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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH,
AT JAIPUR.

Date of decision: December 16, 1988.

T.A. No.2414/86

SHRI SURESH CHANDRA TIWARI

... Petitioner.

Mr. M.S.Gupta

... Advocate for the
petitioner.

Versus

UNION OF INDIA & ANOTHER.

... Respondents.

Mr. vineet Kothari

... Advocate for the
respondents.

CORAM:

The Hon. Mr. B.S. Sekhon, Vice Chairman.

The Hon. Mr. G.C.Singhvi, Admn. Member.

B.S. SEKHON.

The plaintiff- an Inspector in the Income-tax Department- has instituted the present suit in the court of Additional Munsif No.2, Jaipur City, praying for a permanent injunction restraining the defendants from implementing the order dated April 16, 1982 and from treating the aforesaid order as effective and from re-fixing his salary on the basis of the said order. The plaintiff also prayed for restraining the defendants from effecting any recovery out of his pay.

2. The suit has since been transferred to the Tribunal by virtue of the operation of section 29(1) of the Administrative Tribunals Act, 1985.

3. The factual matrix, in so far as is germane to the adjudication of this T.A., is :

The plaintiff was appointed as U.D.C. in the Income-tax Department on September 4, 1964. He earned his promotion to the post of Head Clerk and Inspector on February 1, 1971 and Inspector on May 29, 1981 respectively. One Shri Ganga Singh, who was junior to the plaintiff was promoted as U.D.C. on January 27, 1965. Shri Ganga Singh was promoted as Head Clerk and

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subsequently as Supervisor Grade II in the scale of Rs.550-750. Vide order dated April 13, 1977 passed by defendant No.2, Commissioner of Income-tax, Jaipur, under F.R.27 the plaintiff's salary was stepped up and brought at par with that of Shri Ganga Singh by fixing the same at Rs.485/- with effect from February 13, 1973. By virtue of the impugned order, the aforesaid order was cancelled and the plaintiff's salary was stepped down to Rs.455/-. The plaintiff has assailed the impugned order, inter alia, on the grounds that the same has been passed in colourable exercise of power and is violative of the principles of natural justice, the order dated April 13, 1977 could not be reviewed in the absence of a specific order in that behalf and also for the reason that it has been passed by a superior authority. The plaintiff had also obtained ~~leave of the~~ leave of the Court envisaged by section 80(2) of the Code of Civil Procedure (for short the Code) by filing an application in that behalf on the ground that the relief claimed was of an urgent/immediate nature.

4. The defendants have resisted the suit, inter alia, on the grounds that the suit is not maintainable for want of notice under section 80 of the Code. The suit is bad for multifariousness, is beyond the pecuniary jurisdiction of the Court, the court-fee affixed is deficient and that the plaintiff having raised the question of seniority, the suit could have been filed only in a representative capacity ^{as} contemplated under Order I Rule 8 of the Code. The other pleas raised by the defendants are that the stepping up of the pay of the plaintiff had been made by an order made erroneously which has since been cancelled by a competent authority and the order dated April 16, 1982 fixing the pay of the plaintiff at Rs.455/- is legal,

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valid and in accordance with the rules. According to the defendants, the plaintiff's case is not covered by F.R.22 C as the three conditions laid down in Order No.10 below F.R.22C were not satisfied in this case. The defendants have further pointed out that the disparity in pay is due to the fact that Shri Ganga Singh had joined as L.D.C. on September 1, 1950, his salary on promotion as U.D.C. was fixed at Rs.176/- with effect from January 27, 1965, whereas, the pay of the plaintiff was fixed at Rs.130/- when he was appointed as U.D.C. on February 4, 1964. The pay of Shri Ganga Singh on appointment as Head Clerk is said to have been fixed at Rs.485/- with effect from February 13, 1973 after taking into account the higher salary he was getting in the lower rank. The defendants have also refuted the allegation about the impugned order having been made in colourable exercise of power or in contravention of the principles of natural justice.

5. The following issues were framed by the trial court:-

- (1) Whether Order No.81-82/175 dated 16.4.82 is void and without jurisdiction ?
- (2) Whether the suit is liable to be dismissed for want of notice under section 80 C.P.C.?
- (3) Whether the suit has been under-valued and is liable to be dismissed on that ground ?
- (4) Whether the Court is not competent to try this suit ?
- (5) Whether the suit is not maintainable for the reason that the plaintiff has merely claimed injunction without praying for a declaratory relief ?
- (6) Relief.

