

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated this the 30th day of June 2009.

CORAM:

HON'BLE MR. JUSTICE A. K. YOG - MEMBER (J)
HON'BLE MRS. MANJULIKA GAUTAM - MEMBER (A)

Original Application No. 30/2003
(U/S 19 of Administrative Tribunals Act 1985)

Suresh Chandra Awasthi,
S/o Shri Shiv Kumar Awasthi,
R/o 104 A/32 Ram Bagh, Kanpur. Applicant

By Advocate Shri R.M.Shukla

Vs.

1. The Union of India through
the Chief Commissioner of Income Tax, Kanpur.
2. The Chief Commissioner of Income Tax, Kanpur.
3. The Commissioner of Income Tax, Kanpur.
4. The Deputy Commissioner of income Tax,
Range II, Kanpur. Respondents

By Advocate Shri S.C.Mishra, SCGSC

ORDER

HON'BLE MR. JUSTICE A.K.YOG, MEMBER (J)

Perused the pleadings and the documents on record.

2. The applicant, an employee of the Income Tax Department
has claimed relief to quash order dated 24.4.1995, communicated

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vide department letter dated 16.1.2002 in pursuance to the directions issued by this Tribunal dated 1.11.2001 in O.A. No.638/1996 (Suresh Chandra Awasthi Vs. Union of India and others (Annex. A-1 and Annex.A-1(b)/Comp.I.)

3. Facts, required for adjudicating the claim of the applicant in this O.A. are not in dispute. While working as U.D.C. under control of Commissioner of Income Tax, he was placed under suspension on 7.11.1986 (copy of suspension order was filed as Annex. -II). He filed O.A. 869/87 and the said order was set aside by appellate authority vide order dated 29.12.1987 (Annex. A-IV Comp-II). The applicant resumed duties on 30.12.87; the disciplinary enquiry was initiated on the basis of Memorandum of charges which remained pending for no fault of the applicant; subsequently, proceedings were closed vide order dated 24.11.95 finding that the charges were not proved (Annex. A-VI Comp-II); the applicant was promoted to the post of Tax Assistant vide order dated 20.2.1995 (Annex.A-IX Comp-II) and, again promoted as Head Clerk vide order dated 20.2.1995 (Annex.A-X Comp-II); the applicant requested concerned authorities for payment of bonus for the period of 1986-87 (which was apparently withheld in view of his suspension) and also consequential reliefs on the

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basis of notional promotion since he was exonerated of the charges and disciplinary proceedings were dropped.

4. According to the applicant, he filed representation dated 23.02.1995 claiming of arrears etc. for the period he was kept under suspension (Annex. A-II Comp-II) which has been rejected vide impugned order dated 24.4.1995. According to the applicant, said order was, however, communicated to him vide departmental letter dated 16.1.2002 (Annex. A-I referred to above).

5. For convenience we are quoting the impugned order dated 24.4.1995 is reproduced.

To

*The Commissioner of Income Tax,
KANPUR*

Sir,

*Sub: Representation of Shri Suresh Awasthi, HC –
Regarding*

With reference to your letter F.No.47-1392/100008, dated 27.3.1995, on the above subject, I am directed to convey that the representation of Shri Suresh Awasthi, Head Clerk requesting for arrears of pay and allowances in consequence of his notional promotion does not merit consideration and has, therefore, been rejected. The official may please be informed accordingly.

Yours faithfully,



(KAUSHALENDRA KUMAR SINGH)
 ASSTT. COMMISSIONER OF INCOMETAX (ADMN)
 O/o CHIEF COMMISSIONER OF INCOMDETAX
 KANPUR."

6. Respondents have filed counter affidavit (sworn by N.N.Avasthi, I.T.O. HQ, Kanpur (UP) and the relevant pleadings for the purpose of deciding the present O.A. are contained in paragraphs 4, 6, 10 & 12 which are re-produced below:

"4. That in reply to the contents of paragraph No.4(i) of the original application, it is stated that the applicant did not actually work on higher post of T.A. or H.C. during the period of suspension. Therefore, the applicant can not claim arrears of salary and other benefits of those posts retrospectively. He has been given promotion as T.A. and H.C. notionally with retrospective effect for the purpose of seniority and pay fixation in the present grade. Hence this original application deserves to be rejected.

