

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 13 DAY OF July, 2010)

HON'BLE MR. A. K. GAUR, MEMBER - J
HON'BLE MR. S.N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO. 807 OF 2004
(U/s, 19 Administrative Tribunal Act.1985)

Sumitra Banerjee W/o Late S. S. Banerjee, Retired Income Tax Officer
son of Late Sheetal Chand Banerjee resident of Flat no. ALMG 20 Har
Narain Vihar Colony, post - Sarnath, District Varanasi.

.....Applicant

By Advocate: Sri P. K. Ganguly

Versus

1. Union of India, through Secretary Ministry of Finance, New Delhi.
2. Chairman Central Board of direct Taxes Ministry of Finance, North Block, New Delhi.
3. Chief Commissioner Income Tax, Allahabad.
4. Commissioner of Income Tax, Varanasi.
5. Zonal Accounts Officer, Allahabad in the office of Chief Income Tax, Allahabad.

..... Respondents

By Advocate: Sri R. D. Tiwari

ORDER

DELIVERED BY HON'BLE MR. A. K. GAUR, MEMBER -J

By means of aforesaid O.A. the applicant prayed for following
main relief:-

“(a). Issue order or direction in the nature of mandamus directing
the respondents to re-fix the pay of the applicant giving benefit of
two advance increment as per the order of the Central Chief Income
Tax Allahabad dated 5.7.84.

(b) Issue writ, order or direction in the nature of mandamus directing respondents to reimburse the salary allowances, other retiral benefits to the applicant which has wrongly been deducted, alongwith interest."

2. Brief facts of the case are that the applicant (since deceased) retired from the post of Income Tax Officer after serving the department for a period of 35 years on 31.01.2002 after attaining the age of superannuation. According to the applicant he joined the Income Tax Department on 03.04.1967 and was promoted to the post of Stenographer selection grade in the year 1978. On 31.03.1979 the applicant joined the post of Income Tax Inspector after passing exam in the pay scale of Rs.425-15-500-560-20-700-EB-20-800/-.

3. The applicant is the wife of the deceased employee and whose name has been substituted as heir and legal representative of the deceased employee. According to the applicant, deceased employee has passed the Departmental Examination of Income Tax Inspector and was allowed two advance increments by Commissioner of Income Tax Officer, Allahabad vide order dated 05.07.1984. The copy of the order dated 05.07.1984 was also endorsed to the Zonal Accounts Officer, Allahabad but no objection or query was ever raised by him, against the grant of two advance increments. The grievance of the applicant is that just before his retirement the Zonal Account Officer, Allahabad raised objection while preparation of his pension papers vide letter dated 27.12.2001 the objection no.2 in the said letter is reproduced hereunder:-

"Sri Banerjee passed the Inspector Exam with effect from 15.7.1978 and was allowed two advance increment while he was posted in the grade of stenographer (S G) as per existing orders stenographer was not entitled for the above increment on passing Inspector Exam. A true copy of the

✓

letter dated 27.2.2001 passed by the Accounts Officer is being file herewith and marked as Annexure-2 to this application."

4. The Respondent No. 5 did not follow the order of Commissioner of Income Tax, Allahabad dated 05.07.1984 and has worked out the pension and gratuity of the applicant in a lower scale. The calculation of the applicant's pension by the Zonal Accounts Officer against his dues is mentioned as below:-

	Actual dues in my case as per order of the CIT.	Calculation as per ZAO ignoring the order of the CIT	Short payment given to me
Pay as on 31.202	Rs.9,900	Rs.9,500	Rs. 67,344 (as per due and drawn statement)
Leave encashment	1,43,550	1,37,750	5,800
Commutation pension	2,31,203	2,20,372,	10831
Gratuity	2,33,691	2,27,288	7303
			Rs.91,278

5. According to the applicant, Respondents have illegally deducted Rs. 67,344/- and have also paid less leave encashment to the applicant and fixed the commutation amount of pension and gratuity. The action of the Respondents in recovering the amount from the salary of the applicant at the time of his retirement on the presumption that the applicant was not entitled to the two advance increments on passing Income Tax Inspector is illegal arbitrary and without jurisdiction. The benefit of the two advance increments has been granted to the applicant w.e.f. 05.07.1984 and the applicant was not guilty of any misrepresentation or fraud committed by him. It is settled principle of law that if an amount has been paid by the Respondents not on account of any misrepresentation, concealment or

✓

fraud on the part of the applicant, the same cannot be recovered subsequently, without issuing any notice or granting opportunity of hearing.

