

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 19.11.2014

OA No.291/00297/2014

Mr. G.P.Gupta, Counsel for the applicant.

Mr. Gaurav Jain, Counsel for the respondents.

The learned counsel for the applicant submits that he does not wish to file any rejoinder. Thus the pleadings are complete. With the consent of parties the OA was heard today. The learned counsel for the applicant submitted that the controversy involved in the present OA is covered by the order of this Tribunal in OA No.291/00036/2014 passed in the case of Shri Brij Mohan Pandey Vs. Union of India and others. and other connected matters. Therefore, the OA No.291/00297/2014 can be decided in terms of the order of this Tribunal dated 31.10.2014 in the case of Brij Mohan Pandey Vs. Union of India and others (Supra).

The learned counsel for the respondents agrees with the submissions made by the learned counsel for the applicant that the controversy involved in the present OA is covered by the said order.

Heard the learned counsel for the parties.

Order Reserved.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/

21/11/14.
order pronounced
today in the
open court by
the aforesaid
Bench

21/11/14.
co.

OA No. 291/00297/2014 & OA No. 291/00298/2014

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR**

**ORIGINAL APPLICATION NO. 291/00297/2014
&
ORIGINAL APPLICATION NO. 291/00298/2014**

ORDER RESERVED ON: 19.11.2014

DATE OF ORDER: 21.11.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

OA No. 291/00297/2014

Virendra Kumar Godiwal S/o Shri R.R. Godiwal, aged about 35 years, R/o Godiwal Bhawan, Near Indira Bazar, Harijan Basti, Jaipur, presently working as Senior Tax Assistant in Income Tax Department, Jaipur, Commissioner of Income Tax-II, Jaipur.

...Applicant

Mr. G.P. Gupta, counsel for applicant.

VERSUS

1. Union of India through its Secretary, Ministry of Finance Department, North Block, New Delhi.
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi.
3. The Chief Commissioner of Income Tax (CCA), NCR Building, Statue Circle, Jaipur.

...Respondents

Mr. Gaurav Jain, counsel for respondents.

OA No. 291/00298/2014

Laxmi Narayan Badgujar S/o late Shri Gajendra Singh Badgujar, aged about 30 years, R/o House No. 2714, Bhindon Ka Rasta, Indira Bazar, Jaipur, presently posted as Senior Tax Assistant in Income Tax Department, Jaipur.

...Applicant

Mr. G.P. Gupta, counsel for applicant.

VERSUS

1. Union of India through its Secretary, Ministry of Finance Department, North Block, New Delhi.

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2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi.
3. The Chief Commissioner of Income Tax (CCA), NCR Building, Statue Circle, Jaipur.

...Respondents

Mr. Gaurav Jain, counsel for respondents.

ORDER

With the consent of the learned counsel for the parties, O.A. No. 291/00297/2014 & O.A. No. 291/00298/2014 were heard together. Learned counsel for the parties submitted that both the Original Applications involve the same controversy regarding grant of two advance increments to certain officials of the Income Tax Department on passing the Departmental Examination for promotion to the post of Income Tax Inspector. Therefore, both the Original Applications are being disposed of by a common order. The facts of O.A. No. 291/00297/2014 are being taken as a lead case.

2. The present Original Applications have been filed by the applicants being aggrieved by the rejection of their representations for grant of two advance increments on passing the departmental examination for the post of Income Tax Inspector, by the respondents vide order dated 29.04.2014 (Annexure A/1).

3. The brief facts of the O.A. No. 291/00297/2014 (Virendra Kumar Godiwal vs. UOI & Ors.), as stated by the applicant, are that the applicant was appointed in the year 2007 as a Tax

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Assistant in the respondent-department. The Departmental Examination for Income Tax Inspectors (Normal) 2011 was held in the year 2012. The applicant appeared in the departmental examination in the year 2012 and he passed said examination.

4. After passing the said examination, the applicant submitted a representation on 21.11.2013 to the respondent-department for granting him two advance increments but the respondent-department did not consider the representation submitted by the applicant for grant of two advance increments. Therefore, the applicant filed an OA No. 291/00041/2014 before this Bench of the Tribunal. This Tribunal vide order dated 28.01.2014 directed the respondents to consider and decide the representation of the applicant according to the provisions of law by a reasoned and speaking order. In compliance of these orders, the respondents have considered the representation of the applicant and rejected it vide order dated 29.04.2014 (Annexure A/1). Therefore, being aggrieved by the rejection of his representation vide order dated 29.04.2014 (Annexure A/1), the applicant has filed the present Original Application.

5. The similar controversy has been settled by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur vide order dated 21.08.2002 in OA No. 127/2001 and 128/2001 by which the Tribunal allowed two advance increments to similarly

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situated persons. This order of C.A.T., Jodhpur Bench dated 21.08.2002 has been upheld by the Hon'ble High Court vide order dated 11.12.2006.

6. Learned counsel for the applicants also submitted that the similar controversy has also been settled by this Bench of the Tribunal in the following cases -

- (i). Pooran Lal Verma vs. UOI & Ors - OA No. 513/2009 - decided on 05.09.2011.
- (ii). K.L. Meena vs. UOI & Ors. - OA No. 96/2012 - decided on 15.01.2013.
- (iii). D.K. Meena vs. UOI & Ors. - OA No. 835/2012 - decided on 19.07.2013.
- (iv). Brij Mohan Pandey vs. UOI & Ors. (OA No. 291/00036/2014) and other connected matters - decided on 31.10.2014.