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6. That in reply to the contents of paragraph No.4(iv) of the original application, it is stated that an order or suspension dated 7.11.86 was served upon the applicant under rule 10(1) of the CCS (CCA) Rules. The above order very specifically stated in the very first para that disciplinary proceedings against Shri Awasthi were contemplated. This order when read with Rule 10(1) (a) of the CCS (CCA) Rules makes it amply clear that the Competent authority is fully empowered to place on suspension an official against whom disciplinary proceedings are contemplated. It is not necessary that definite charges be framed and communicated to the official. So placed under suspension. In the instant case, a prima-facie case was established against the applicant subsequent to preliminary enquiries. It was noticed that the applicant was misusing his official position to take custody of refund vouchers not relating to him either in his personal capacity or official capacity. A bogus TDS refund racket was also detected involving some legal practitioners and connivance of departmental officials was also believed. Further it is very appropriate to place any official under

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suspension, if his continuance in office may have a prejudicial effect on the investigations.

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10. That in reply to the contents of paragraph No.4 (xviii) of the original application, it is stated that the applicant has been given notional promotion from the date to which he became entitled to It. However, no arrears of salary have been paid going into the facts and circumstances of the case. It is well within the powers of disciplinary authority to deny such arrears or part of salary as it considers fit. As per Govt. of India, Ministry of Finance O.M. No.15 (14) E.IV(59) dated 25.5.1962 and 9.8.1962, read with provision of FR.54-A and 54-B, the competent authority has the discretion to pay proportionate pay and allowances and three the period as duty. If no order to the above effect is passed, as in the case of the applicant the period of absence is treated as 'non-duty'. As such, by the rule of "no work - no pay" no arrear of pay can be claimed.

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12. That in reply to the contents of paragraph No.4 (xx) and 4 (xxi) of the original application, it is stated that the representation dated 23.2.95 of the applicant was rightly rejected by the CCIT, Kanpur vide letter dated 24.4.95. The applicant did not work on the post of TA and HC during his period of suspension as submitted in the reply to para 4 (i) and following the principle of "No pay No work", it is prayed that the order of the CCIT may kindly be upheld."

7. The impugned order rejecting the representation does not reflect application of mind nor disclose as it contains no reason referring to any statutory provisions or otherwise 'good ground' to deprive the applicant of the arrears/emoluments and other consequential benefits flowing from the order of deemed promotion. Government/Authority (contemplated ^{or under} Article 12,

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Constitution of India) is not expected to act arbitrarily or whimsically.

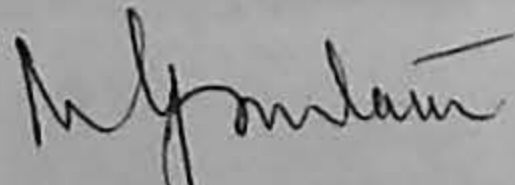
8. It is admitted case of the respondents that applicant was not found guilty and have no valid justification for not giving consequential benefits.

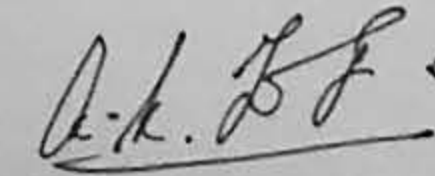
9. In view of the above, we have no option but to set aside part of impugned order dated 24.4.1995 (Annex. A-I (b) Comp-I) which reads:

"The official concerned shall not be entitled to any arrear of pay and allowance on account of his notional promotion to the grade of Tax Assistant."

Consequential order dated 20.2.1995 (A-7)/Comp-II is also set aside. Period of suspension shall not be treated as break in service of the applicant and he shall not be subjected to any kind of prejudice on that score.

10. O.A. allowed. No order as to costs.


MEMBER(A)


MEMBER(J)