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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 125/92, 126/92, 127/92, 128/92

DATE OF DECISION 11-5-1994

Mr. Jairambhai Madhavdas Vanwari

Mr. S. Ramchandra

Mr. Koshy Panicker

Mr. M.D.C. Nair

Petitioner

Mr. M.S. Trivedi

Advocate for the Petitioner (s)

Versus

Union of India and Others

Respondent

Mr. R.P. Bhatt

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. V. Radhakrishnan

Member (A)

The Hon'ble Dr. R.K. Saxena

Member (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? **No**
2. To be referred to the Reporter or not ? **No**
3. Whether their Lordships wish to see the fair copy of the Judgment ? **Yes**
4. Whether it needs to be circulated to other Benches of the Tribunal ? **No**

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8. The Commissioner of Income-tax Gujarat I Ahmedabad.	Respondent in O.A. 127/92
9. The Dy. Commissioner of Income-tax Ahmedabad Range-1, 3rd Floor, Insurance Building, Ashram Road, Ahmedabad.	Respondent in O.A. 127/92
10. The Asst. Commissioner of Income-tax Circle-1(Admn.) & D.D.O. 3rd Floor, Ashram Road, Ahmedabad.	Respondent in O.A. 127/92
11. The Director of Income-tax 1st Floor, Aayakar Bhavan Ashram Road, Ahmedabad.	Respondent in O.A. 128/92
12. The Dy. Director of Income-tax, (Inv) Unit I & H.Q., Aayakar Bhavan Ashram Road, Ahmedabad.	Respondent in O.A. 128/92
13. The Income-tax Officer (Inv.) H.Q.I & D.D.O., First Floor, Aayakar Bhavan Ashram Road. Ahmedabad.	Respondent in O.A. 128/92

Advocate Mr. R.P. Bhatt

JUDGMENT

In

Date : 11-5-1994

O.A. 125/92, 126/92, 127/92, 128/92

Per Hon'ble

Dr. R.K.Saxena

Member (J)

Applicants Shri M.D.C. Nair, Shri Koshy Panicker, Shri S. Ramchandra, Shri J.M. Vanwari, who are Senior Grade-II Stenographers in the Income-tax Department at Ahmedabad have come with the prayer that their salary is reduced and the recovery is likely to be made from them. It was, therefore, urged that the note of the Auditor on which salary of the applicants has been reduced, be declared illegal and void ab-initio, and the order passed

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Shri Jairambhai Madhavdas Vanwari
 Stenographer (Senior Grade II)
 D/5 Samata Society, Keshav Nagar,
 PO Gandhi Ashram, Ahmedabad.

Applicant in
 O.A. 125/942

Shri S. Ramchandra
 Stenographer (Sr. Grade II)
 D/39 Ashoknagar
 Behind Sundervan
 Near ISRO Jodhpur Tekra, Ahmedabad.

Applicant in
 O.A. 126/92

Shri Koshy Panicker K.C.
 Stenographer (Senior Grade II)
 E-27, Central Government Flats
 Nr. St. Xavier's High School
 Memnagar Road, Naranpura, Ahmedabad.

Applicant in O.A.
 127/92

Shri M.D.C. Nair
 S/44, Ashok Nagar,
 Near ISRO, Jodhpur Tekra, Ahmedabad.

Applicant in
 O.A. 128/92.

Advocate Mr. M.S. Trivedi

Versus

1. The Chief Commissioner of
 Income Tax, Gujarat,
 2nd Floor, Aayakar Bhavan
 Ashram Road, Ahmedabad.

Respondent in O.A. 125/92
 O.A. 126/92, 127/92 &
 O.A. 128/92

2. The Incometax Officer (Inv)
 H.A.I. & D.D.O, 1st Floor,
 Aayakar Bhavan, Ashram Road,
 Ahmedabad.

3. The Income Tax Officer
 Sur-cum-C.I.B. Section
 B.D.O. Unit II, Hotel Sabar Building
 Khanpur Ahmedabad.

Respondent in O.A.
 128/92 &

4. Union of India
 Ministry of Finance
 Department of Revenue (Expenditure)
 Janpath Bhavan, Janpath New Delhi

5. Dy. Commissioner of Income Tax
 (Appeals) A.R. 6, 5th Floor,
 Ajanta Commercial Centre 'B' Wing
 Ashram Road, Ahmedabad.