Therefore, the applicant prayed that the O.A. be allowed and the respondents be directed to allow him two advance increments from the date of passing of the examination for the post of Income Tax Inspector and arrears be paid to him.

7. In the case Laxmi Narayan Badgujar vs. UOI & Ors. (OA No. 291/00298/2014), the applicant passed the departmental examination for Income Tax Inspectors (Normal) 2011 held in September, 2011, therefore, the applicant submitted that he is entitled for two advance increments from the date of passing of the departmental examination for the post of Income Tax Inspector along with arrears.

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8. The respondents have filed their written reply. The respondents in para 4.1 to 4.7 of reply to the O.A. have stated that facts given in these paras of OA are matters of record and, hence, need no reply. However, in reply to the grounds, they have stated that there is no merit in any of the grounds and all the grounds are denied being not tenable in the eye of law.

9. The respondents in their written reply have further stated that vide Board's letter No. A36017/44/94-Ad.IV dated 20.10.1994, it was decided that while the existing scheme for grant of advance increments for income tax side may be continued on historical grounds but no fresh categories of staff can be added to this scheme. Since vide Board's letter dated 09th September, 2009 (Annexure R/2), it has been clarified that new designated post consequent upon restructuring in lieu of 'Head Clerk' is 'Senior Tax Assistant', therefore, in view of this clarification, the candidates who pass the departmental examination for Inspectors in the cadre of 'Senior Tax Assistant' cannot be granted advance increments. Therefore, in view of the letter dated 09th September, 2009 (Annexure R/2), the applicants in both the OAs are not entitled for advance increments.

10. The respondents also referred to the judgment of the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal and Others vs. State of Uttarakhand and others**, reported

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in 2012 (7) SC 460 wherein in para 16 of the judgment it has been held that the excess payment of the public money which is often described as 'tax payers money' can always be recovered by the employer.

11. However, the learned counsel for the respondents agreed that the similar controversy has been decided by this Bench of the Tribunal in the case of **Brij Mohan Pandey vs. UOI & Ors.** (OA No. 291/00036/2014) and other connected matters vide order dated 31.10.2014 and the present OAs can be decided in terms of the settled position of law, as referred to by the learned counsel for the applicants.

12. Heard the learned counsel for the parties, perused the documents available on record and the case law referred to by the learned counsel for the parties.

13. Having considered the submissions made on behalf of the respective parties, on the merit of the case, there is no dispute between the parties that similarly situated employees have been given the benefit of two advance increments from the date they have passed the departmental examination for the post of Inspector. The present applicants are also similarly situated persons.

14. The relevant para 8 of the order dated 31.10.2014 passed by this Bench of the Tribunal in the case of **Brij Mohan**

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Pandey vs. UOI & Ors. (OA No. 291/00036/2014) and other connected matters (supra) is quoted below: -

8. On the merit of the case, there is no dispute between the parties that similarly situated employees have been given the benefit of two advance increments from the date they have passed the departmental examination for the post of Inspector. The present applicant is also similarly situated person. Para 13 of the order dated 05.09.2011 in OA No. 513/2009 (Pooran Lal Verma vs. Union of India & Others) is quoted below:-

"13. It is not disputed between the parties that the learned Tribunal has allowed two advance increments to the similarly situated employees who have qualified the departmental examination for the post of Inspector. It is also not disputed that the view of the learned Tribunal has been affirmed by the Hon'ble High Court. Thus the controversy of grant of two advance increments on qualifying the departmental examination for the post of Inspector has been settled by the court of law. Applying the same principle, the applicant is also entitled for the grant of two advance increments on the ground that other similarly situated employees have been given this benefit by the Court. In our opinion, the respondents are bound by the law of equity and they cannot make discrimination between two similarly situated persons. Therefore, in our opinion, the applicant is entitled for the grant of two increments from the date he passed the departmental examination for the post of Inspector. The respondents are directed to take action accordingly."

15. In my opinion, the respondents are bound by law on equity and they cannot discriminate between two similarly situated persons. Thus, in view of the settled position of law, the applicants in the present Original Applications are entitled to two advance increments from the date of passing of the departmental examination for the post of Income Tax Inspector. They are also entitled to the arrears, if any. The respondents are directed to take action accordingly.

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16. The ratio decided by the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal and Others vs. State of Uttarakhand and Others** (supra) as referred to by the learned counsel for the respondents is not applicable under the facts and circumstances of the present Original Applications. There is no recovery involved in the present Original Applications. On the other hand, the applicants are entitled for two advance increments; therefore, no question of recovery is involved from the applicants.

17. Therefore, in view of the above discussions, the respondents are directed to complete the exercise as directed in para 15 of this order within a period of three months from the date of receipt of a copy of this order.

18. The Registry is directed to place a copy of this order in the case of Laxmi Narayan Badgujar vs. UOI & Ors. (OA No. 291/00298/2014).

19. With these observations and directions, the present Original Applications are disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER