

In the Central Administrative Tribunal
Calcutta Bench

OA No.1323/96

Present : Hon'ble Mr.S. Biswas, Member(A)
Hon'ble Mr.N.Prusty, Member(J)

Narayan Chandra Dutta S/o Sri Kalipada Dutta, Sr.A/l, I.T.
Dy.Commissioner Field Payment, Asansol

...Applicant

-Vs-

1) Union of India, through the Secy. Ministry of Finance, Govt. of
India, New Delhi

2) The Addl. Commissioner of Income Tax, Asansol

...Respondents

For the applicant : Mr.B.Chatterjee, Counsel

For the respondents : Ms K. Banerjee, Counsel

Date of Order : 26.2.2004

ORDER

Mr.S.Biswas, Member(A)

Heard rival counsel.

2. The applicant while filing this OA was serving as Sr.I.T. Dy. Commissioner Field Payment under Respondent No.2 with present pay of Rs2540 (basic) after increment and fixation since 1973. For having passed Revenue Audit Exam, the applicant had earned two increments earlier w.e.f. 14-9-72. In 1973 he earned a special pay of Rs16/- which rose to Rs35/- since 1-3-86 following the Pay Commission recommendation. Further, fixation on 1-5-87 was effected on the basis of his enjoying the special pay of Rs35/- upto 28-2-87.

3. The applicant has by this OA brought to our notice that after almost 23 years thereafter his pay was reduced by recasting the fixation vide communication dated 6-8-96. Relevant extract of it is reproduced below for understanding the error, which the Department had committed requiring an alleged retrospective correction and recasting :

As Shri Dutta was not in receipt of Special Pay on the date of fixation of pay in the revised scale, that element can not be taken into account for fixation of pay in the revised scale.

Therefore, you are requested to recast the pay from time to time of Shri Dutta from 3rd Pay Commission to 4th Pay Commission onwards as shown in the statement furnished by the Internal Audit Party, CBDT, Calcutta sent along with this office letter No.ZAO/Cal/Admin/Pay-anomaly/94-95/1744 dated 13-1-95 with an amendment as shown below and recovery of overpayment may please be effected at an early date under intimation to this office. 'Date of Promotion' of Shri Dutta as Senior Accountant should be 1-8-1985 instead of 1-5-1985 as shown in the statement.

4. The applicant has sought appropriate direction upon the respondents restraining them from such retrospective recasting and in effect reducing his salary drawn by him for 23 years - not in any way due to any contributory mistake or manipulation by the applicant.

5. The applicant has further cited a communication (Annexure 4) dated 10-5-96/13-5-96 containing the following clarificatory replies as reproduced below :

1. Inclusion of Rs20/- as P.D.A. in the fixation of pay at the stage of Rs452/- in the scale of Rs330-560/- of Shri N.C. Dutta, Senior Accountant may kindly be supported by Government of India Order which categorically authorises such inclusion of provisional D.A. which is a post of 3rd Pay Commission element. If no such order is available, the fixation of pay as above will have to be revised excluding the element of provisional D.A. of Rs20/-.

2. The Special Pay of Rs35/- cannot be taken into account in the fixation of pay as had been done on 1-5-87 in case of Shri N.C. Dutta, Sr.Acctt. vide G.I., M.F. Department of Expenditure, Controller General of Accounts, New Delhi's OM No.A.26011/19/78/MF-CCA(A)/II Part/174-207 dated 2/3-2-83.

Therefore, the pay of Shri Narayan Chandra Dutta may be recast in the light of above observations and amount overdrawn, if any, be recovered under intimation to this office.

6. All these evidently showing an intention to revise and recast the fixation erroneously made as detailed in this correspondence, have been challenged by this OA, though clearly no effect to this has yet been given. In our understanding therefore this is an anticipatory OA and the actual cause of action has not yet arisen - may be as because the OA was admitted and the applicant was therefore not able to go ahead with the proposed recasting of the fixation.

