

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 6th DAY OF APRIL 2010)

PRESENT:

HON'BLE MR. S.N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO.664 OF 2007

(U/s, 19 Administrative Tribunal Act.1985)

Udai Nath Misra, Income Tax Inspector, (now Retired),
O/O Tax Recovery Officer, Range-5,
Income Tax, Kanpur.

.....Applicant

By Advocate: Shri A. Trivedi

Versus

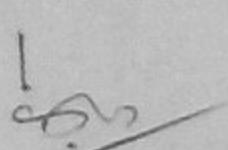
1. Union of India, Ministry of Finance, Department of Revenue,
New Delhi.
2. Central Board of Direct Taxes, Jeevan Deep Building,
Parliament Street, New Delhi.
3. The Chief Commissioner of Income Tax (CCA), Kanpur.
4. The Commissioner of Income Tax-II, Kanpur.
5. Deputy Commissioner of Income Tax (Admn.),
O/O Addl. Commissioner of Income Tax, Range-5, Kanpur.
6. Income Tax officer, Drawing & Disbursing Officer,
Range-5, Kanpur.

..... Respondents

By Advocate: Shri Himanshu Singh

ORDER

1. Heard Shri A. Trivedi, learned counsel for the applicant and Shri Himanshu Singh, learned counsel for the respondents.
2. The record shows that even after repeated opportunities the respondents did not file a counter affidavit even from the very inception i.e. order dated 05.07.2007. Vide order dated 28.3.2008 this Bench granted a final opportunity to the respondents to file



counter affidavit along with a cost of Rs. One thousand and failing which the right to file counter affidavit was to be forfeited. Order dated 16.02.2010 notes that the right to file the counter affidavit is finally forfeited as the respondents have not deposited the cost imposed on 28.3.2008. Today when the case was called out for hearing learned counsel for the respondents merely stated that his counter affidavit is ready though he has filed an application for waiver of cost.

3. Considering the above facts, this Tribunal proceeds to decide this case on the basis of pleadings available on record and by rejecting the respondent's plea to allow him to file the counter affidavit without payment of cost. It is apparent that there is no intention on their part to honour the orders passed by this court earlier.

4. Briefly the facts of the case are that the applicant had passed departmental examination for the post of Inspector at the relevant point of time and, therefore, he became entitled for two advance increments. He accordingly made a representation dated 20.09.1993 to the competent authority. The competent authority vide order dated 05.10.1993 (Annexure-6) granted advance increments w.e.f. 29.6.1986. Thereafter a circular dated 20.10.1994 was issued by Central Board of Direct Taxes (Annexure A-8). In the said circular the question of grant of advance increments was discussed in depth and finally in the last part of the order it was stated that "*in the light of above position, the pending representations in your charge may be rejected on the above lines and individuals inform suitably*". Thereafter an order

dated 18.05.1995 (Annexure A-3) was issued by the Office of Commissioner of Income Tax Kanpur canceling the advance increment with immediate effect and excess amount to be recovered with immediate effect. The applicant thereafter made a representation to the competent authority dated 12.07.1995 (Annexure-10). Thereafter further representations were made and the recovery was stayed vide the office letter dated 23.05.1997, from the office of the Chief Commissioner of Income Tax, Kanpur (Annexure A-13). Thereafter impugned order dated 21.06.2007 was issued from the Office of the Additional Commissioner of Income Tax, Range-5, Kanpur indicating the amount to be recovered from the salary of various individuals with effect from duty indicated therein. Earlier an order dated 11.6.2007 quantified the amount which was to be recovered (Annexure A-2). Consequently, recovery was started from the pay of the applicant w.e.f. February 2007 to June 2007 @ Rs.5000 (Annexure A-25). The applicant superannuated on June 2007. Thereafter the applicant was denied payment of gratuity along with other retiral dues and even regular pension. However, during the pendency of this OA, as ordered by this Tribunal order dated 05.07.2007, provisional pension is being paid to the applicant.

