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(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 05th day of August, 2005

Original Application No. 71 of 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER- J.

L.N. Tiwari, Aged about 59 years, S/o late Ram Agaya
Tiwari, R/o 838 Baghambari Road, Allahpur,
Allahabad.

.....Applicant

Counsel for the applicant :- Sri V. Budhwar.

V E R S U S

1. Union of India through the Secretary, Ministry of Finance, New Delhi.
2. Commissioner of Income Tax, Allahabad Region, Allahabad.
3. Senior Accounts Officer in the office of Zonal Accounts Officer, Accounts office, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, 38, M.G. Marg, Ayakar Bhawan, Allahabad.

.....Respondents

Counsel for the Respondents :- Sri Saumitra Singh.

ORDER

By this O.A., applicant has challenged order dated 25.1.2005 whereby it has been ordered to fix his pay at Rs. 2000/- w.e.f. 8.6.90 with annual increment from April, 1991 with further direction to recover excess payment already made to applicant (page 20).

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2. It is submitted by applicant that he was promoted to the ^{post of B2} Stenographer Gr.II in the scale of Rs. 1400-2300/- and thereafter he was again promoted to the post of Stenographer Gr. I in the scale of Rs. 2000-3200. He was further promoted to the post of Inspector in the Grade of Rs. 1640-2900 and his ^{pay B2} was again fixed under FR 22@ at Rs. 2120 with DNI on 6.9.91. He had been drawing his salary as per pay fixation done by respondents when after over 14 years, impugned order has been passed whereby his pay has been ordered to be reduced and recovery order^{ad} that too without giving him any show cause notice.

3. It is submitted by applicant's counsel that Hon'ble Supreme Court has held in the case of Bhagwan Shukla Vs. Union of India & Ors that if no misrepresentation has been made by person concerned and pay has been fixed by the department themselves, the same cannot be recovered from the person concerned and cannot be even changed without putting the person concerned on notice.

4. Respondents, on the other hand, have submitted that pension papers of the applicant were submitted to the Sr. Accounts Officer, Office of the Chief Controller of Accounts, CBDT, Allahabad in time.



However, Sr. Accounts officer i.e. Respondent no.3 issued letter dated 25.1.2005 through which the DCIT (HQ) Allahabad was requested either to submit definite order of fixation of pay from a higher grade to a lower grade under Rule FR 22 C or his pay fixation from 8.6.90 should be amended accordingly fixing his pay at Rs. 2000/-I per month with annual increment from April, 1991. Through above letter it was also directed that excess payment may be worked out and recovered. It is also submitted that right after receiving the above letter, a letter was issued to the Sr. Accounts Officer, Allahabad, under letter dated 27.1.2005 through which it was clarified to the Sr. A.O. that Rule FR 22 © had been omitted through notification dated 30.8.89 and the case of applicant was covered by FR 22(1)(a)(i) as the post of Inspector carried duties and responsibilities of greater importance than the post of Stenographer Gr. I, which post he was holding before promotion (Annexure CA-1). It is further stated that since the letter dated 25.1.2005 was issued by Sr. Accounts Officer being respondent no.3 so further reply can be given only by him. It is further stated that applicant has not committed any forgery with representation nor he concealed anything. It is also correct that his pay was fixed under FR 22(C) of the Financial Rules. They have further explained that reply has been given by the respondent no.3. The pension papers resubmitted to



the Sr. Accounts Officer, Allahabad on 27.1.20-05 were returned by Sr. Accounts Officer through his letter dated 09.2.2004 in which it was desired by Sr. Accounts Officer to submit definite order of fixation of pay from a higher grade to a lower grade under FR 22 (C) FR 22 (a)(i) etc. In view of the above order of fixation under FR 22(a(i) was passed afresh on 25.2.2005 vide this office order no. 76 and pension papers were resubmitted. The Sr. Accounts Officer, however, returned the pension papers through his letter dated 3.3.2005 by observing that since there was disagreement on the observations of the ZAO the case should have been placed before the higher authorities for taking final decision. They have thus, prayed that appropriate orders may be passed in this case.

5. I have heard both counsel and perused the pleadings as well.

6. The short question involved in this case is whether before amending the pay fixed by respondents and ordering recovery of excess payment, any notice is required to be given to applicant. In this connection, it would be relevant to quote few judgments passed by Hon'ble Supreme Court wherein same point has already been discussed. In the case



of Bhagwan Shukla Vs. UOI & Ors. Reported in AIR 1994 SC 2480 when the basic pay was reduced with retrospective effect without giving any opportunity to the employee, it was held that there was flagrant violation of the principle of natural justice. It was further held that opportunity to show cause must be given when respondents wanted to reduce the basic pay with retrospective effect. In J.T. 1994(1) SC 574 in the case of Shyam Babu Verma Vs. Union of India & Others when the recovery was being sought to be made against petitioner on the ground that their pay was wrongly fixed. It was held by the Hon'ble Supreme Court that since the appellant had received the scale of Pay Rs. 330-560/- since 1973 due to no fault on their part and scale was being reduced in the year 1984 w.e.f. 1.1.1973, it shall only be just and proper not to recover any excess amount, which has already been paid to them. Accordingly, it was directed that no steps should be taken to recover or adjust the excess amount paid to petitioners due to fault of respondents since the petitioners are not responsible in any way.

7. If the facts of the present case are seen in the backdrop of the judgments as referred to above, I find even in the instant case it is not the case of respondents that his pay was fixed in 1990 due to *any* mis-representation made by applicant, therefore, it

[Signature]

would not be proper for respondents to recover any excess amount from applicant after a period of over 14 years now. Of course, if respondents feel that his pay was wrongly fixed in 1990, which needs to be corrected for the purpose of drawing pensionary benefits of applicant, the same could be corrected only after putting applicant on notice. In the instant case, since admittedly no notice was given to applicant, impugned order is quashed and set-aside. However, liberty is given to the respondents to pass appropriate orders after giving notice to applicant within a period of two months from the date of communication of the order so that applicant's pensionary benefits may be released at the earliest. It is stated by applicant that even though applicant retired on 31.1.2005, till date, he has not ~~even~~ received any amount except GPF. Since ^{issuance of}

B SCN for

fixation of pay and final order ^{may B} ~~also~~ take some time, respondents are directed to atleast give provisional pension to applicant forthwith, which may be adjusted after final orders ^{are B} passed by respondents. Since this O.A. is decided ^{on technical ground,}

B 9 have not gone on merits of the case at all. B

8. With the above directions, O.A. stands disposed off with no order as to costs.

Meera Chhiber

MEMBER-J

GIRISH/-