

19

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 22.12.1997

OA No. 553/1995

Abdul Hamid S/o Abdul Sakoor, aged about 63 years, R/o 16/118,  
Bajaj Khana, Mehra Para, Kota.

.. APPLICANT

Versus

1. Chief Commissioner of Income Tax, Central Revenue Building, Jaipur.
2. Commissioner of Income Tax, Central Revenue Building, Jaipur.

.. RESPONDENTS

Mr. M.Rafiq, counsel for the applicant

Mr. Gaurav Jain, Proxy to Mr. N.K.Jain, counsel for the respondents

CORAM:

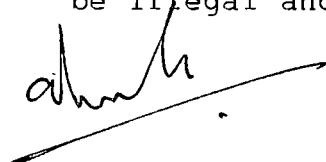
Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant seeks setting aside of the order dated 29.11.1994 (Ann.A1) rejecting his representation, declare applicant entitled to receive all the benefits which have been allowed by this Hon'ble Tribunal to the applicant in TA No. 158/87, R.C. Goswami Vs. Union of India decided on 1.9.1990 and OA No.896/92, Devi Prasad Vs. Union of India decided on 24.3.1993 and also declare the action of respondents in stepping down the pay of the applicant without affording him any opportunity of hearing to be illegal and unconstitutional.



2. Undisputed facts of the case are that while the applicant was serving on the post of Inspector of Income Tax (for short IIT), his pay was stepped up under FR 27 vide CIT order of 11.3.1977 on account of his junior getting higher pay and subsequently his pay was refixed vide order dated 22.3.1977 (Ann.A2) w.e.f. 1.3.1977; that the applicant was meanwhile promoted as Income Tax Officer (for short ITO) vide order dated 18.11.1981 (Ann.A3) with his pay fixed at Rs. 845/- in the scale of Rs. 600-1200 in view of he haing drawn a pay of Rs. 800/- in the post of IIT in the scale of Rs. 425-800, that vide order dated 29.5.1982 (Ann.A4) of ITO, Jaipur the pay of the applicant was brought down to Rs. 600/- w.e.f. 1.5.1977 and Rs. 740/- w.e.f. 1.4.1981 on the strength of an order dated 6.3.1982 from the respondent No.2 and that ultimately an amount of Rs. 11,292/- was deducted from the gratuity of the applicant in the month of February, 1992 after he had retired on 31.10.1990.

3. The case of the applicant is that the action of the respondents in stepping down the applicant is arbitrary and unreasonable and that no opportunity of hearing was given to him. Further, the authority fixing the pay of the applicant under FR-27 was not competent to review/revise the same once the order of stepping up was passed on the basis of existing circulars of 12.6.1975, 23.7.1976 and 22.2.1977 and the reviewing authority could not seek sustenance from an earlier circular (of 4.2.1966) to the exclusion of later circulars. A suo-moto administrative review made after a period of 5 years without affording the principle of audi alteram partem was wholly arbitrary and inequitable. In any case, administrative instructions dated 4.2.1996 could not detract the validity or scope of the statutory provisions of FR 27 and it was issued

*[Signature]*

(21)

to resolve the anomalies of a specified category of incumbents in a particular department and since all these circulars were issued by the same Ministry in Government of India, it can be presumed that they all co-existed. It was also contended that as per Government of India decision No. 12 under FR 27 duly vetted by the Ministry of Law vide their U.O. dated 8.8.1962, even where stepping up of pay is done under Fr-27 on the basis of wrong date (sic data), the benefit cannot be withdrawn through a subsequent order. Lastly, the applicant is being discriminated against in that on one hand benefit of stepped up pay has been allowed to others like R.C.Goswami, Dev Prasad, Banwari Lal Gupta, Madan Gopal, Bhanu Dutt Sharma, P.C.Khetri and K.N.Pandey, whose cases are exactly identical and on the other similar benefit is being denied to the applicant and respondents are not even extending the benefit of the judgments of this Tribunal in OA No.158/87, R.C.Goswami Vs. Union of India and OA No.896/92, Devi Prasad Vs. Union of India even though the case of the applicant is squarely covered by the said judgments.

4. The respondents took a preliminary objection contending that the alleged grievance occurred on 6.3.1982 and the OA is, therefore, hopelessly barred by limitation, notwithstanding the reply dated 29.11.1994 to the representation of 28.6.1994. The applicant also filed a Misc. Application in which delay was attributed to the physical and mental problems applicant faced between August, 1981 and August, 1995. We have considered this aspect of delay and laches and feel that since it is a case of fixation of pay, it is a continuing grievance and the OA shall be taken up for adjudication. The applicant has also filed a rejoinder which is on record and has been perused by us.

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5. We have heard the learned counsel for the rival parties, during which they have amplified their respective contentions. We have also carefully examined the records of the case.