Respondent in
 O.A. 126/92

6. The commissioner of Income Tax
 Gujarat II Aayakar Bhavan,
 Ashram Road, Ahmedabad.

7. The Asst. Commissioner of Income Tax
 Circle 9 (3) (GS), 5th Floor, Ajanta 'B'
 Wing Commercial Centre, Ashram Road,
 Ahmedabad.

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by the Chief Commissioner, Income-tax also be declared as void.

2. The facts of the case are that all the applicants were initially appointed as Lower Division Clerk, in the Income-tax Department in the scale of Rs. 110 - 300. Thereafter they were posted as Stenographer (Ordinary Grade) in the scale of Rs. 130- 330 in the year 1969. On the recommendation of Third Pay Commission the pay scale of Rs. 130 - 330 was revised to Rs. 330 - 560 and was made applicable with effect from 1-11-1974. The applicants were made the said revised pay scale admissible and their pay was accordingly fixed. The next promotion was on the post of Stenographer Selection Grade II in the pay scale of Rs. 425 - 640 in the year 1984. It is contended that the Chief Commissioner, Income-tax and Commissioner, Income-Tax, Gujarat issued orders in the year 1986 giving directions for fixation of pay of the Stenographers Selection Grade II with effect from 1-1-1976. ^{vide a} _{which} Annexure A-2 is the copy of the said order. In the light of this order, the applicants contend that ^{though} they joined the post of Stenographer Selection Grade II in the year 1984 but their pay of that post was fixed with effect from 1-1-1976 in the pay scale of Rs. 425 - 540. Since then the applicants were getting regular pay in the said grade. In the meantime Fourth Pay Commission was set up and it gave its report revising the pay scale of Stenographer Selection Grade II from Rs. 425 - 640 to Rs. 1400 - 2300 which was made applicable with effect from 1-1-1986. Accordingly, their pay was again fixed alongwith ^{other} _{such} persons totalling 32 in number. The applicants further contended that the Chief Commissioner, Income-Tax issued

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orders for making recovery of the excess payment made to the Stenographers because their pay was wrongly fixed with effect from 1976 whereas they were actually promoted in the year 1984 and as such the pay for the post of Stenographer Selection Grade II ~~should not have been~~ ~~would not be~~ given to them prior to their promotion in the year 1984. This order was based on the Audit note. By this order, the applicants pay is going to be reduced and they are subjected to ~~refund~~ make payment of the amount which was paid to them from the year 1976.

3. The respondents contend that the salary of the applicants was wrongly and in-correctly made payable with effect from 1976 whereas they were promoted as Stenographer Selection Grade II only in the year 1984. It is further contended that the posts of Selection Grade of Stenographer were created in the Income-tax Department only in the year 1983 and 1985 vide orders of Ministry of Finance and hence the pay of Stenographer Selection Grade II cannot be given to them from the year 1976. It was pointed out that certain conditions of eligibility for the consideration for the post of Stenographer Selection Grade II were laid down. One of the conditions was that the employee should have rendered such length of service which would have brought him to the stage represented by 3/4 of the span of the revised scale of the ordinary Grade inclusive of the service rendered in the pre-revised scale of that Grade subject to minimum of 14 years of service. It is stated that while determining the pay of the Stenographer these conditions were not understood correctly and the Grade was made applicable since 1976. The respondents also contend that there is mistake in pay fixation and it ~~can~~ be rectified. The applicants cannot

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be allowed to enjoy the benefit which is not legally due to them. It is also contended that there was no question of issuing show-cause notice because there was apparent mistake in pay fixation.

4. The applicants have filed rejoinder to the reply of the respondents and reiterated the same grounds which were narrated in the application. It is further pointed out that there were 32 employees who were promoted to Stenographer Selection Grade but out of them, 28 have been left untouched and no action was taken against them. It was therefore, pleaded that the action of the respondents was discriminatory as well.