Issue No.(1)

This issue is the most crucial issue in this case. The fate of the suit hinges upon the decision of this issue. Before proceeding further it would be apposite

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to state that the matter is no longer res integra. The questions agitated by the plaintiff have already been determined in several decisions including the decision rendered in Smt. Krishna Widow of Shri R.K. Chopra (T.A. No. 255/86 and 15 others) Vs. Union of India and others and the connected cases on June 27, 1988. All the same, the grounds urged by the plaintiff are being referred to and discussed briefly. The plea of the plaintiff that the order dated April 13, 1977 having been made by a superior authority could not be cancelled vide the impugned order by the Commissioner of Income-tax, who is a lower authority, has hardly anything to commend itself. It is pertinent to point out in this connection that the aforesaid order was issued by the C.I.T. Jaipur/Jodhpur and the impugned order was also passed by the Commissioner of Income-tax, Jaipur. It is manifest that these orders were made by the same authority. A perusal of the impugned order goes to show that the order dated April 13, 1977, whereby the salary of the plaintiff was stepped up to Rs. 485/- with effect from February, 13, 1973 was withdrawn consequent upon a review of the case of stepping up of pay. It was not a case of review of an order. The impugned order also directed that recovery of excess payment made to the plaintiff on account of the order dated April 13, 1977 shall start with immediate effect. As the power to make an order carries with it the power to vary/rescind/modify the order, the Commissioner of Income-tax was competent to make the impugned order. The question as to whether or not the impugned order is violative of the principles of natural justice as also relating to the validity thereof is, however, a different matter. Since the impugned order entails civil/evil consequences in that it also directed recovery of the alleged excess payment

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made pursuant to the order dated April 13, 1977, the same could have been passed after complying with the rule of 'audi alteram partem', which is one of the cardinal rules of natural justice. This view is fortified by the following authorities:-

Divisional Superintendent, Eastern Railway Dinapur
and others v. L.N. Kashri and others (1)

Chander Bhan v. Union of India (2)

In view of the aforesaid infirmity and the fact that it would be extremely harsh, unfair and unreasonable to make recovery, the portion of the order directing recovery of excess payment is unsustainable. It may be pointed out that the plaintiff is holding a relatively junior post in the hierarchical order and was drawing a salary which could hardly be described as reasonable. That apart, a considerable period has already rolled by. In view of the aforesaid and the fact that the portion of the impugned order directing recovery of excess payment is plainly severable, the following portion in the impugned order is hereby struck down:-

" Recovery of excess payment made to Shri Suresh Chandra on account of the order dated April 13, 1977 shall start with immediate effect."

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6. Turning to the other part of the order, the justification put forward by the defendants for withdrawing the order dated April 13, 1977 is that the same has been passed erroneously. The pay of the plaintiff could not be stepped up as the following conditions in Order No. 10 dated February 4, 1966 did not stand satisfied in this case:-

(a) Both the junior and senior officer should belong to the same cadre and the posts in which

(1) AIR 1974 S.C. 1889.

(2) 1987(3) A.T.C. 432.

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they have been promoted should be identical in the same cadre.

- (b) The unrevised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical; and
- (c) The anomaly should be directly as a result of the application of the provisions of F.R.22-C in the revised scale. For example, if even in the lower post, the junior officer was drawing more pay in the unrevised scale than the senior by virtue of fixation of pay under the normal rules or any advance increments granted to him, the provisions contained in this decision need not be invoked to step up the pay of the senior officer.

7. It may not be out of place to state here that Shri Ganga Singh was drawing a higher salary not only by virtue of fixation of his pay under the normal rules, but also on account of his promotion to the post of Supervisor which carried a higher pay scale as compared to the post of Head Clerk. The plaintiff and Shri Ganga Singh were not holding the same post prior to their promotion to the post of Inspector of Income-tax. The disparity has thus arisen on account of Shri Ganga Singh enjoying a higher grade in an intermediary post as also on account of the fact that his pay had been fixed higher due to his getting higher pay as a result of the increments he received in the lower posts of L.D.C. and U.D.C. The points relating to the applicability of circulars dated June 12, 1975 and February 22, 1977 and the implications thereof have been considered and dealt with elaborately in Smt. Krishna supra. It is scarcely necessary to cover the same ground over again. The challenge made by the plaintiff to the impugned order, save to the extent upheld herein-above, is thus hereby repelled, and the remaining portion of the impugned order is held to be

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legal and valid.

Issue No.(1) is decided accordingly.

Issue No.(2).

8. The learned Munsif had granted leave visualised by section 80(2) of the Code vide his order dated January 10, 1983. The leave granted is unexceptionable, inasmuch as the suit had been filed to obtain urgent/ immediate relief. In view of the foregoing, the plea of the defendants that the suit is not maintainable for want of notice under section 80 of the Code is held to be devoid of merit. This issue is thus found against the defendants.

Issues No.(3), (4) and (5).

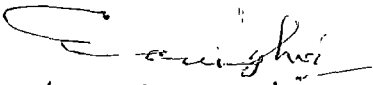
9. Save for the bald pleas set out in the written statement, the defendants have not been able to substantiate the objections embodied in these issues. The learned counsel for the defendants also did not advance any arguments in support of any of these issues. These issues are thus decided against the defendants.

10. In view of our finding on issue No.(1) the following portion in the order dated April 16, 1982 is hereby struck down:-

* Recovery of excess payment made to Shri S.C.Tiwari on account of the order dated 13.4.1977 shall start with immediate effect."


The respondents are directed not to make any recovery on account of the alleged over payment.

11. The T.A. is disposed of accordingly, leaving the parties to bear their own costs.


(G.C.Singhvi)

Admn. Member.

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(B.S.Sekhon)

Vice Chairman.

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