

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA 29/94 : Date of order 8.11.94

Mr. K.V. Singh : Applicant

V/s

Union of India & Others : Respondents.

Mr. Lajpat Rai : Counsel for the applicant

Mr. N.K. Jain : Counsel for the respondents.

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Hon'ble Mr. Gopal Krishna, Member (Judicial)

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

PER HON'BLE MR. O.P. SHARMA, MEMBER (ADMINISTRATIVE)

Shri K.V. Singh in this application u/s 19 of the Administrative Tribunals Act, 1985, has prayed that the applicant's claim made as early as 5/7-11-79 may be accepted and the Commissioner of Income Tax be directed to give benefit of Pay fixation to the applicant along with the arrears of pay fixation w.e.f. 16.8.75 and he may be allowed all the benefits arising out of such pay fixation.

2. The applicant's case is that he joined the Income Tax Department as an Upper Division Clerk on 15.9.54 and was promoted as Head Clerk on 18.1.65. He passed the Departmental examination for the Inspectors and ITOs and was promoted as Inspector w.e.f. 17.3.66 and as ITO on 30.3.70. On 2.5.85 the applicant was promoted as ITO Class I, now designated as Assistant Commissioner of Income Tax, junior scale. The applicant was appointed as an Assistant Commissioner of Income Tax, Senior scale, on 1.10.88. He retired from Government service on 31.7.89 on superannuation while holding the post of Assistant Commissioner of Income Tax, senior scale.

3. Further according to the applicant, the Commissioner of Income Tax, Jaipur circulated a seniority list of Inspectors vide letter dated 19.1.79, where from it was noticed by the applicant that several of his juniors were drawing more

pay than him. This anomaly was to be removed in view of the Central Board of Direct Taxes letters dated 12.6.75 (Annexure A-2) and 23.7.75 (Annexure A-3). The nature of the anomaly arising has been described in detail by the applicant. In pursuance of the decision dated 9/10-4-75, on the recommendations of the Sub-Committee of the Departmental Council, it was decided by the Government of India that in cases where there is anomaly in fixation of pay resulting in the juniors drawing higher pay than their seniors on promotion, it may be removed in accordance with the above recommendations and accordingly the Government issued a circular dated 12.6.75 to all the Commissioners of Income Tax (Annexure A-2). In pursuance of the above instructions, the Commissioner of Income Tax, Jaipur removed anomaly in the cases of several ITOs and thus many of the juniors started drawing higher pay than the applicant. Consequently the applicant also made a representation on 6/7-11-79 (Annexure A-4) to the Commissioner of Income Tax, Jaipur requesting him to remove the anomaly in this case also. The said representation Annexure A-4 remained undisposed of on the part of the Commissioner of Income Tax, Jaipur till 24.10.91, in spite of reminders. The Commissioner of Income Tax, however, replied vide his letter dated 23/24-10-91 (Annexure A-5) that the anomaly cannot be removed as the case of Shri D.P. Govil was not of the same cadre/scale. Thereafter the applicant made another representation quoting the case of Shri R.K. Gautam on 6.4.92. Thereafter the Central Board of Direct Taxes rejected the applicant's claim on the ground that the benefit of the Tribunal's/ Court's orders cannot be extended to those who are not a party to it (Annexure A-1). The applicant has cited a number of judgements of various Benches of the Tribunal to show that in the same circumstances the anomaly has been

removed. The order passed by the Tribunal is final for all purposes. The applicant's contention is that anomaly in this case should be removed on the basis of cases of S/Shri D.P. Govil and R.K. Gautam who were junior but were drawing higher pay than the applicant. The rejection of the applicant's claim on the ground that he was not a party to the case filed before the Tribunal is not justified.

4. The respondents in their reply have taken a preliminary objection as to limitation. According to them the stepping up of the pay of so-called similarly situated persons was done in the year 1975. Since the stepping up of the pay of the applicant was not done, the cause of action arose in 1975 whereas the applicant has filed the present application in 1994. The applicant remained in service for 14 years during the period from 1975 to 1989 but did not file any application before the Tribunal till his retirement regarding his grievance of stepping up of his pay. The applicant himself has admitted in para 3 of the OA that he came to know about the pay anomaly when seniority list was issued vide letter dated 19.1.79. Therefore, even from the date of the knowledge of the applicant, the present application is late by about 15 years. They have also added that the applicant was not entitled to any stepping up of his pay on merits. The facts of the case of D.P. Govil are totally different as stated in the reasons given in the letter dated 23/24-10-91. They have added that the judgements of the Tribunal on which the applicant has placed reliance are not applicable in the present case.

