

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 595/93

Transfer Application No:

DATE OF DECISION: 30-1-95

V.D. Karkare Petitioner

Shri G.S.Walia Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri A.L. Kasturey. Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M.R.Kolhatkar, Member (A)

The Hon'ble Shri

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

M.R. Kolhatkar
(M.R.Kolhatkar)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 595/93

V.D.Karkare

... Applicant.

V/s.

Union of India, through
General Manager,
Western Railway
Churchgate
Bombay,

Chief Cashier
Western Railway
Churchgate
Bombay.

... Respondents.

CORAM: Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearance:

Shri G.S. Walia, counsel
for the applicant.

Shri A.L.Kasturey, Counsel
for the respondents.

JUDGEMENT

Dated: 36-1-95

¶ Per Shri M.R. Kolhatkar, Member (A) ¶

This Original Application has been filed under section 19 of the Administrative Tribunals Act. The facts are as below:

2. The applicant is working as Senior Cashier at Headquarter Office of Western Railway. He was placed under suspension from 13.9.85 to 23.4.86 and from 17.9.86 to 24.6.87. The applicant was not paid full wages for ^{the} said periods of suspension. Subsequently by the orders of the Court, the applicant was paid full wages for the period from 17.9.85 to 24.4.86 ^{and} income-tax amounting to Rs. 775/- (has) been deducted and for the period from 17.9.86 to 24.6.87 income-tax amounting to Rs. 1130/- (has been) deducted vide Exhibit 'C' at page 12. Pursuant to the judgement, the increment of the applicant has been restored and he has been paid the arrears of Rs. 1776/- which has been accounted for the

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purpose of income-tax. Therefore a total amount of Rs. 2087/- had been deducted as income-tax from the payment made to the applicant. In precise terms Rs. 1130/- + Rs. 775/- = Rs. 1905/-, from which it is assumed that an amount of Rs. 182/- was also deducted at the time of making the 3rd payment, totalling to Rs. 2087/-. The contention of the learned counsel for the applicant is that the deduction of the income-tax was wrongful and illegal. The respondents ought to have spread over the income-tax over the years in which it fell due. Applicant vide letter dated 13.2.92 page 17 stated that:

" The arrears payment as a result of restoration of increment is a delayed payment and cannot be taken for income-tax purposes as per Supreme Court Judgement."

However inspite of this letter the respondents have deducted the income-tax. The first relief claimed is to refund the income-tax.

3. The second relief claimed by the applicant is that the two periods of suspension have been treated as period spent on duty, but the leave account has not been recast.

4. The third relief claimed by the applicant is that the applicant was not paid any interest on the payment of arrears made for the two suspension periods, and the applicant ought to have been paid the interest as major punishment and disciplinary proceedings were not warranted.

5. So far as re-casting of leave account is concerned, the respondents have pointed out that by letter dated 16.7.92 (Annexure II to the written statement) the applicant was informed about the leave



account having been re-cast and the leave in the credit was intimated to him. In view of this, the applicant does not press the relief regarding the re-casting of leave account.

6. So far as the other prayers are concerned, the respondents have resisted the same on the preliminary ground that the matter pertaining to recovery and refund of income-tax cannot come within the purview of the service matters and the applicant ought to have claimed the same from the Income-tax authorities. The respondents have also communicated this to the applicant by letter dated 22.7.92, vide Annexure I to written statement which is reproduced below:

" The arrears of salary is taxed in the year of receipt if these have not been taxed earlier on due basis as per the Income Tax Act. The recovery of Income-tax on arrears payment has therefore been correctly made by the Administration. The request for refund of the same, if any should be directly made to the Income-tax authority by filing Income-tax returns annually."

Therefore, according to the respondents, the Tribunal has no jurisdiction to go into the question and the applicant should be directed to approach the Income-tax department. Regarding the claim of the applicant for interest on arrears of pay for the past period, the respondents have contended that he is not entitled to any interest as the arrears have been paid due to the judgement of the Tribunal and not due to any administrative delay or lapses. We, are inclined to agree to this contention of respondents as to interest and therefore we have to consider this case only in regard to the relief on refund of Income-tax.

7. Regarding the issue as to whether the refund of income-tax is a service matter or not, the applicant contended that deduction from Income-tax from salary is a service matter and he shows us that the interim relief passed by this Tribunal in the case of Aruna Madan V/s. Union of India (O.A.) in which the Tribunal had directed the department to spread the arrears of salary before deducting the Income-tax.

8. The service matters are defined in Section 3(q) of Administrative Tribunals Act as below:

" Service matters, in relation to a person, means all matters relating, to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects (i) remuneration

Payment of salary or remuneration is a service matter and since salary is paid on a net basis after deduction of various dues including deduction of Income-tax, we hold that such deduction of income-tax from salary is also a service matter.

