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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

Original Application No. 202/2003
Date of order: 14.11.2006

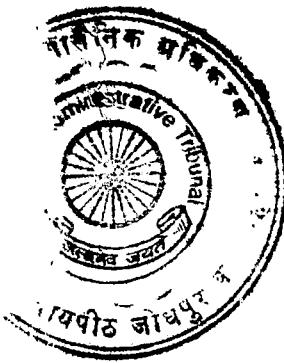
**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER**

Man Singh Mehta S/o Lt. Shri Sukhraj Ji Mehta, aged about 60 years, r/o Daftariyon Ka Mohalla, Moti Chowk, Khapta, Jodhpur. Official address – Assistant Commissioner, Income Tax Department, Circle Pali, Pali.

....Applicant.

Mr. Kamal Dave, counsel for applicant.

VERSUS



1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. Commissioner of Income Tax-I, Aya Kar Bhawan, Paota 'C' Road, Jodhpur.
3. Sr. Accounts Officer, Zonal Accounts Office, Central Board of Direct Taxes (CBDT), New Central Revenue Building, Statue Circle, Jaipur.
4. Additional Commissioner of Income Tax, Pali Range, (Hq.), Jodhpur.
5. Assistant Commissioner of Income Tax, (Incharge) Pali Marwar, Income Tax Office, Pali.

....Respondents.

Mr. Vinit Mathur, counsel for respondents.

ORDER

(By Mr. J K Kaushik, Judicial Member)

Shri Man Singh Mehta has, inter alia, questioned the validity of order dated 14.08.2003 (annexure A/1) and 5th September, 2003 (Annexure A/2) and has prayed for quashing and setting aside with consequential benefits amongst other reliefs.

2. We have heard the arguments advanced at the bar, by both the learned counsel representing the contesting parties and have anxiously considered the pleadings as well as the records of this case.

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3. The factual background as culled out from the pleadings of both the parties indicates that the applicant came to be initially appointed to the post of U.D.C. on 07.04.1966. He earned his various promotions and finally attained the post of Assistant Commissioner of Income Tax on 07.11.2001. He qualified the examination held for the post of Inspector (Income Tax) in the year 1968. He was granted two advance increments and further stepping up of his pay vis-à-vis his next junior Shri S.C. Ajmera. In the year 1989, the Zonal Accounts Office, Central Board of Direct Taxes (CBDT) objected stepping up of the pay, allowed to the applicant and this objection was set at rest vide communication dated 1/5-03-1990. The matter has again been opened vide order dated 14.08.2003 on new facts that benefit of the two advance increment granted to Shri S.C. Ajmera has been withdrawn and also his pay was stepped down from Rs. 500 to 470 with effect from 20.07.1976. Hence, this application has been filed on numerous grounds.



4. The factual as well as legal aspect has been controverted in the reply and it has been averred that the pay fixation of Shri S.C. Ajmer has been revised and the applicant is also required to be given similar treatment. The impugned order cannot be faulted with and the grounds raised in the Original Application have been generally denied. A very detailed rejoinder has been filed almost reiterating the facts narrated in the Original Application and the defence version of the respondents taken in the reply has been refuted. With the rejoinder, the decision of a coordinate Bench of this Tribunal at Jaipur passed on 15.10.2003 in the case of **Hari Kishan Sharma vs. Union of India & Ors.** (O.A. No. 63/2003) as well as the judgment of the Hon'ble High

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Court of Judicature for Rajasthan at Jaipur Bench passed in D.B. Civil Writ Petition No. 5179/2004 in the case of **Union of India & 4 others vs. R.S. Sarasar etc. etc.**, affirming the order of the Tribunal have been annexed as Annexure A/8 and A/9.

5. Learned counsel for the applicant has drawn our attention to the Annexure A/8 and A/9 and has submitted that the issues involved in the instant case have been fully adjudicated upon and set at rest. The same does not res integra. This Original Application may also be decided on similar lines. He has also submitted that the applicant has already retired from service and the impugned orders have been given effect to which have resulted in deduction of the recovery amount from the due amount of DCRG and also in reduction of pay/pensionary benefits payable to the applicant. He has also laid great emphasis and submitted that the due arrears may be paid to the applicant along with interest at a reasonable rate. Per contra, learned counsel for the respondents has vehemently opposed the contentions raised on behalf of the applicant and has reiterated the defence version of the respondents as set out in their reply.

6. We have considered the rival submissions put forth on behalf of both the parties. There is no dispute regarding the factual aspect of this case except that there is no specific prayer in the pleadings for payment of interest of arrears. However, while exercising powers under Article 226 of the Constitution of India, this court has ample power to mould the relief in the facts of the particular case **(Employees State Insurance Corporation Vs. Jardine Henderson Shipping Association & Others AIR 2006 SC 276. (Para 62 Refers).** We waded the decision in the case of **Hari Kishan Sharma (supra)**

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cited on behalf of the applicant. We find that the controversies involved in the instant case relate to re-fixation of pay of applicant by withdrawing of two advance increments granted earlier and recovery thereof from a retrospective date. The same have been elaborately discussed, settled in the aforesaid decision. We are, therefore, refraining from repeating the discussion afresh; rather adopt/treat the discussions made therein, as part of this order. The decision of the Hon'ble Tribunal in the case of **Harji Kishan Sharma** (supra) has been also upheld and affirmed by a Division Bench of the Hon'ble High Court of Judicature for Rajasthan at Jaipur Bench in the case of **R.S. Sarasar** (supra), therefore, we have absolutely no hesitation in following the ratio of the same, rather we are bound by the same and decide this Original Application on similar line.

7. In the premises, the Original Application has ample force and deserves acceptance. The same stands allowed accordingly. The impugned order dated 14.08.2003 (Annexure A/1) and 5th September, 2003 (Annexure A/2) are hereby quashed. The applicant shall be entitled to all consequential benefits including the refund of any amount deducted from the DCRG amount payable to him and also the revision of pensionary benefits etc. The due amount shall carry an interest @ of 8% p.a. This order shall be complied with within a period of three months from today. No costs.

R R Bhandari
(R R BHANDARI)

ADMINISTRATIVE MEMBER

J K Kaushik
(J K KAUSHIK)

JUDICIAL MEMBER

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art II and III destroyed
in my presence on 31/10/14
under the supervision of
section officer (1) as per
order dated 31/10/14

Section officer (Record)

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