

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH: ALLAHABAD.

ORIGINAL APPLICATION No. 1544 of 1999.

Allahabad this the 19th day of September 2003.

Hon'ble Maj Gen KK Srivastava, Member-A.

A.R. Sen (Anadi Ranjan Sen),
Son of Late Ajit Kumar Sen,
at present residing at
C/o G.C. Saxena, 27/1, E.W.S.
Preetamnagar Colony, P.O. Dhumanganj,
Allahabad, voluntarily retired
Senior Personal Assistant,
Income Tax Appellate Tribunal,
38, M.G. Marg, Allahabad Bench,
Allahabad.

.....Applicant.

(By Advocate : Sri Onkar Nath)

Versus.

1. Union of India
through the Secretary,
Ministry of Law & Justice (Dept of
Legal Affairs), New Delhi.
2. The President, Income Tax Appellate
Tribunal, Old Central Govt. Office
Building 101, Maharshi Karve Marg,
4th Floor, Mumbai-400 020.
3. The Pay & Accounts Officer (Dept of Legal)
Affairs), Ministry of Law & Justice, Indian
Oil Bhawan, 4th Floor, B-Wing, Janpath Bhawan,
Janpath, New Delhi.
4. The Assistant Registrar, Income-Tax Appellate
Tribunal, 38 M.G. Marg, Allahabad.

.....Respondents.

(By Advocate : Sri S.C. Mishra)

O_R_D_E_R

In this O.A. filed under section 19 of Administrative
Tribunals Act 1985, the applicant has prayed for following
relief (s):

"In view of the facts mentioned in para 4 above, the
applicant prays for the following reliefs:

(i) Issue necessary directions/order directing the respondents to refund the alleged over payment and refund of 2nd instalment of arrear consequent upon Vth Pay Commission Report.

(ii) Issue necessary direction to the President, Income-Tax Appellate Tribunal, Mumbai (Respondent No.2) to release payment of 2nd Instalment of arrears of Rs. 10,164/- and release of over payment of Rs.25,217/- which the respondents have illegally recovered from the applicant's pensionary benefit and refix the pension of the applicant, correctly.

(iii) Issue necessary directions/order in the nature of mandamus directing the respondents to grant new pay scale of Rs.2000-3200 from 1.1.1986 with interest and direct the respondents to fix the salary of the applicant in accordance with the provisions of F.R. 22(C) which have been illegally given from 1.1.1990.

(iv) Issue necessary direction/order to the respondents to fix the pensionary benefit of the applicant and release of alleged overpayment in view of the letter of the A.G.(Audit), Kerala dated 15.3.1999 (Annexure A-14).

(v) Grant any other relief which this Hon'ble Tribunal may deem fit and proper.

(vi) Award the cost of this application in favour of the applicant.

(vii) Issue necessary direction in the nature of certiorari quashing the order dated 19.7.1999 (Annexure No.A-1), order dated 16.8.99 passed by the respondent No.4 (Annexure No.A-2), Bill dated 13.8.1999 (Annexure No.3) passed by the respondent No.4.

(viii) Issue necessary direction in the nature of certiorari quashing the order dated 12.5.98 passed by the respondent No.2 (Annexure A-3) with the O.A., and all consequential benefits may be given to the applicant with interest".

2. The facts of the case are that applicant was appointed as Senior Stenographer in the Income-Tax Appellate Tribunal, Gauhati Bench, Gauhati on 02.04.1974. From there he was transferred to Allahabad Bench of Income-Tax Appellate Tribunal. The applicant was initially placed in the pay scale of Rs.425-700 which was revised, subsequently and granted pay scale of Rs.550-900 which was later on revised in the pay scale of Rs.1640-2900, in pursuance of the recommendation of IV Pay Commission

and Stenographers were designated as Personal Assistants.

It is stated that vide order dated 1.3.1988, the Government of India issued an office memorandum in modification of earlier notification dated 13.09.1986, laying down that Stenographers attached to the Officers belonging to the Senior Administrative Grade or equivalent post shall be in the scale of Rs.2000-3200. Thus by order dated 30.09.1988, the applicant alongwith others were re-designated as Senior Personal Assistants. However, the pay scale was not revised by this order. By another order dated 23.12.1992 (Annexure A-8) the pay scale of the applicant was revised from Rs.1640-2900 and he was put in scale of Rs.2000-60-2300-ED-75-3200 with effect from 01.09.1990.

