

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.338/95

Date of order: 14.11.1996

Ghevar Chand Jain

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.Lajpat Rai

: Counsel for applicant

Mr.N.K.Jain

: Counsel for respondents

CORAM:

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

Hon'ble Mr.Patan Prakash, Judicial Member

PER HON'BLE MR.O.P.SHAJMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Ghevar Chand Jain, has prayed that the order dated 12.7.1984 (Annx.A3) passed by the Commissioner of Income Tax, Jaipur, withdrawing the stepping-up of the pay granted to the applicant may be quashed.

2. The facts of the case as stated by the applicant are that he joined the Income Tax Department in September 1960 in the post of Steno-typist and got promotions from time to time. He was selected on the post of Inspector and appointed to officiate as such in temporary capacity w.e.f. 15.1.1970 and the applicant's pay was fixed at Rs.230/- by giving him the benefit of FR 22-C. Vide order dated 12.6.1970 passed by the Commissioner of Income Tax the applicant was appointed to the permanent post of Inspector scale Rs.425-800 w.e.f. 31.8.1974. Vide order dated 1.11.1978, the applicant was promoted as Income Tax Officer Group-B in scale Rs.650-1200 and he tookover the charge of the said post on 4.11.1978. With effect from 1.1.1973, the pay scales of the Government servants, including the applicant, were revised and the pay of the applicant was fixed at Rs.500/- w.e.f. 1.1.1973, when he was working as an Inspector.

3. Further according to the applicant, after the appointment of the applicant as Inspector w.e.f. 5.1.1970, some persons junior to the applicant working as UDC or Head Clerk were promoted to the post of Inspector and they started drawing more pay than the applicant. The Govt. of India noticed this anomaly in 1975. Under the JCM Scheme also the Income Tax Employees Federation raised the point regarding stepping-up of pay of the seniors to the level of juniors and the matter was also discussed in a meeting of a Sub-committee of the Departmental Council. The recommendations of the Sub-committee were accepted and it was decided by the Govt. of India that anomaly in the fixation of pay of the seniors who draw less pay than their juniors may be removed in accordance with the recommendations of the Sub-committee. Subsequently, further anomaly in fixation of pay of the seniors was noticed for the same reason resulting in juniors drawing higher pay than their seniors. Vide order dated 1.3.1977, the Commissioner of

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Income Tax, Jaipur, stepped-up the pay of the applicant working as Inspector at that time to the level of the pay of a person junior to him at Rs.580/- w.e.f. 26.9.1973. Thereafter, the applicant brought to the notice of the Department that there existed an anomaly in the matter of fixation of his pay with reference to the pay of another junior who was drawing higher pay than the applicant. The commissioner of Income Tax, Jaipur, passed another order dated 21.1.1978 stepping-up the pay of the applicant to Rs.775/- as Inspector w.e.f. 14.7.1977, thereafter bringing the applicant's pay at par with that of his junior.

4. Further, according to the applicant, vide order dated 16.4.1982, by which the stepping-up pay of the applicant passed on 11.3.1977 under which his pay was stepped-up from Rs.550/- to Rs.580/- per month w.e.f. 26.9.1973, was withdrawn and his pay was ordered to <sup>be</sup> reduced to the stage of Rs.500/- with effect from that date and recovery of the excess amount paid to the applicant was also ordered to be started with immediate effect. The applicant filed a S.B.Civil Writ Petition before the Hon'ble Rajasthan High Court which was transferred to the Tribunal as T.A No.512/86, G.C.Jain Vs. Union of India and it was allowed by the Tribunal vide order dated 13.7.1990 (Annx.A5 attached to the rejoinder). In the meantime another order was passed on 12.7.1984, whereby the order dated 21.2.1978, stepping-up the pay of the applicant to Rs.775/- w.e.f. 14.7.1977 was withdrawn. One of the juniors of the applicant namely late Shri H.L.Soni on the basis of whose pay fixation the applicant's pay was stepped-up to Rs.775/-, challenged the decision of stepping-down of his pay, before the Jodhpur Bench of the Tribunal and the Tribunal decided the matter in his favour and set aside the order by which the pay of late Shri H.L.Soni was stepped-down (Annx.A5 attached to the rejoinder wherein the name of his widow Smt.Shushila Devi, appears as an applicant at Sl.No.38 of the names of the applicants).