9. However, income-tax had already been deducted for the arrears paid to the applicant and the issue is whether this court can direct refund of Income-tax already deducted from the arrears of salary paid. On this point, the applicant has referred to the decision of the Supreme Court in the case of Workmen of American Express International Banking Corporation V/s. Management of American Express International Banking Corporation and others

reported in 1988 SCC (L&S) 254. As this is a short order the same is reproduced below:

" Learned counsel appearing for both the parties informs us that the matter has been settled. The workman Ravi Chandran will forthwith tender his resignation. In addition to the amount of Rs.81,000 already paid to the workman, he will be paid a sum of Rs. 1,06,500 (Rs. One lakh six thousand five hundred.) only in full and final settlement of all his claims against respondent management of American Express International Baking Corporation within two months. The management will not deduct any amount of income-tax from this amount. This amount will be spread over in previous years under the provisions of Section 89 read with Rule 21-A of Income-tax Act, 1961 in terms of the judgement of this Court in Sant Raj V. O.P. Singla. The appeal is disposed of accordingly. No costs."

The learned counsel for the applicant contends that in this judgement the Hon'ble Supreme Court had directed to spread over the claim of settlement over the previous year. But this is under the provisions of Section 89 read with Rule 21(A) of Income-tax ^{Rules} ~~Act 1961~~ in terms of the judgement of this Court in Sant Raj Vs. O.P. Singla.

10. We have gone through the judgement of Sant Raj and Another V/s. O.P. Singla and another reported in 1985 SCC (L&S) 435. This judgement considered the provisions of Section 192 and Section 89 of Income-tax Act and Rule 21(A) of the Income Tax Rules. Section 192 provides that any person responsible for paying any income chargeable under the head 'Salaries' shall at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year

in which the payment is made, on the estimated income of the assessee under this head for that financial year. The person at the time of making any deduction may increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year. Section 89 deals with the question of relief when salary etc. is paid in arrears or in advance which is reproduced as below:

" Where, by reason of any portion of an assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than twelve months or a payment which under the provisions of clause (3) of section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that at which it would otherwise have been assessed, the income-tax Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed."

11. Rule 21(A) deals with the modality of giving relief and is to be read with section 89.

12. In the case of Sant Raj, considering the special circumstances viz. that compensation of 12 years was being paid, and the back wages for the entire period plus other benefits were paid ~~under~~, the Supreme Court made some observations. In this connection we may reproduce para 8 of the judgement.

" Before we conclude this judgement, we would like to make it abundantly clear that the compensation of Rs. 2,00,000 awarded to each appellant includes back wages for a period of 12 years. Now that the amount is being paid in one lump sum, it is likely that the employer may take

recourse to Section 192 of the Income-tax Act, 1961 which provides that when any person responsible for paying any income chargeable under the head 'Salaries' shall at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. If therefore the employer proceeds to deduct the income-tax as provided by Section 192, we would like to make it abundantly clear that each appellant would be entitled to the relief under Section 89 of the Income-Tax Act which provides that where, by reason of any portion of assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than 12 months or a payment which under the provisions of clause (3) of Section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that it would otherwise have been assessed, the Income-tax Officer shall on an application made to him in this behalf grant such relief as may be prescribed. The prescribed relief is set out in Rule 21(A) of the Income-Tax Rules. Both the appellants are entitled to the relief under Section 89 because compensation herein awarded includes salary which was in arrears for 12 years and it is being paid in one lump sum under the orders of this Court. Therefore, the salary has to be spread over for a period of 12 years as also the compensation in lieu of reinstatement and the relief should be given as provided by Section 89 of the Income-Tax Act read with Rule 21(A) of the Income-Tax Rules. Both the appellants are entitled to the same. If any application is necessary to be made, the same may be made to the competent authority and the respondent-employer shall assist the appellants in each case for obtaining the relief."

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13. From this judgement it is clear that the Supreme Court envisaged that the workman would make an application to the competent authority i.e. Income-Tax Officer and the employer was to assist the workman in obtaining the relief. In the judgement of Sant Raj there was no direction for the employer to perform the work of the Income-Tax Officer. The direction in the Workmen of American Express International Banking Corporation's case that the Management will not deduct any amount of Income-tax from this amount has to be read in the context of this background. In other words the Supreme Court judgement does not support the case of applicant that he is entitled to the claim of refund of income-tax from the respondents.

14. Supreme Court judgement indicates that whenever a court or Tribunal gives relief regarding the arrears of salary, it would be well within its powers to direct the employer to help the employee in getting the relief under section 89^{of IT Act} and if any such direction is not complied with, then further action against the employer can be taken. We are, therefore, of the view that the applicant is not entitled to the relief claimed by him and at the same time keeping the spirit of the Supreme Court judgement cited by the applicant, in view, the employer is expected to use his good offices to help the employee to obtain the relief by forwarding the case of the applicant with facts and figures to the Income-tax^{Dept} and by expediting the Income-Tax Department. We, therefore, dispose of this application by passing the following order.

ORDER

2 O.A. is rejected except that we simultaneously direct the respondents to assist the applicant in

case he files his claim with the Income-Tax Officer under section 89 of the Income-Tax Act to assist him in obtaining the relief due under law. There will be no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

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