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In the Central Administrative Tribunal, Jodhpur Bench,
at Jaipur

Date of decision: July 19, 1990.

(1). T.A. No. 507 of 1986

Banvarilal Gupta Versus Union of India & ors.

(2). T.A. No. 1782 of 1986

Madan Gopal Versus Union of India & ors.

(3). T.A. No. 2252 of 1986

Bhanu Dutt Sharma Versus Union of India & ors.

(4). T.A. No. 2504 of 1986

P.D. Khetri Versus Union of India & ors.

(5). T.A. No. 10/89.

K.N. Pandey Versus Union of India & ors.



Mr. B.C. Mehta, counsel for the applicants in
T.A. Nos. 507/86, 2252/86, 2504/86 and 10/89,

Mr. S.K. Singh, proxy counsel for Mr. M.S. Gupta,
counsel for the applicant in T.A. No. 1782/86;

Mr. Vinay Kothari, counsel for the Respondents.

CORAM : The Hon'ble Shri Kaushal Kumar, Vice-chairman

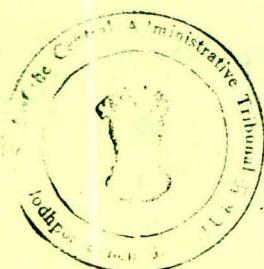
The Hon'ble Shri T.S. Oberoi, Judl. Member.

SHRI KAUSHAL KUMAR, VICE-CHAIRMAN :

The facts of the above cases are more or less
similar and all of them can conveniently be disposed of
by this common judgment.

2. The applicants in all these cases were

U.D.Cs. in the Income-tax Department and they were promoted to the post of Inspector on different dates. They were senior to certain other U.D.Cs., who were first promoted as Head Clerk and/or Supervisors before they were promoted to the post of Inspector. As a result of the intermediate promotions having been given to the juniors to the post of Head Clerk/Supervisor, their pay was fixed under FR 22-C once or twice before they were finally promoted to the post of Inspector. As a result of the multiple application of FR 22-C, these juniors got, on their promotion as Inspectors, benefit of higher pay than their seniors, who were promoted directly from the post of U.D.C. to the post of Inspector.

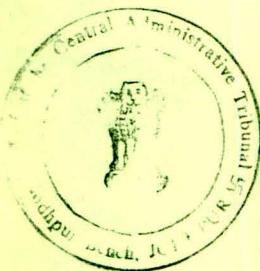


3. To remove this anomaly, the Ministry of Finance, Department of Revenue, issued circulars in 1975, 1976 and 1977, in pursuance of which, the pay of the applicants was raised to the level of their juniors on different dates in 1977. However, these orders of stepping up were subsequently revised after a period of nearly five years in 1982 through an administrative review undertaken by the Commissioner of Income-tax. Recoveries were also ordered to be made in respect of the excess payments made.

4. The facts of these cases are similar to those, which were disposed of by judgment dated June 27, 1988 in T.A. No. 529/86: A.S. Choudhary Vs. Union of India & others and 15 other T.As. as also the judgment

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dated December 1, 1989 disposing of T.A. No. 259/86 Smt. Vidyawati Vs. Union of India and others and 44 other T.As. The Review petitions were filed against the judgments dated June 27, 1988 and December 1, 1989, which were disposed of by the judgment dated July 13, 1990 by a Bench of this Tribunal, of which, one of us (Mr. Kaushal Kumar) was a member.



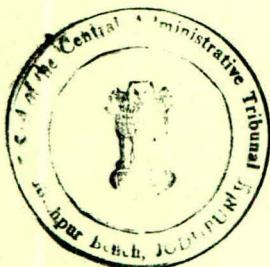
5. The learned counsel appearing on both the sides conceded that the cases now before us are covered by the judgment dated July 13, 1990. However, the learned counsel for the Respondents Mr. Vineet Kothari submitted that since in the judgment dated July 13, 1990, the earlier orders passed in 1982 were set aside mainly on the ground that the principle of natural justice (audi alteram partem) was not followed, these cases, while quashing the impugned orders, may be remanded to the department with the direction that show cause notices be issued to the concerned officials by the Department and their replies considered before any fresh orders are passed.

6. We are of the view that apart from the principle of natural justice having not been followed in these cases, the impugned orders passed by the Commissioner of Income-tax in 1982 cannot stand on their own legs otherwise as well.