5. During the arguments, the learned counsel for the applicant drew our attention to a Single Member judgement of this Tribunal in OA no. 896/92 delivered on 24.3.93 (Annexure A-12) wherein the Tribunal had held that relief may not be confined to those who had approached the court but it

should be extended to those similarly situated regardless of whether they have approached the court or not. The Tribunal also held in this judgement that the case was not one of inordinate delay. He added that after making representation in 1979 (Annexure A-4), the applicant continued to pursue the matter by sending reminders and received no replies. He made a further representation on 12.9.91 to which reply was given by the Commissioner of Income Tax, Jaipur by letter dated 23/24-10-91. Thereafter the applicant moved the Central Board of Direct Taxes by letter dated 28.5.92 to which reply was given by the Central Board of Direct Taxes on 20.1.93 which was received by the applicant on 2.2.93. Thereafter the present OA was filed on 19.1.94. Therefore, the present application was within the limitation period because the cause of action arose on account of letter dated 20.1.93 issued by the Central Board of Direct Taxes denying the benefit of the order of the Tribunal to the applicant, and this letter was received by him on 2.2.93.

6. The learned counsel for the respondents has reiterated the averment made in the reply and relied upon the judgement of the Hon'ble Supreme Court Bhoop Singh Vs. Union of India & Others, AIR 1992 SC 1414, wherein the Hon'ble Supreme Court has held that relief cannot be granted to persons who have approached the court after inordinate delay.

7. We have heard the learned counsel for the parties and have gone through the records and the decisions cited before us.

8. In the present case, the anomaly arose for the first time in 1975 and the applicant made a representation in 1979 seeking removal of the anomaly. According to the applicant, he had sent several reminders to the Department but there was no response. However, no copy of reminders has been annexed

to this application. The representation made in September, 1991 was replied to by the Commissioner of Income Tax by letter dated 23/24-10-91 rejecting the claim of the applicant. Thereafter the applicant made another representation which was rejected by the Central Board of Direct Taxes, and on rejection of his representation by the Central Board of Direct Taxes, he moved the present application. From 1979 to September, 1991, the applicant took no action to have his grievance redressed. He retired from service on 31.7.89. In spite of the fact that he came to know about the existence of the anomaly in 1979, and he retired from service on 31.7.89, he moved the Commissioner of Income Tax in the matter only in September, 1991 and received reply rejecting his representation in October, 1991. This is a case where the applicant has merely slept over the matter for a period about 12 years, even if there was an anomaly and action was required to be taken. It is not a case where the applicant came to know about the anomaly for the first time in September, 1991 or knew about it only on receipt of the Court's/Tribunal's order that there was an anomaly in fixation of his pay and it needed to be redressed. Therefore, the present case is clearly distinguishable from ones cited by the applicant in support of his claim.

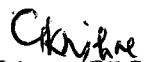
9. When we gone through the order dated 23/24-10-91 (Annexure A-5) issued by the Commissioner of Income Tax, Jaipur, rejecting the applicant's claim. We find that there is a detailed discussion of the case on merits and it has been stated in the letter that the applicant's case is not comparable with that of Shri D.P. Govil. Thereafter also the applicant make another representation to which the reply was received from the Central Board of Direct Taxes in January/February 1993. At the very least, it was expected that once the applicant had received reply from the Commissioner of Income Tax rejecting his claim on merits, he should have



filed the application before the Tribunal within the limitation period of one year. Even this was not done by the applicant. Repeated representations and rejection of the last representation do not provide fresh cause of action to the applicant.

10. In the circumstances of the present case, we are of the view that the preliminary objection of the respondents regarding limitation is entirely sustainable. This application is therefore dismissed on the ground of limitation. No order as to costs.

  
(O.P.SHARMA)  
MEMBER(A)

  
(GOPAL KRISHNA)  
MEMBER(J)