The name of the applicant is found at Sl. No.48 in the notification dated 23.12.1992.

3. Learned counsel for the applicant has submitted that applicant was rightly given pay scale of Rs.2000-3200 and there was no illegality. The impugned order is arbitrary and illegal and has been passed without giving any opportunity of hearing to the applicant.

4. The respondents have filed counter reply resisting the claim of the applicant. The applicant, alongwith ^{on} supplementary affidavit filed 16.09.2003, has filed a judgment of Mumbai High Court which shows that similar controversy was raised before Mumbai Bench of this Tribunal

in O.A. No.750/98. The O.A. was dismissed on 08.01.2001 which was challenged in writ petition No.1532/01. The controversy was similar before Hon'ble High Court.

Writ petition before Hon'ble High Court was against the order of Mumbai Bench of Central Administrative Tribunal by which the claim of the applicant of that O.A. was rejected against reduction of pay and revision of pension was not granted. The Hon'ble High Court noticed the letter dated 15.03.1999 issued from the office of Accountant General and observed that Mumbai Bench of this Tribunal passed the order without noticing the letter issued from the office of Accountant General which justified the pay scale of the applicant in that case. The case was remanded to the Tribunal for fresh decision. The Tribunal thereafter heard the matter again and Division Bench by order dated 16.10.2002 allowed the O.A. by following order:

"In the result, O.A. is allowed. Order dated 8.9.1988 is quashed and set aside. The respondents are directed to the applicant his pension and D.A. his retirement benefits on the basis of the revised pay fixation after adjusting the amount already paid treating his pay in the revised pay scale w.e.f. 1.1.1996 Rs.9,300/- and at Rs.9,500/- w.e.f. 15.11.1996. The applicant shall be entitled to interest 12% p.a on the payments delayed by more than three months and costs amounting to Rs.650/-. This exercise be completed within a period of three months from the date of receipt of copy of order".

5. Learned counsel for the applicant has submitted that the order passed by the Hon'ble High Court of Bombay and thereafter the order passed by the Tribunal have become final and applicant is entitled for relief. - On perusal of the aforesaid judgment, it is clear that

earlier objection raised by the Accountant General was withdrawn by letter dated 15.03.1999 and on the basis of that letter the Ahmadabad Bench of this Tribunal decided the matter, as the objection was dropped. The fact was noticed by the Bombay High Court and matter was remanded to the Tribunal which allowed the claim as stated above.

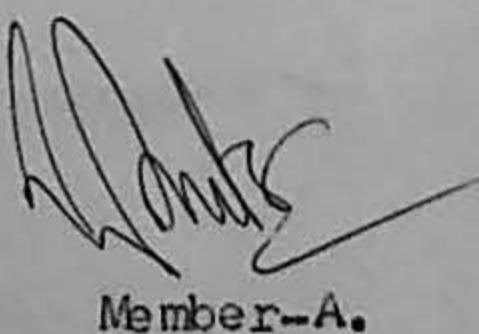
6. In para 22 of the counter affidavit, respondents have stated as under:

"That the contents of paragraph No.5 of the original application, it is stated that the respondents have accepted the decisions of the Hon'ble High Court and order of the Bench of the Central Administrative Tribunals. Therefore, there remains no litigation and applicant is being given all benefits which are now available in other identical decided cases. Therefore, the present application may kindly be disposed of accordingly".

7. ~~The~~ Similar controversy has been decided recently by order of this Tribunal dated 25.04.2003 passed in O.A. No.382/99. The same is squarely applicable in this case also.

8. In the facts and circumstances, in my opinion, the applicant is also entitled for the relief. The O.A. is allowed. Impugned orders dated 19.7.1999, (Annexure No.A-1), 16.08.1999 (Annexure No.A-2), Bill dated 13.08.1999 (Annexure No.A-3) and order dated 12.05.1998 (Annexure A-13) are quashed.

No order as to costs.



Member-A.