(7)

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 462 of 2007

Friday, this the 16th day of November, 2007

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

P.K. Khurana,
S/o. Late Dewan Chand Khurana,
R/o. 121, Rajroop Pur, Allahabad ... Applicant.

(By Advocate Mr. P. Srivastava)

v e r s u s

1. Union of India, through
Ministry of Finance,
Department of Revenue,
New Delhi.

2. The Chief Commissioner,
Income Tax, Lucknow.

3. The Commissioner of income Tax,
Faizabad.

4. The Zonal Accounts Officer,
Central Board of Direct Taxes,
M.G. Marg, Allahabad. ... Respondents.

(By Advocate Mr.S. Singh)

O R D E R

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant has assailed the Annexure A-1 order of recovery of Rs 52,913/- and further reduction in the pay of the applicant, stated to be on account of erroneous grant of two advance increments to the applicant in the year 1990 when the applicant qualified in the departmental examination for the post of Inspector of Income tax.

2. Brief facts: The applicant, an entrant as LDC in the Income tax

(8)

Department in 1969 was promoted as Stenographer in 1970 and in 1989 he qualified in the departmental test conducted for further promotion to the post of Income tax Inspector. The applicant was granted two increments vide order dated 31-05-1990 at Annexure A-1. It is stated that in the course of audit, it was revealed that the pay fixation made in 1990 was erroneous, consequent to which the applicant's pay is liable to be revised and further the excess payment made is to be recovered. Accordingly, the applicant was asked to explain and in response to Annexure A-3, the applicant had furnished his representation, inviting an identical case of one Shri P.N. Tiwari, (OA No. 83/2005) wherein to on identical facts of having paid two advance increments, the respondents proposed to revise the pay of that individual after a number of years and the Tribunal vide order dated 16th September, 2005 allowed the OA and passed the following order:-

"8. In view of the above, the OA succeeds with the following directions:-

(a) Order directing recovery of the amount of Rs 1,15,293 is hereby quashed. Respondents shall not recover any amount from the DCRG in pursuance of the order dated 18-11-2004 (impugned). Any amount withheld out of the terminal benefits shall be paid forthwith.

(b) The applicant shall be paid provisional pension on the basis of the last pay actually drawn.

(c) It is open to the respondents to take action under under due process of law for rectification their error in fixation of pay of the applicant and for re-fixation of pay and allowances of the applicant and re-schedule the pension that the applicant is entitled to.

(d) Needless to mention that before processing the case for re-fixation of pay the applicant shall be put to due notice."

3. The above order was also upheld by the Hon'ble High Court vide judgment dated 31-08-2006 in Civil Misc. Writ Petition 47517 of 2006 at

(9)

Annexure A-4.

4. The respondents, have however, passed the impugned Annexure A-1 order which is now under challenge. The applicant has stated in the OA that he was to superannuate in June, 2007 and that he is a patient of Paralysis.

5. Respondents have contested the OA. The applicant has also filed rejoinder affidavit, reiterating his stand as contained in the OA.

6. At the time of initial admission hearing, vide order dated 14-05-2007, the respondents were restrained from acting on the impugned order dated 15-03-2007 (Annexure A-1).

7. Counsel for the applicant argued that the case is identical to that of OA No. 83/05. In that case the applicant was to superannuate on 30th November, 2004 and the notice of recovery was issued on 18-11-2004 and the reason for recovery was erroneous fixation of pay caused as early as in 1984, when the individual was granted two advance increments on his qualifying in the departmental examination for the post of inspector. In the instant case too, just prior to the date of applicant's superannuation, the department has issued the order of recovery and the reason for recovery is the same as in the other case. Counsel for the applicant further submitted in the other case of OA 83/2005, not only that this tribunal allowed the OA and quashed the impugned order therein, but the Hon'ble High Court has also upheld the same holding as under:-

'Learned Central Administrative Tribunal has worked hard in giving a detailed judgment after placing reliance upon large number of judgments of Hon'ble Supreme Court wherein it has been held that unless the employer makes out a case for excess amount which has been paid to the employee by misrepresentation or fraud, the

recovery is not permissible."

8. Counsel for the respondents contended that the case of the applicant is different from the other case.

9. Arguments have been heard and documents perused. In the order in OA No. 83/2005, this Tribunal had referred to the decision of the Apex Court in the case of **Sahib Ram vs State of Haryana,** *(1995) Supp (1) SCC 18.* This decision has been re-affirmed in the case of ***Purshottam Lal Das v. State of Bihar,*** *(2006) 11 SCC 492* , in the following words:-

> *" We do record our concurrence with the observations of this Court in Sahib Ram case 4 and come to a conclusion that since payments have been made without any representation or a misrepresentation, the appellant Board could not possibly be granted any liberty to deduct or recover the excess amount paid by way of increments at an earlier point of time. The act or acts on the part of the appellant Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances."*

10. The case of the applicant is certainly identical to that in the other O.A. and as such, the order in the other OA shall apply to the facts of this case as well. It has been held in the case of ***Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644*** as under:-

> *"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known*

(11)

rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. This Court in the case of Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same Court observed thus:

> *The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in Pinjare Karimbhai case and of Macleod, C.J., in Haridas case did not lay down the correct law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it. Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of coordinate authority or of superior authority. Gajendragadkar, C.J., observed in Bhagwan v. Ram Chand :*
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> > *'It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that inquiry sitting as a Single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety.' "*

11. In view of the above, the earlier order is fully adopted to this case as well and the OA is allowed. The impugned order dated 15-03-2007 (vide Annexure

A-1) is hereby quashed and set aside. It is declared that no recovery could be effected from the applicant on account of the alleged erroneous excess payment. However, it is open to the respondents to revise the pension of the applicant (if so done in the case of the applicant Shri P.N. Tiwari in OA No. 83/2005) in accordance with law.

12. Under the circumstances, there shall be no orders as to costs.

(Dated, the 16th November, 2007)

(Dr. K B S RAJAN)
JUDICIAL MEMBER