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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR.**

Original Application No. 17/2004  
Date of order: 14.11.2006

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

Bheeka Ram S/o Shri Deva Ram, aged 59 years, R/o 94, Pratap Nagar, Jodhpur, Official Address - Income Tax Officer, Jaisalmer under the Office of Joint Commissioner, Income Tax, Barmer (Raj.)

**....Applicant.**

Mr. Kamal Dave, counsel for applicant.

**VERSUS**

1. Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. Commissioner of Income Tax,-II, 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. Joint Commissioner of Income Tax, Barmer Range, Barmer (Raj.)
5. Drawing & Disbursing Officer (DDO), ITO, Jaisalmer (Raj.).

**.....Respondents.**

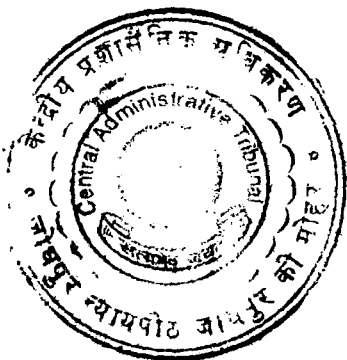
Mr. Vinit Mathur, counsel for respondents.

**ORDER**

**(By Mr. J K Kaushik, Judicial Member)**

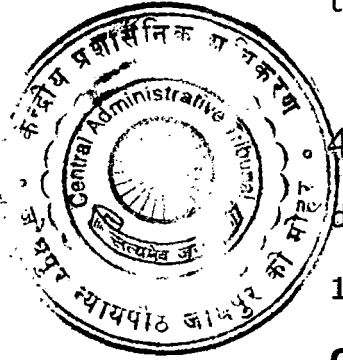
Shri Bheeka Ram has, inter alia, questioned the validity of order dated 2.12.2003 (Annex A/1), 31.12.2003 (Annex A/2) and 17.2.2002 (Annex A/3) and has prayed for quashing and setting aside with consequential benefits amongst other reliefs.

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 11.8.75. He earned his various promotions and finally attained the post of Income Tax Officer. He qualified the examination held for the post of Inspector (Income Tax) in the year 1989. He was granted two advance increments w.e.f. 3.7.89 and allowed due fixation of pay as per rules in force. Subsequently impugned orders came to be issued on dated 2.12.2003, 31.12.2003 and 17.2.2002, respectively directing withdrawal of the said two increments and revision of pay fixation thereof. Hence, this application has been filed on numerous grounds. The factual as well as legal aspect has been controverted in the reply by the respondents. The impugned orders cannot be faulted with and the grounds raised in the Original Application have been generally denied.



Learned counsel for the applicant has drawn our attention to a decision of 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 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 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 during pendency of this case 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

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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.

5. 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).**

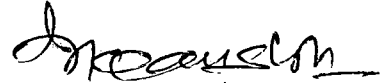


We waded the decision in the case of **Hari Kishan Sharma** (supra) cited on behalf of the applicant. We find that the controversies involved in the instant case relate to re-fixation of pay of applicant by withdrawing of two advance increments granted earlier and recovery thereof from a retrospective 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 **Hari 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.

6. In the premises, the Original Application has ample force and deserves acceptance. The same stands allowed accordingly. The impugned orders dated 2.12.2003 (Annex A/1), 31.12.2003 (Annex A/2) and 17.2.2002 (sic 17.2.2003) (Annex A/3) 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 )  
ADMINISTRATIVE MEMBER



( J K KAUSHIK )  
JUDICIAL MEMBER

nlk



P/c for Kamal Daul  
Bhagwary  
22-11-06

Part II and III destroyed  
in my presence on 11/4/14  
under the supervision of  
section officer ( ) as per  
order dated 31/12/14.

Section officer (Record)

G  
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