7. An interim order was passed in this case on 20-10-97 restraining the applicant from recasting and effecting any recovery as proposed in Annexure-A the alleged overpayment due to the erroneous fixation made in case of the applicant giving him certain undue monetary advantage since 1973. Further the applicant has taken shelter to continue with the said advantage in pursuance of the decision in self same subject matter in Shyambabu Verma v. Union of India & others reported in ATC 1994 SC 121.

8. The respondents have contested the above submissions and have inter alia admitted that -

(a) On 1-5-1976 the basic pay of Shri Narayan Chandra Dutta, Senior Accountant was fixed as per formula recommended by the Third Central Pay Commission taking into account provisional Dearness Allowance of Rs20/- which was a post Third Pay Commission phenomenon. This point has been elucidated in paragraphs 3(vii), 3(xiii) & 3(ix) of the Brief History of the Case.

b) On 1-5-1997 pay of Shri Narayan Chandra Dutta was fixed at the stage of Rs2050/- in the scale of pay of Rs1,400/- - 2600/- taking into account special pay of Rs35/- which he was not in receipt on the date of pay fixation and the point has been elucidated in paragraph 3(x) of the Brief History of the case.

(c) In the application Shri Narayan Ch. Dutta has claimed the promotion to the post of Sr.Accountant from 1-5-1985 but he was actually promoted to the post of Sr.Accountant w.e.f. 1-8-1985. This point has been elucidated in paragraph 3(xi) of the Brief History of the case.

9. According to the respondents the applicant was posted in the office of the respondents, i.e. A.G. on 2-8-67. He was posted on 3-11-79 in the field Pay Unit of Income Tax Office at Asansol and as per his service book he exercised an option on 31-5-84 to take fixation of pay with effect from 1-5-1976 under CCS (RP) Rules, 1973. His fixation was done without the approval of the Chief Controller of Accounts and element of Rs20/- which was a ~~provisional~~ DA introduced since 1-5-73 had been taken into account but the Government of India vide OM dated 6-4-74 regularised the DA, DP and interim relief admissible on the basic pay under the orders in force prior to 1-1-1973.

10. Similarly, it is also stated that the applicant exercised an option on 10-12-90 to take fixation of pay under CCS (RP) Rules, 1986 w.e.f. 1-5-87. In this fixation the element of Rs35/- as special pay was taken into account, although the applicant was not in receipt of any special pay on 1-5-87 as noted in the Service Book (Annexure-II). He was as per (Annexure-II) in receipt of special pay from 1-3-86 to 28-2-87. Accordingly it was found that there was a typing mistake where 1-8-85 had been typed as 1-5-85. Therefore, that mistake can be corrected by specific action.

11. We have considered the submissions of the rival sides. The respondent authorities have tried to clarify that mistake was due to commission and omission including typing mistake.

12. In our consideration, in view of the Shyambabu Verma's case cited by the applicant, the respondents have proposed to correct the position by order dated 5-8-94 which was only a communication from the Asstt. Controller of Accounts to Additional Commissioner of I.T. However, the applicant filed the OA to stall the process and succeeded to obtain an injunction dated 28-10-97.

13. It is not the case of the respondents that the mistake was in any way attributable to the applicant. Therefore the ratio of Shyam Babu Verma's case is applicable in respect of recovery of the past dues before the notice was actually issued or the recovery effected. Record however shows that though injunction was neither prior to it, nor subsequently any actual recovery order was passed specifically in respect of the applicant's case. In the situation, in our considered view the recovery if any, is liable to be made only prospectively with effect from 30-10-96. As orders are yet to be made in this behalf by the respondents. We are not in a position to pass any order regarding the process and which elements are to be adjusted, the same is left to the respondents. We therefore dispose of the OA with the direction that the action if any decided to be taken after considering his representation, the same may be taken with effect from 30-10-96 when the present OA was filed. No costs.


Member (J)


Member (A)