

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 17th day of May 2002.

Original Application no. 763 of 2000.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Anand Singh, S/o late Sri Khushal Singh,
Income Tax Inspector, O/O Income Tax, C.R. Building
Bareilly.

... Applicant

By Adv : Sri B.D. Mandhyan,
Sri S. Mandhyan

Versus

1. Union of India, through Secretary, Ministry of Finance,
Department of Revenue, Govt. Of India,
Delhi.
2. Commissioner of Income Tax, C.R. Building,
Bareilly.
3. Principal General Controller of Accounts, Central Board of
Taxes, Zonal Accounts office Patna (Bihar).

... Respondents

By Adv : Sri R.C. Joshi

O R D E R

Hon'ble Maj Gen K.K. Srivastava, A.M.

In this OA filed under section 19 of the A.T. Act, 1985,
the applicant has challenged the order dated 27.6.2000 passed by
respondent no. 2, rejecting the applicant's representation and
directing recovery of excess payment already made to the applicant
at the rate of Rs. 750/- per month, commencing from the month of
July 2000. The applicant has prayed that the impugned order
dated 27.6.2000 (Ann A-7) be quashed and direction be given

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to the respondents ~~not~~ to give effect to the order dated 27.6.2000.

2. The facts, in short, giving rise to this OA are that the applicant was appointed as Upper Division Clerk in Income Tax Department on 5.9.1980. The applicant appeared in the departmental examination for the post of Income Tax Inspector (in short ITI) which is a selection post, and cleared the same on 4.7.1992. As per circular of Ministry of Finance dated 9.8.1983, ^{in the} ~~in~~voque at that time, the applicant was granted two advance increments as an incentive after passing departmental examination for the post of ITI i.e next higher grade, by the then Commissioner of Income Tax, Lucknow vide his order dated 20.4.1993 (Ann A-1). Consequently the pay of the applicant was fixed at Rs. 1800/- w.e.f. 4.7.1992. Audit objection was raised by the internal audit party that the applicant was not entitled for two advance increments as per Central Board of Direct Taxes (in short CBDT) order no. A-26017/50/84-Ad IX dated 19.3.1998. Because of this audit report recovery of Rs. 21,948/- as basic pay plus allowances admissible thereon was raised against the applicant. The applicant ^{by him} represented the Commissioner of Income Tax, Bareilly on 26.6.2000. His representation was rejected vide impugned order dated 27.6.2000 and recovery of Rs. 750/- per month commencing from July 2000 has been ordered. Aggrieved by this, the applicant has filed this O.A., which has been contested by the respondents by filing counter affidavit.

3. Sri S. Mandhyan, learned counsel for the applicant submitted that according to the audit objection raised on 25.2.2000 a show cause notice was given to the applicant on 2.3.2000. Reply to this show cause notice was given by the applicant on 26.6.2000. It seems that the order of recovery was already prepared because it is inconceivable that within 24 hours the respondents considered all the aspects brought out in the representation issued

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and issued order of recovery on 27.6.2000.

4. Learned counsel for the ~~applicants~~ further submitted that there has been no fraud or misrepresentation on the part of the applicant. The administration decided for grant of two advance increments to the applicant as per instructions on the subject and, therefore, the order of recovery is bad in law. He ~~has~~ placed reliance on the decision of Ernakulam Bench of this Tribunal in case of P. Daniel and others Vs. Chairman, Central Board of Direct Taxes and others, (1989) 10 ATC 826, ~~holding~~ ^{holding} approving ^{grant} of two advance increments ^{granted} in view of the letter of CBDT dated 9.8.1989. Learned counsel for the applicant finally submitted that as per audit report the circular of CBDT mentioned therein is dated 19.3.1998. Hence, the letter of 1998 can be operative ^{prospectively} and not retrospectively.

5. Contesting the claim of learned counsel for the applicant, learned counsel for the respondents submitted that the correct date of Board's letter referred to in audit objection is 19.3.1984 and not 19.3.1998. It has been submitted that the pay of the applicant on passing departmental examination of Income Tax Inspector was not fixed properly and various circulars/instructions existing at the time of passing pay fixation ~~order~~ dated 20.4.1993 (Ann A1) ^{was} totally ignored. Therefore, the action of the respondents is in accordance with rules on the subject and no illegality ~~has~~ been committed by them.

6. Heard learned counsel for the parties and perused records.

7. Letter dated 9.8.1993 of Ministry of Finance, Department of Revenue, New Delhi is quite clear and according to that the applicant is entitled for two advance increments. We are not inclined to accept the contention of the learned counsel for the

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respondents that the applicant was not entitled for these two advance increments as per instructions of CBDT, New Delhi, contained in letter dated 19.3.1984. The letter dated 19.3.1984 has been placed as annexure CA 1 to the counter affidavit which reads as under :


"...consequent on issue of Board's letter F.No. 26017/67/80-Ad.IX dated 9.8.1983 there has not been any change in the policy of grant of advance increments to officials for passing the Departmental Examination of next higher grade.

2. Head Clerks and stenographers (Senior Grade) are NOT entitled for advance increments on passing Departmental Examination of Inspectors."

7. The case of the applicant cannot be negated on the basis of letter dated 19.3.1984, as it has reiterated the order dated 9.8.1983. Besides since the applicant is in supervisor grade II his case is not at all covered under para 2 of the aforesaid order dated 19.3.1984. The case of the applicant is covered by CBDT letter dated 9.8.1983. We would like to observe that the case of the applicant is fully covered by the decision of this Tribunal, Ernakulam Bench, in P. Daniel's case (supra), wherein the letter of CBDT dated 9.8.1983 has been considered and has been maintained. There is nothing on record to suggest that the letter of CBDT dated 9.8.1983 has been superseded by any subsequent letter of CBDT nor have the respondents been able to produce ^{any letter} to this effect. We are, therefore, of the view that the applicant is entitled for two advance increments and he is entitled for the relief.

8. On overall consideration the OA is allowed.
Order dated 27.06.2000 is quashed. Respondents are


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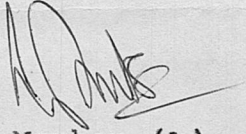


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directed to restore the pay of the applicant in view of order of Ministry of Finance dated 9.8.1983. The O.A. is decided accordingly.

9. There shall be no order as to costs.


Member (J)


Member (A)

/pc/