6. By filing Counter Reply, the Respondents have denied the allegations contained in the Original Application. According to the Respondents, there has been a considerable delay in filing the present Original Application and the O.A. is liable to be dismissed on the ground of delay and latches.

7. The applicant has already been retired from service w.e.f. 31.01.2002. According to the Respondents the applicant was not entitled for grant of advance increments after passing the departmental Exam. of Income Tax Inspector while working as Stenographer. In these circumstances, the pay fixation of the applicant was got revised and pensionary benefits were granted to him in accordance with provisions of Rules. It is also alleged on behalf of the Respondents that as a result of revision of pay fixation which was wrongly done earlier, the excess amount already paid to the applicant was recovered from the gratuity of the applicant, which is permissible under the rules.

8. We have heard Sri P. K. Ganguly, Counsel for the applicant and Sri R. D. Tiwari, learned counsel for the Respondents. Since the dispute relates to recovery of certain amount from the retiral benefits of the

W

applicant, it would be recurring cause of action and for which no specific period of limitation has been provided; we accordingly, condone the delay in filing the Original Application.

9. We have heard learned counsel for either sides and perused the pleadings as well as the Written Arguments filed by the applicant.

10. The applicant was earlier allowed two advance increments on passing Departmental Examination of Income tax Inspector but subsequently, the pay of the applicant has been reduced & the excess amount already paid on that account was ordered to be recovered from the applicant. In this context, we may refer to FR-12, which is being reproduced herein under: -

"(12). Wrong Fixation under F.R.27- Initial pay fixed not be reduced- Once fixation was done by competent authority in exercise of the discretion vested in it under F.R 27 that authority was not competent under the law to reduce initial pay originally fixed even when such pay was based on some data which subsequently turned to be incorrect."

11. In the instant case, be that as it may, that the applicant had wrongly been awarded two increments, to which he was not entitled and when this mistake was detected, the orders were passed for recovery of excess amount from the applicant but it is really amazing that no where it is stated by the respondents that the applicant had ever mislead, misrepresented or committed fraud to the authorities and due

to the said misrepresentation, the respondents have paid certain amount to the applicant. On the other hand, it is seen from the record that the respondents have awarded two advance increment to the applicant after passing Income Tax Inspector Exam, of their own accord, which was subsequently, discovered that by mistake the applicant had been granted two increments. The question emerges that when such a benefit has been conferred upon the applicant because of his no fault, can it be recovered from his retiral benefits, the answer would be 'No'.

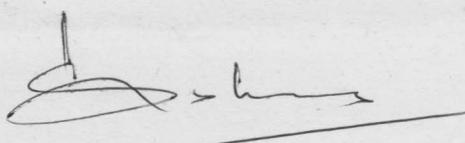
12. We are not convinced with this argument of learned counsel for the respondents that as a grant of ^{two} ~~to~~ increments on account of passing of Income Tax Inspector examination, which was wrongly done earlier, the excess amount paid to the applicant was recovered from the gratuity. In view of the decision rendered by Hon'ble Supreme Court reported in the decision rendered in *Shyam Babu Verma and others Vs. U.O.I & Ors reported in 1994 (2) SCC 621*. since the applicant received the benefit of two increments due to none of his fault, it shall not be just and proper to recover the salary already paid to him.

13. In view of the observations made above, the applicant cannot be held responsible for getting benefit of two increments, therefore, payment of salary already paid to the applicant cannot be recovered, as held in the case of Shyam Babu Verma's case (Supra).

✓

14. Accordingly the Original Application is partly allowed. The respondents are directed not to made any recovery from the applicant. It is also provided that the amount in question, if already deducted, form the gratuity of the applicant shall be refunded to him within a period of three months from the date of receipt of certified copy of the order.

15. Parties are directed to bear their own costs.


Member - A
Member - J

/Dev/