5. The applicant's case is that the anomaly in fixation of pay of the applicant vis a vis his juniors resulted long back in 1977 or thereabout <sup>and stepping up was granted</sup> after full examination of the matter at all levels and therefore, the order stepping down the pay of the applicant is unjustified and deserves to be quashed.

6. The respondents in their reply have taken objection to the filing of the O.A on the ground that it is time barred as it is directed against an order passed on 12.7.1984 (Annx.A3). The communication Annx.A4 dated 27.4.1995 which has been impugned by the applicant is an internal communication of the department seeking certain clarifications from the Drawing & Disbursing Officer themselves and not an order granting or taking away any benefit of the applicant. The Tribunal's judgment in the case of late Shri H.L.Soni is on the facts of that particular case and even such a

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judgment would be applicable prospectively. Cases which have been already settled or decided cannot be reopened. They have however accepted that the order dated 16.4.1982 passed by the respondents withdrawing the first order of stepping-up of pay has been quashed by the Tribunal. However, according to them, there is no illegality in passing the subsequent order dated 12.1.1984 withdrawing the stepped-up pay granted to the applicant a second time by raising his pay <sup>to</sup> Rs.775/- on the basis of the pay granted to late Shri N.L.Soni. While the order stepping-down the pay of late Shri N.L.Soni was also set aside by the Tribunal, the order passed in the applicant's case has not yet been set aside by the competent authority or the Tribunal.

7. The learned counsel for the applicant during his oral arguments, drew attention to various judgments of the Tribunal whereby the orders withdrawing the stepping-up of the pay of persons in similar circumstances in the Income Tax Department have been quashed by the Tribunal. These orders are part of the rejoinder filed by the applicant at Annx.A2 passed by this Bench of the Tribunal, Annx.A3, passed by the Jodhpur Bench of the Tribunal, Annx.A4 passed by this Bench of the Tribunal and Annx.A5, passed by the Jodhpur Bench of the Tribunal. In the last order Annx.A5, cases of 45 persons similarly situated have been dealt with by the Tribunal. He has added that in view of the decisions given by various Benches of the Tribunal, there is no justification for the respondents to withdraw the orders of stepping-up as these are passed long back.

8. We have heard the learned counsel for the parties and have perused the material on record including the judgments of the Tribunal relied upon by the applicant. As regards the question of limitation, it has also been dealt with in the Tribunal's orders Annxs.A2 and A4 of the rejoinder. The Tribunal had held that in the peculiar circumstances of these cases, the plea of limitation was not tenable. We respectfully follow the earlier decisions of the Tribunal in the matter and proceed to dispose of the application on merits. No doubt the communication Annx.A4 which has been impugned by the applicant is not a final decision ordering recovery of the alleged excess pay granted to the applicant on account of stepping-up of his pay but it gives sufficient indication that the respondents propose to recover the alleged excess amount drawn by the applicant, from him. The only question now in this case <sup>is</sup> regarding the order passed by the respondents on 12.7.1984 (Annx.A3) ~~the~~ the stepping-up ~~of~~ his pay from Rs.640/- to Rs.775/- per month on the analogy of pay drawn by late Shri N.L.Soni. The order passed by the respondents in the case of late Shri N.L.Soni by which the stepping-up of pay granted to him was withdrawn has already been quashed by the Tribunal vide order Annx.A5 to the rejoinder filed by the applicant. The stepping-up of pay of the applicant to Rs.775/- was based on stepping-up of pay of late Shri N.L.Soni. Therefore, the applicant would also be entitled to the same benefit which was granted to

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late Shri N.L.Soni. That apart, as rightly averred by the applicant, these matters had been settled long back and therefore, reopening of these matters after a period of more than 17 years would not be justified. For all the reasons given above, we hold that the respondents would not be justified in withdrawing the stepping-up of pay of the applicant vide order dated 12.7.1984 (Annx.A3). Accordingly, order Annx.A3 dated 12.7.1984 is quashed.

9. The O.A is allowed accordingly. No order as to costs.



(Ratan Prakash)

Judicial Member.



(O.P.Sharma)

Administrative Member.