

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.185/94

Date of order: 18.12.1995

S.P. Gupta : Applicant

Vs.

Union of India & Ors. : Respondents

Mr. Lajpat Rai : Counsel for the applicant

Mr.N.K.Jain : Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Administrative Member

PER HON'BLE MR.GOPAL KRISHNA, VICE CHAIRMAN.

Applicant S.P.Gupta has filed this application under Sec.19 of the Administrative Tribunals Act, 1985, praying for quashing the recovery and stepping down of pay contained in Annex.A1 dated 21.5.93 and Annex.A2 dated 7.6.82. He has prayed for a direction to the respondents to pay him all the retiral benefits as if no such orders were passed.

2. The case of the applicant is that he joined the Income Tax Department on 15.11.1957 as an Upper Division Clerk and retired on superannuation as an Income Tax Officer on 31.7.93. When the applicant was serving as an Income Tax Inspector his pay was stepped up to Rs.680 per month from Rs.560 per month by respondent No.3 w.e.f. 23.1.1973. His pay was stepped up with a view to remove the anomaly in the pay which had arisen due to promotions of some juniors from UDC to that of Inspectors who got a higher pay scale as a result of multiple application of FR 22-C. The applicant had been receiving the stepped up pay from March 1977 till 21.5.93 but on 21/24.5.93, before his retirement, respondent No.4 in order to give effect to an order dated 7.6.82 passed the impugned order at Annex.A1 stepping down the applicant's salary to Rs.560 w.e.f. 23.1.77 and refixing his pay as mentioned therein. Vide Annex.A2, the recovery of excess payment made to the applicant on account of

the order dated 1.3.77/11.3.77 was to be made from him. It is stated by the applicant that the order dated 7.6.92 was communicated to the applicant for the first time on 26.5.93 by the respondents, and therefore, the cause of action actually accrued to him on 26.5.93. The respondents had continued to pay the stepped up pay to the applicant for a period of 17 years and now they are estopped from stepping down his pay or from effecting any recovery. The stepping down of pay and recovery of the alleged excess payment made to the applicant without giving any show cause notice to him is arbitrary and is against the principles of natural justice.

3. On the contrary, the respondents have stated in their reply that the order dated 7.6.82 was sent to the applicant and the same was also sent to the TFO-II, Jaipur, as the applicant was then holding that post. In the circumstances, a presumption should be drawn that a copy of the order dated 7.6.82 was received by the applicant and it was his own duty to refix his pay and to recover the excess amount wrongly paid to him. It does not lie in the mouth of the applicant now to say that the impugned order dated 7.6.82 was communicated to the applicant on 26.5.93. It is, therefore, contended by the respondents that the present O.A is hopelessly time barred.

4. We have heard the learned counsel for the parties and have carefully perused the record.

5. The learned counsel for the respondents has raised a preliminary objection that the present application is barred by limitation in so far as the impugned order dated 7.6.82 pursuant to which the order of recovery has been passed cannot be challenged after such a long time since the same was communicated to the applicant as soon as it was passed. The applicant has stated that he did not receive any copy of this order till 26.5.93. This order was also not even sought to be

Chhukhe

(5)

implemented at any point of time earlier than 21.5.93. Copy of the order dated 7.6.82 was neither available in the Personal File of the applicant nor was it available in his office. This fact tends to support the applicant's averment that he had not received a copy of the order earlier than 26.5.93. No evidence has been produced on behalf of the respondents to support their plea that they had communicated the order dated 7.6.82 earlier than 26.5.93. Therefore, the respondents plea in regard to limitation is not tenable.

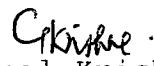
6. The undisputed facts are that the applicant's pay was stepped up from Rs.560 to Rs.680 per month by an order of respondent No.3 w.e.f. 23.1.1973. The respondents had continued to pay the stepped up pay to the applicant from March 1977 to 21.5.93. It is also true that no show cause notice was issued to the applicant prior to the passing of the impugned order dated 7.6.82. No show cause notice was issued to the applicant prior to passing of the order dated 21.5.93 either. The learned counsel for the applicant has taken us through an order of this Bench of the Tribunal in T.A.No.529/86 in the case of A.S.Choudhary & 45 others and all other similar T.As ^{which} were disposed of by a common order of the Jodhpur Bench of the Tribunal dated 13.7.1990 by which orders withdrawing the previous order regarding stepping up of pay has been struck down and the respondents have ^{been} directed to refund the excess amount already recovered. The learned counsel for the applicant has further relied on a decision of this Bench of the Tribunal rendered in O.A.No.558/93 R.D.Yadav Vs. Union of India & Ors decided on 25.6.93. So far as the merits of this case are concerned, the learned counsel for the respondents has not been able to show that there are any distinguishing features which may distinguish the case of the ~~Choudhary~~ applicant from the cases of other applicants, decided earlier.

7. In view of the position stated above, this application succeeds. The order of Commissioner of Income Tax dated 7.6.82 at Annex.A2 and the order of the Income Tax Officer cum Drawing & Disbursing Officer, Ward 2(9), Jaipur dated 21.5.93 are hereby set aside. The excess amount already recovered from the applicant shall be refunded to him within a period of 3 months from the date of the receipt of a copy of this order. The applicant's pension and other pensionary benefits shall be recalculated on the basis of his pay as it would exist after ignoring the order dated 7.6.82 and the order dated 21.5.93. The arrears on that count will also be paid to him within a period of 4 months from the date of the receipt of a copy of this order. Parties shall bear their own costs.



(O.P.Sharma)

Member (Adm.).



(Gopal Krishna)

Vice Chairman.