6. The only controversy ~~was~~ raised in this case is whether respondents were right in rolling back the pay of the applicant on 29.5.1982 after having stepped it up first on the post of IIT on 22.3.1977 and later on 18.11.1981 on his promotion on the post of ITO and whether such roll back could be done without following the principles of natural justice i.e. affording an opportunity to the applicant to have his say. Something happened when a sum of Rs. 11,292/- was deducted from his gratuity. Respondents, on the other hand, have really depended on the argument of OA being barred by limitation and that the judgments cited by the applicant were judgments in persona and not in rem and, therefore, the respondents were not bound to give the applicant similar relief. We have already dealt with the issue of limitation in the preceding paragraph and we now propose to deal with the main issue mentioned above, on which we have to take a decision.

7. The learned counsel for the applicant cited a number of cases decided by various Benches of this Tribunal including one each by the Jodhpur and this Bench, where applications of similarly placed employees were allowed and fixation of pay of the applicants to the level of their juniors was upheld. However, the law in this <sup>regard</sup> has now progressed much ahead and with FR 22(I)(a)(1) as it stands now, having substituted the former FR 22-C as also the decision of the Hon'ble Supreme Court of India, the cases cited on behalf of the applicant no longer hold the sway over the matter. FR 22(I)(a)(1) read with

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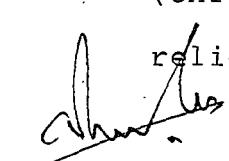
the order No.(22) under the said FR under the heading "Removal of anomaly by stepping up pay of senior on promotion drawing less pay than his junior" indicates the three conditions whereunder stepping can be done and order no (26) "Instances which do not constitute an anomaly for stepping up of pay with reference to juniors". However, in this particular case, we do not propose to go into the question of whether the applicant was entitled to stepping up of his pay when it was done but examine whether it was proper for the respondents to have first sanctioned stepping up of his pay way back on 22.3.1977 and 8.11.1981 without the applicant having made any misrepresentation and later on 29.5.1982, the same was withdrawn without issuing any show-cause notice to the applicant and slapping on him a recovery of Rs. 11,292/- and having effected the recovery from the poor man's gratuity given to him for having served the Department for certain number of years.

8. We are aware of the latest in a catena of decisions of the Apex Court i.e. Mitrangshu Roy Chaudhury Vs. Union of India, reported in 1993 (3) SLJ 173 in which also the Apex Court has upheld the action of the lower formation of correcting a bonafide mistake whereunder the appellant apprentices were wrongly appointed in a Group-C post in contravention of the orders of the Headquarters. However, in this particular case, the facts and circumstances are entirely different. The applicant was allowed stepping by the respondents themselves without any misrepresentation or fraud by the applicant. In fact, admissibility of such stepping up vis-a-vis their juniors was allowed to number of exactly similarly situated employees of the very same Income Tax Department. Further, the respondents have <sup>e</sup> rally contested this Original Application only on the ground that orders of various

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Benches of this Tribunal in cases involving others like R.C.Goswami, Dev Prasad, Banwari Lal Gupta, Bhanu Dutt Sharma etc. etc. were all judgments in persona and not in rem, and therefore, such benefit was not allowed to the applicant in this OA. We cannot accept this logic and are of the opinion that respondents should have extended similar benefit to the applicant without forcing him to come to the Tribunal. We feel that withdrawing the step up was not correct in view of the discussions above, and especially when recovery was ordered after many years and that too when the applicant had retired and amount was recovered from the gratuity of the applicant. We are also of the opinion that the theory of legitimate expectation does operate in cases like this. One can easily imagine a government employee getting a benefit of a some rupees in his monthly salary, using it to <sup>meet</sup> some of his family liabilities and then having thus spent it, being asked to refund it after many many years and in this case from his life-long accumulated retiral benefits.

8. In view of above, we are of the opinion that the amount of Rs. 11,292/- recovered from the gratuity payable to the applicant on the ground of wrong stepping up of his pay, many years before his retirement, is not fair and just. We also feel that in cases of such recoveries, principles of natural justice demand that a notice is given to the concerned employee to place his point of view before the authority. Requirement of giving a notice to show-cause before recovery is made has been mandated in a number of judgments of this Tribunal as well as the Apex Court. Some of which are Indu Bhushan Mondal Vs. Union of India reported in 1999 (2) SLJ (CAT) 455 in which the Calcutta Bench of this ~~Trtibunal~~ has relied on Bhagwan Shukla case reported in 1994 SCC(L&S) 1230.



92

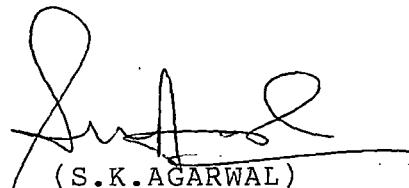
9. We accordingly allow this Original Application partly and direct the respondents to refund the amount of Rs. 11,292/- to the applicant alongwith interest @ 12% from the date recovery was effected and the date on which refund is made to the applicant. This direction shall be carried out within a period of 4 months from the date of receipt of a copy of this order.

10. No order as to costs.



(N.P.NAWANI)

Adm. Member



(S.K.AGARWAL)

Judl. Member