5. We have heard learned Counsel for the parties and perused the records. In these cases so far as the induction of the applicants in the service is concerned and their promotion to the post of Stenographer of Ordinary Grade or of Selection Grade are concerned there is no doubt about it. The only point of dispute is whether the pay fixation which was given effect ^{to} from the year 1976 although the applicants were promoted to the post of Stenographer Selection Grade II in the year 1984, was correct; and if not, whether a mistake committed can be rectified and the excess payment made to the applicants be recovered. The applicants admitted that they were promoted to the post of Stenographer Selection Grade II in the year 1984 but the grade of the said post was made payable to them with effect from the year 1976. For these acts the respondents are not responsible and the responsibility can be thrown on the Department itself. The learned Counsel

for the applicants has drawn our attention to the letter No. A-26017/198/84-Ad.IX (Pt.), Government of India, Ministry of Finance, Central Board of Direct Taxes, dated 4th October 1985. By this letter directions were given to the Chief Commissioner of Income-tax about fixation of pay for the Selection Grade ~~from~~ ^{as on} 1-8-1976. It was further directed that the arrears arising out of such fixation of pay could be payable only from the date of actual joining the post by the official. It is not clear from this letter as to what were the grounds on the basis of which the Grade of Selection Grade was advanced to the year 1976, particularly when the arrears was not to be paid. Another letter No. Estt 2/NG-UV/Assoc./86/15729-90 dated 4-11-1986 has also been produced by the applicants in which some clarification as to why this concession was given, was made clear. The relevant ~~operation~~ ^{position} and the intention of these instruction was, that such fixation from back date i.e. 1-8-1976 is to be given in the case of those Stenographers only who have completed a minimum of 14 years of service as on 1-8-1976 and have reached the 3/4th of the Scale of Stenographer (Original Grade) i.e. the basic pay of Rs. 488/- in the pre-revised scale. It came to the notice of the office of the Chief Commissioner (Admn) & Commissioner of Income-tax, New Delhi, that most of the D.D.O were fixing the pay of the Stenographers (OG) so promoted with effect from 1-8-1976 even though most of them have not rendered 14 years' of service in the cadre of Stenographer (OG) and have not reached the basic pay of Rs. 488/-. By going through this letter, the position is clear. This letter has been produced by the applicants alongwith their rejoinder and the respondents have also pleaded on its basis that the fixation ~~fixx~~

of pay of the applicants was incorrect. The conditions which have been enumerated in the letter dated 4-11-1986 mentioned above are being fulfilled by the applicants to qualify for the benefit, is not stressed. The result, therefore, is that we hold that the benefit of giving pay scale to the applicants from 1-8-1976 was not correct; and that mistake was committed by the Department. Any how, if the mistake is committed and it is detected, the right of rectifying the same by the Department, cannot be denied. Thus the applicants have got no case on this ground.

6. The second part of the problem is whether the Government or the Department can make recovery of any excess payment made to the applicants without issuing show-cause notice. So far as the question relating to recovery is concerned, it has been argued on behalf of the applicants that if excess payment has been made because of incorrect fixation of pay, the order of recovery cannot be issued unless show-cause notice was given to the aggrieved person. In this connection, reliance on the cases of Shri C.S. Bedi Vs. Union of India and others, A.T.R. 1988(2) C.A.T. 510, Vithal Dagdoo Marathe Vs. General Manager, Central Railway and Others, A.T.R. 1989 (2) C.A.T. 68 and Sunder Lal Kureel Vs. Union of India and Others, 1993 CSJ (CAT) 250 has been placed; and in these cases it has been held that even if excess payment is made to the employee, it cannot be recovered without issuing show cause notice to him. The learned Counsel for the Respondents argued that there was no question of giving show cause notice in this case because there was apparent mistake in fixation of pay and when the rectification of the same is made or is going to be

made, the necessary corollary would be to recover the excess payment. We are unable to hold this view because in the above cited cases it has been clearly laid down that show-cause notice must have been given and its reason was that it causes civil consequences to an employee which cannot be done unless notice was given. We, therefore, hold that no recovery of any excess payment, if paid to the applicants, can be made because no show-cause notice was given.

We, therefore pass the following order,

ORDER

In the result, applications No. 125/92, 126/92, 127/92 & 128/92 are partly allowed. We hold that the benefit of giving pay scale to the applicants with effect from 1-8-1976 was not correct. However, no recovery of excess payment, if paid to the applicants, ^{could} ~~can~~ be made in absence of show cause notice. Applications stands disposed of accordingly. No order as to costs.



(V. Radhakrishnan)
Member (A)



(Dr. R.K. Saxena)
Member (J)

*AS.