

(13)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.745/2004

New Delhi this the 4th day of November, 2004.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

1. Incometax Employees Federation,
representing the Notice Servers of
the Incometax Department, through its
Secretary General, Sh. K.K.N. Kutty,
S/o late Shri K. Karunakaran Nair,
Aged 56 years and having its office at
Manishinath Bhawan, A/2/95, Rajouri Garden,
New Delhi-110 027.
2. Shri Gajraj Singh S/o late Shri Mamchand aged
46 years, r/o 197 Aliganj, Kotla Mubarakpur,
New Delhi.
3. Shri Rameshwarlal s/o Budhram,
r/o Village and Post Office, Jataula,
Gurgaon, Haryana.

-Applicants

(By Advocate Shri P.K. De)

-Versus-

1. Union of India through
the Secretary, Department of
Revenue, Ministry of Finance,
North Block, New Delhi.
2. Chairman,
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.

-Respondents

(By Advocate Shri V.P. Uppal (X)
(R.R. Bharti))

O R D E R

Mr. Shanker Raju, Member (J):

Applicants, an association with others impugn respondents' order dated 5.12.2000, where on clarification by the Ministry of Finance, advance increments have been denied and recoveries of over-payment has been ordered.

(X) Substituted vide order dated 13.12.2004 passed
in M.A. 2481/04 in O.A. 745/04.
O. J. 12/12/04

2. By an order dated 15.6.2004 recovery has been stopped.

3. Applicants are Notice Servers in Income Tax Department. The V Central Pay Commission vide its recommendations in paragraph 66.111 keeping in view the duties of Notice Servers recommended revision of pay scale to Rs.2750-4400 from 1.1.1996 with two advance increments which has been agreed to by the Central Board of Direct Taxes (CBDT) vide order dated 7.9.98 and Chief Commissioner of Income Tax, New Delhi re-fixed the pay of Notice Servers with two advance increments. Accordingly pay of applicants was revised with grant of two increments w.e.f. 1.1.1996.

4. A clarification by Chief Commissioner re-iterated that all Notice Servers who are in the pre-revised pay scale of Rs.800-1150 are to be fixed in the pay scale of Rs.2750-4400 with two advance increments. To bring the pay scale of Notice Servers at par with Postman of Government of India, Department of Expenditure upgraded the pay scale of Notice Servers to Rs.3050-4590 w.e.f. 10.10.1997. Accordingly pay of Notice Servers was re-fixed in the upgraded pay scale w.e.f. 10.10.1997.

5. The Principal Chief Controller of Accounts, CBDT requested for correct fixation of pay of Notice Servers for grant of benefits of advance increments to only those who were initially fixed at Rs.2750 and Rs.2820 and those who were initially fixed at Rs.2980 have been recommended not to be granted advance increments. Accordingly, Department of Expenditure vide letter dated 17.11.2000 decided that benefit of two advance increments would

be admissible at the initial stage. The aforesaid matter was re-examined by CBDT and the Principal Chief Controller of Accounts issued instructions to re-fix the pay of Notice Servers giving benefit of two increments to those who are fixed at Rs.3050 and the next stage of Rs.3125. But those whose initial pay was fixed at Rs.3200 or above were not accorded the benefits.

6. Accordingly those Notice Servers whose pay has been re-fixed, overpayment has been computed on account of grant of two advance increments even when their pay was fixed at or above Rs.2980 w.e.f. 1.1.97 or above Rs.2800 w.e.f. 10.10.97.

7. Learned counsel for applicants Shri P.K. De contends that in case of **Shyam Babu Verma & Ors. v. Union of India & Ors.**, WP No.12897 to 12899 of 1984 decided on 8.2.1994 as receipt of higher pay scale was not actuated with malafide or misrepresentation on the part of applicants, excess amount cannot be recovered. The decision in the case of **P.H. Reddy & Ors. v. N.T.R.D. & Ors.** decided on 30.1.2002 in CA No.382-385 of 2001 is also relied upon.

8. Shri De further stated that as per the clarification two advance increments shall be admissible at the time of initial fixation of minimum and next stage of pay scale and not to others was issued only on 17.11.2000. The original notification is silent on it. As benefit of two advance increments was given to applicants was bona fide payment to them. The learned counsel further states that though the benefit was accorded from 1.1.96 and was continued to be enjoyed by applicants till August 2003, it

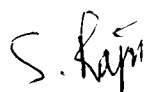
is only on 17.11.2000 that the clarification has specified it to be restricted to initial entry stage, yet the pay scale in the revised pay scale of Rs.3050-4590 applicants who are fixed have continued their scale from the earlier revised scale, as such they have not been given the benefit of this scale. As such, there is no question of any overpayment and recovery is not sustainable in law.

9. On the other hand, learned counsel for respondents Shri V.P. Uppal R.R. Bharti vehemently opposed the contentions and stated that on clarification by the Ministry of Expenditure benefit of two advance increments shall be admissible only to those who are initially fixed at minimum and next stage of pay and not to others, applicants were not entitled but have been accorded the same. ‘

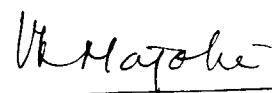
10. Be that as it may, the fact remains that there is no misrepresentation or fraud on the part of applicants for grant of benefit of two advance increments. This has been taken bona fide by respondents themselves. As such, in the light of the settled position of law, no recovery can be effected. However, another aspect of the matter is that though the benefit has been accorded from 1.1.96 as per the recommendations of the V CPC, as accepted the clarification had come only on 17.11.2000 and while fixing the pay in the revised scale to bring Notice Servers at par with Postman there is no change in the pay scale and in view of the fact that there is no overpayment recovery is unwarranted. As this aspect of the matter has not been gone into by the respondents, we dispose of this OA with a direction to the respondents to re-examine the entire matter in the light of the contentions raised and observations made in the present OA. Applicants as an

Substituted vide order dated 13.12.04 passed in
MA 2481/04 in OA. 745/04. 13/12/04

association may file a representation, explaining the above contentions which would be gone into by the respondents and be disposed of by a detailed and reasoned order, within a period of three months from the date of receipt of a copy of this order. The recovery already effected to, shall be restored back to applicants and the respondents are restrained from effecting any recovery till a final decision is arrived at. No costs.


(Shanker Raju)
Member (J)

'San.'


(V.K. Majotra) 4-11-04
Vice-Chairman(A)