7. The orders passed by the Commissioner, Income-tax in March, 1982 were by way of review

M. Kaushal

of the earlier orders which were issued in August, 1977. By the review orders the benefit of stepping up of pay under FR 27 was withdrawn. However, these orders of review are not speaking orders inasmuch as they do not give reasons on which such a review was based. It is presumed and also contended on behalf of the Respondents that the reason for review was non-fulfilment of the conditions stipulated in the Government of India decision No. 10 under F.R. 22-C. However, when the stepping up of pay was done in August, 1977 to remove anomalies in pay fixation of senior incumbents as compared to their juniors the competent authority relied on instructions issued by the Ministry of Finance vide their circulars dated June 12, 1975, July 23, 1976 and February 22, 1977 issued by the Ministry of Finance, Government of India. Thus, it will be seen that the stepping up of pay for removal of anomalies did not have the circular of February 4, 1966 as its authority but the subsequent circulars which were issued in 1975, 1976 and 1977 by the same Ministry of the Government of India. Stepping up of pay or grant of premature/advance increments can only be done under FR 27 and the circular of Feb. 4, 1966 as incorporated in Government of India decision No. 10 under FR 22-C envisages a certain set of conditions required to be filled when stepping up is to be resorted under FR 27 for removal of anomalies which are direct result of the



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application of FR 22-C. The said circular does not circumscribe or limit the scope of FR 27 for grant of pre-mature or advance increments in other circumstances. The scope and ambit of FR 27 is much wider and not limited by the stipulations and conditions prescribed in the circular dated Feb. 2, 1966.

8. The directions contained in the circular of February 4, 1966 were issued by way of executive instructions but they do not detract from the validity or scope of the statutory provisions of FR 27. The circulars which were issued on June 12, 1975, July 23, 1976 and February 22, 1977 were also by way of executive instructions. In fact, the circular dated February 22, 1977 invoked the name and authority of the President of India and these circulars did not supersede the earlier circular of February 4, 1966. The instructions contained in these circulars were issued to meet and resolve the anomalies in the fixation of pay of a specified category of incumbents in a particular department of the Government and their legality or validity cannot be questioned on the ground of their being at variance with the instructions contained in the circular of February 4, 1966. At the time when these circulars were issued, the circular of February 2, 1966 was very much there and since all the circulars were issued by the same Ministry of the Government of India, it can be safely presumed that the Government



Mr. Kumar

was aware of the provisions of the earlier circular issued in 1966. It cannot be assumed that the right arm of the Government was not aware of what the left arm had done earlier.

9. At the time when the review was undertaken by the Commissioner of Income-tax in 1982 and the impugned orders were passed, in the circulars of 1975, 1976 and 1977 had not been withdrawn and the reviewing authority could not seek sustenance from an earlier circular to the exclusion of the later circulars. A suo moto administrative re-view made after a period of nearly five years through a non-speaking order without following the principle of audi alteram partem can only be considered as arbitrary and inequitable.

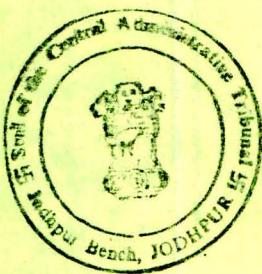
10. As per decision No. 12 of the Government of India cited under FR 27 under the authority of the Ministry of Law U.O. Note dated August 8, 1962 even where fixation of higher pay is done under FR 27 on the basis of wrong data, the benefit cannot be withdrawn through a subsequent order. In the present case, there was no wrong data or incorrect premises when the original stepping up was done. At the most, it would have been a case of wrong application of the circular dated February 4, 1966 although this circular was in fact not invoked for the removal of anomalies. The stepping up was done on the authority of circulars of 1975, 1976 and 1977 referred to above.

M. Murali



11. In the circumstances, the review orders passed by the Commissioner of Income-tax in 1982, cannot be sustained. These orders in the case of the applicants herein are hereby quashed. Recoveries, if any, effected from the applicants in pursuance of the impugned orders, shall also be refunded to them within a period of 3 months from today.

12. The parties shall bear their own costs.



Sd/-

(R.S. Oberoi)
- Judl. Member

Sd/-

(Kaushal Kumar)
Vice Chairman