5. The learned counsel for the applicant vehemently argued that C.B.D.T. circular dated 20.10.1994 was prospective as is evident from the language of the para itself and under no circumstances it should have been applied in the case of the applicant. The Ministry of Finance has taken a note of such situation and issued directions to all Cadre Controlling authorities way back in the month of October 2004 wherein it was observed

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that the courts/CAT have ordered that over payment can not be recovered if the employee have already retired and/or on the verge of retirement.

6. Learned counsel for the applicant also relied upon the following decisions: -

i) Shyam Babu Verma and Others Vs. Union of India and Others, (1994) 2 Supreme Court Cases 521 held as under: -

"Higher pay scale erroneously given to petitioners since 1973-Payscale of petitioners reduced in 1984-Held, since petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them."

ii) Bindeshwari Sahai Srivastava Vs. The Chief Engineer, Irrigation Department, U.P. and Others, (1996) 4 UPLBEC 2634 held as under:-

"Wrong fixation of pay scale-in 1982 detected in 1995 after retirement of employee-No fraud or misrepresentation played on the part of petitioner-Hence employer/respondent cannot recover any part of salary from petitioner after retirement".

iii) Sahib Ram Vs. The State of Haryana and Others, JT 1995 (1) S.C. 24 held as under: -

"Appellant does not possess required educational qualification and so not entitled to higher scale-However appellant not responsible for any misrepresentation and so amount paid till date may not be recovered."

7. Learned counsel for the respondents on the other hand argued that the impugned order dated 18.5.1995 should have been challenged earlier and there is no reason why the applicant should

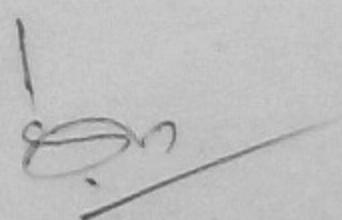
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have waited for so long before filing this OA. This Tribunal finds no relevance of this argument more so when the CCIT himself has stayed the recovery (Annexure A-13).

8. The Tribunal has given a careful consideration to the rival submissions. The applicant applied and was granted advance increment by the competent authority. While doing so the applicant did not misrepresent or conceal any fact. Similarly the applicant cannot be held responsible on any count for having been granted advance increment. Under these circumstances the case of the applicant is fully covered by the Apex Court decision quoted in para 6 (Supra) and accordingly he deserves the benefit of the law laid down by the Apex Court in the rules cited above.

9. In view of the above, following reliefs are allowed.

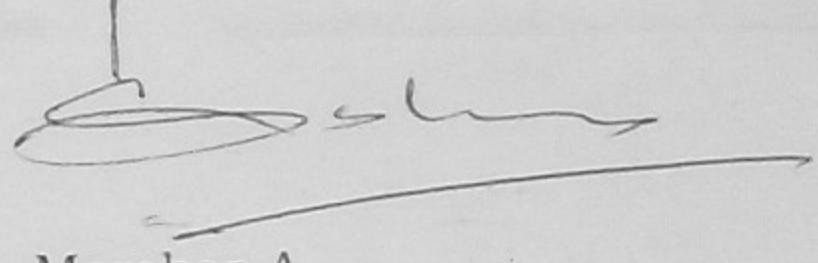
- a) Impugned orders dated 21.06.2007 (Annexure-1) and 11.06.2007 (Annexure-2) read with basic impugned order dated 18.05.1995 (Annexure-3) are set aside and quashed.
- b) Respondents are directed to refund the amount of Rs.25,000/- recovered from the Applicant till June,2007 along with any other further amount recovered in between during the pendency of this OA.
- c) Respondents are also directed to release the all amounts withheld from the retiral dues of the applicant related to impugned recovery and start paying regular pension admissible to the applicant as

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per rules within four weeks of receipt of copy of this order.

10. The Tribunal takes a serious exception to non cooperation and lack of assistance from the respondents in timely finalization of litigation. The respondents by not filing counter affidavit for almost three years inspite of repeated opportunities ~~have~~ ^{con} caused impediment in delivery of justice. The Tribunal finds this is a fit case for imposition of a cost of Rupees Five thousand to be paid along with other dues *and directs accordingly*.

11. With the above observations, OA is allowed.



Member-A

/ns/