IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:JAIPUR BENCH:JAIPUR.

O.A.No.245/95   Date of order:11.10.1996

K.P.Joshi   :Applicant

   Vs.

Union of India & Ors.   :Respondents

Mr.Surendra Singh, counsel for the applicant
Mr.N.K.Jain, counsel for the respondents

CORAM:

   Hon'ble Shri O.P.Sharma, Member Administrative
   Hon'ble Shri Ratan Prakash, Member Judicial

O R D E R

PER HON'BLE SHRI O.P.SHARMA,MEMBER ADMINISTRATIVE

In this application under Section 19 of the Administrative Tribunals Act,1985, Shri K.P.Joshi has prayed that the remarks made in the service book of the applicant on 18.7.1991 and communicated to him on 2.9.1994, regarding stepping up of pay from Rs.545-600 w.e.f. 16.7.1977 be i/-ng subject to verification may be quashed. The communications dated 2.9.1994,2.5.1995, 10.5.1995 and 18.7.1991 by which the representations of the applicant against the proposed stepping down of his pay had been rejected, may be quashed with all consequential benefits and the respondents may be restrained from with-holding any amount from the retirement benefits of the applicant on account of the remarks given in the service book.

2. The facts of the case as stated by the applicant are that he was appointed as an L.D.C. in the Income Tax Department in 1961 and he earned promotions from time to

time. With effect from 16.7.1977 a person junior to the applicant Shri H.S.Parihar Inspector had been given the benefit of increment. The applicant though promoted earlier from 15.11.1976 had been ignored while according the benefit of pay fixation after adding the increment. The applicant represented the matter before the Commissioner of Income Tax, Jaipur. The anomaly pointed out by the applicant came to be removed vide order dated 17.11.1977 (Annx.A-4) whereby the applicant's pay was stepped up to Rs.600/- w.e.f. 16.7.1977. On 2.9.1994 the applicant was served with a communication Annexure A-3 of the same date wherein it was stated, interalia, that stepping up of the pay of the applicant from Rs.445-600 w.e.f. 16.7.1977 is subject to verification. The applicant submitted representations against the aforesaid communication but these did not evoke any satisfactory response.

3. The applicant has pointed out that on the identical issue there have been several judgments of different benches of the Tribunal holding that no recovery can be effected with regard to the/allegedly wrong stepping up granted as in the case of the applicant.The benefit of stepping up had been granted to the applicant in view of the provisions of Rule 22(c) read with Rule 27 of the Fundamental Rules.

4. The respondents in their reply have taken the plea that the service book of the applicant had been forwarded to the Zonal Accounts Officer for verification of his service after completion of 25 years of qualifying service as per rules. The qualifying service was verified. However, while verifying service, the Zonal Accounts Officer found that

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the applicant's pay had been wrongly stepped up. Since however the entire record was not available with him, he made the remarks which were communicated to the applicant vide Annexure A-3 dated 2.9.1994. The remarks are advisory in nature and these do not give any cause of action to the applicant for invoking the jurisdiction of the Tribunal. No final order has been passed against the applicant so far. They have, therefore, pleaded that this application is premature. Other averments of the applicant in support of his claiming relief have also been generally denied by the respondents.

5.   We have heard the learned counsel for the parties and have gone through the material on record. We have also seen the copies of some of the judgments delivered on the subject earlier.

6.   The applicant has already retired from service on 31.3.1996 as stated by the learned counsel for the applicant. No recovery of the amount alleged to have been paid in excess to the applicant was made from his pay and allowances during his service period and even after his retirement no recovery has been effected so far.

                                              in similar circumstances
7.   On the same issue of stepping up of pay /in the Income Tax Department, recovery had been effected by the respondents from the pay and allowances of a number of officials. The Tribunal had decided a number of OAs filed

by the aggrieved persons against the recovery made
on this account. Without going into the merits of the
issue raised in detail, we may refer to the judgment
dated 13.7.1990 of this bench of the Tribunal passed
in T.A.No.529/86 in the case of A.R.Choudhary and 45
others. By this order, the orders withdrawing the
previous orders regarding stepping up of pay had
been struck-down and the respondents had been
directed not to recover the excess amount already
paid. The latest order passed by this bench of the
Tribunal was in O.A.No.185/94 S.P.Gupta Vs. Union of
India and others and is dated 18.12.1995 by which,
relying upon the earlier orders passed by the
Tribunal in several cases, the recovery of the
amount on account of alleged wrong stepping up was
held to be bad in law and the amount recovered was
ordered to be refunded.

8.   It is not disputed that the facts of this
case are identical to those in O.A.No.185/94 except
that no order regarding stepping down and recovery
of the alleged excess amount paid has been passed
and no recovery has in fact been effected.

9.   The objection of the respondents that the
application filed by the applicant is premature is
not tenable because Communication Annx.A-3 records
the view of the authorities that stepping up was
wrongly granted to the applicant and his
representation   with   regard   to   the

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contents of the said communication have evoked no satisfactory response from the respondents.

10. In the circumstances, we allow this application and hold that the respondents shall not be entitled to step down the pay of the applicant as per the contents of the communication Annexure A-3 and they/shall not recover any such excess amount from the pensionary benefits of the applicant. No order as to costs.

(RATAN PRAKASH)
MEMBER(J)

(O.P.SHARMA)
MEMBER(A)