order was passed contrary to law laid down in the judgment of the Hon'ble Supreme Court in ***State of Punjab and Ors. etc. v. Rafiq Masih (White Washer) etc.*** (2015) 4 SCC 334.

4. We heard Mr. Kumar Sameer, learned counsel for applicant and Mr. Manish Kumar, learned counsel for respondents.

5. The issue is very simple. The applicant did not have any grievance about fixation of his pay scale, when he was promoted to higher post. He made a claim for stepping up of his pay on the ground that his junior was drawing the higher

pay. Taking that representation into account, the respondents stepped up his pay. However, it emerged later on, that the applicant joined the duty in the promotional post much later than his junior. Taking into account the O.M. dated 26.10.2018 issued by the DoPT, the amount of Rs.1,65,865/- was deduced from the retiral benefits of the applicant.

6. The applicant does not dispute that he joined the duty on promotional post much subsequent to the date of joining of his junior. Once the benefit was wrongly extended to him, it is liable to be recovered at the stage of deciding his pensionary benefits.

7. The benefit of the judgment of the Hon'ble Supreme Court in **Rafiq Masih's** case cannot be extended to the applicant for two reasons. Firstly, the relief in that case was only to lower category of employees. The applicant retired as Chief Commissioner of Income Tax. Secondly, the Hon'ble Supreme Court observed that if the benefit of any kind whatever was extended by the Government on its own accord, it cannot be recovered later on, particularly after retirement of the employee. In the instant case, the benefit was extended to the applicant on a representation made by him and the same was recovered at the time of his retirement.

8. Viewed from any angle, we do not find any merit in the O.A. and, accordingly, the same is dismissed. There shall be no order as to costs.

(Mohd.Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/jyoti/vb/ankit/sd