

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 324 of 2006**

Date of order : 12.10.2007

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member (J)

Devi Prasad, S/o Khargu Rajak, resident of Village – Brahmpur, P.O. & P.S. Phulwari Sharif, District – Patna.

...Applicant.

By Advocate : Shri J.K. Karn.

Vs.

1. The Union of India through the Secretary Cum Chairman, Central Board of Direct Taxes, New Delhi.
2. The Chief Commissioner of Income Tax, Patna.
3. The Additional Commissioner Head Quarter, Income Tax, Patna.
4. The Principal Chief Controller of Accounts, CGDT, Zonal Accounts Office, Patna.
5. The Zonal Accounts Officer, O/o Pr. Chief Controller of Accounts, CBDT, Zonal Accounts Office, Patna.
6. The I.T.O. Cum Head of the Office, Ward No. 1, Ara.

...Respondents

By Advocate : Shri B.K. Prasad

ORDER

Ms. S. Srivastava, Member(J) :- The applicant, Devi Prasad, has filed this application seeking direction upon the respondents to fix the entire pensionary benefits, including pension on the basic pay of Rs. 4800/- in stead of Rs. 4500/- and also to direct the respondents to pay all the arrears accordingly. Further, there is a prayer to refund the recovered amount of DCRG amounting to Rs. 64,592/-.



2. The case of the applicant is that the applicant was retired on 31.08.05 while holding the post of Tax Assistant at Ara. Initially he was appointed as a Peon on 22.10.1965. He was promoted as Record Keeper in the year 1979. His juniors, namely, Suraj Narayan Singh and Rahim Ansari were promoted as Ad-hoc LDC in the year 1980. Suraj Narayan Singh was promoted as regular LDC w.e.f. 4.9.1984 and Rahim Ansari was promoted as such w.e.f. June, 1989. Aggrieved by their promotion the applicant has filed a representation before the department and consequently vide order dated 2.1.1990, the applicant was promoted as LDC with retrospective effect from 4.9.1984, i.e., the date from which Shri Suraj Narayan Singh was promoted as LDC. His pay was also stepped up equally to his juniors and the applicant was drawing the same pay as his juniors w.e.f. 1.2. 1990. The applicant retired on 31.08.2005 and his last pay drawn was Rs. 4800/- but his retiral benefits were settled and calculated treating last pay drawn as Rs. 4500/-. According to the applicant his pension should have been Rs. 3563/-, but the same has been fixed as Rs. 3375/- . After retirement of the applicant the entire DCRG amount of Rs. 64,592/- has been withheld due to overpayment. Aggrieved by the action of the respondents, the applicant has filed the instant O.A.

3. The respondents have filed written statement stating therein that since the applicant was not a matriculate he was not promoted in the year 1980, whereas his juniors were promoted on ad-hoc basis and subsequently their promotions were regularised w.e.f. 4.9.1984. The applicant was promoted as LDC

B

w.e.f. 4.9.84 on regular basis when he acquired the minimum educational qualification of matriculation and his seniority was accordingly placed above Shri Suraj Narayan Singh. The prayer of the applicant to fix his pay at par with his juniors in accordance with rules because both the juniors were promoted as ad-hoc LDC in 1980, i.e. almost 4 years prior to the applicant. They earned increment during 4 years for which the applicant was not entitled because he was not matriculate in the year 1980 and not fit to be promoted as LDC either notionally or actually. The respondents have not disputed the retrospective promotion of the applicant w.e.f. 4.9.1984. Their only case is that the stepping up of his pay at par with his juniors w.e.f. 4.2.1990 was a mistake which was rectified subsequently and, therefore, the entire amount of gratuity has been adjusted towards overpayment made to the applicant due to wrong stepping up of his pay. They have further stated that as per rule the applicant's entire retiral benefits have been calculated at the rate of Rs. 4500/- correctly. According to the respondents, the OA is devoid of merit and is liable to be rejected.

4. Heard the learned counsel for the parties. It is borne out from the record that admittedly both the juniors were promoted in the year 1980 on ad-hoc basis and got regularised w.e.f. 4.9.1984 in continuity of their ad-hoc promotion. The applicant was promoted by order dated 2.1.1990 as LDC w.e.f. 4.9.1984. Vide order dated 9.9.1991 (Annexure A/2) the anomaly of the pay scale of the applicant was rectified and his pay was fixed at the rate which his juniors were

b


drawing. Both the juniors were drawing more pay time to time due to their earlier promotion as LDC on ad-hoc basis. Thus condition of stepping up of pay was not fulfilled. Because of their ad-hoc promotion they drew more pay irrespective of their position in the seniority list. The applicant has not controverted the assertions made in the written statement. Since the applicant was not matriculate when his juniors were promoted, therefore, he cannot claim the same pay which his juniors were drawing because of their ad-hoc promotion. In view of the above position, the applicant's retiral benefits have been correctly fixed at the rate of Rs. 4500/-. No reply is due to the applicant in this regard.

5. As regards the relief claimed by the applicant regarding refund of gratuity amount, the law is well settled that if the excess payment has been made without there being no misrepresentation on the part of the applicant it is not open to the employer to recover the same. In the case of Saheb Ram Vs. State of Haryana 1995 Supp. (1) SCC 18, the upgraded pay scale was given due to wrong consideration of relevant order by the authority concerned without any misrepresentation on the part of the employee. The Apex Court held that the excess payment to the employee cannot be recovered. Relying on the law laid down by the Supreme Court, Patna High Court in the case of (a) Raghubir Prasad Singh Vs. BSEB 1996 BBCJ page 15 (b) Gupteshwar Prasad Vs. State of Bihar; 93 PLJR 572 and © Mahendra Prasad Vs. State of Bihar; 2006(1) PLJR 139 have also held that if the excess payment has been made without there being any



misrepresentation on behalf of the employee, it is not open for the employer to recover the same. Consequently, the recovery made by the respondents from the gratuity payable to the applicant has to be refunded. Resultantly, the respondents are directed to refund the amount of Rs. 64,592/- to the applicant with interest payable at the rate of 9% per annum.

6. The O.A. is partly allowed without any order as to the costs.


[Ms. Sadhna Srivastava]
Member(J)

srk.