

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

22.12.2014

OA No. 291/00561/2014

Mr. Nand Kishore, Counsel for applicant.

Mr. Gaurav Jain, Counsel for respondents.

The learned counsel for the applicant submits that he does not wish to file rejoinder. Thus the pleadings are complete.

With the consent of the parties, the OA was heard today. The learned counsel for the applicant submitted that the present controversy is covered by the order of this Tribunal in OA No. 291/00297/2014 and other connected matter decided on 21.11.2014.

Heard. **ORDER RESERVED.**

Anil Kumar
(Anil Kumar)
Member (A)

29/12/14.

order pronounced
today in the
open court
by the aforesaid,
Bench.

29/12/14
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 291/00561/2014

ORDER RESERVED ON 22.12.2014

DATE OF ORDER : 29.12.2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Nami Chand son of Shri Shankar Lal, aged about 49 yers, working as Income Tax Inspector, under Income Tax Officer, Ward-1/DDO Sikar. Resident of Talniya Bhawan, Ambedkar Nagar, Sikar.

... Applicant

(By Advocate: Mr. Nand Kishore)

Versus

1. Union of India of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. Chief Commissioner of Income Tax, NCR Building, Statue Circle, Bhagwandas Road, Jaipur.
3. Income Tax Officer, Ward-1/DDO, Office of Additional Commsisioner, Income Tax (DDO), Todi Nagar, Sanwli Road, Sikar.

... Respondents

(By Advocate: Mr. Gaurav Jain)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

The applicant has filed this OA praying for the following

reliefs:-

- (i) That the impugned order dated 18.09.2014 (Annexure A/1) may kindly be declared as arbitrary, illegal, bad in eye of law and quashed and set aside.
- (ii) The respondents may kindly be directed to restore the two advance increments sanctioned to the applicant on account of passing departmental examination for the post of Income Tax Inspector and continue the two advance increments in future.

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- (iii) They may further be directed to refund the amount which has been recovered by the respondents on account of re-fixation Annexure A/1.
- (iv) Any other directions and orders, which are deemed proper in the facts and circumstances of the case may kindly be allowed to the applicant.

2. The brief facts of the case are that the applicant was appointed as LDC in the respondents department on 04.02.1991. That the applicant appeared in the examination of Income Tax Inspector in January, 2002 and declared fully qualified for the departmental examination for Inspectors 2001. As per rules, the applicant was sanctioned two advance increments @ Rs.150/-. However, subsequently, the respondent department came to the conclusion that two advance increments allowed to the applicant were wrong and as such over payment of Rs.1,55,479/- is to be recovered from the applicant and his pay was reduced vide order dated 18.09.2014 (Annexure A/1).

3. The learned counsel for the applicant submitted that order dated 18.09.2014 is illegal. That 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 vide which the Tribunal allowed two advance increments to similarly situated persons. The order of the Central Administrative Tribunal, Jodhpur Bench, Jodhpur dated 21.08.2002 was upheld by the Hon'ble High Court vide order dated 11.12.2006. That even this Bench (Jaipur Bench) has decided the controversy in OA No. 513/2009, **Pooran Lal**

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Verma vs. Union of India & Others, vide order dated 05.09.2011 and the respondents were directed to grant two advance increments to the applicant of that OA from the date he passed the departmental examination for the post of Inspector. The learned counsel for the applicant further submitted that recently also, a similar controversy has been settled by this Tribunal in OA No. 291/00297/2014 in the case of **Virendra Kumar Godiwal vs. Union of India & Others** and other connected matters vide order dated 21.11.2014. Therefore, the learned counsel for the applicant argued that the respondents be directed to allow the two advance increments to the applicant from the date he passed the departmental examination for the post of Income Tax Inspector.

4. On the other hand, the respondents in their written reply have stated that the respondents have rightly withdrawn two advance increments granted earlier after passing the departmental examination of Income Tax Inspector. In support of their averments, the respondents have relied upon the circular of the Board dated 20.10.1994 and 09.09.2009. The learned counsel for the respondents submitted that in view of provisions of these two circulars, the applicant is not entitled for grant of two advance increments.

5. The learned counsel further submitted that the recovery of the excess payment has been rightly ordered by the respondents. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal & Others**

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vs. State of Uttarakhan & Others, 2012(7) SC 460, wherein the Hon'ble Supreme Court has held that any excess payment of public money which is often described as 'tax payers money' can always be recovered. Therefore, the present OA has no merit. However, he admitted that a similar controversy has been settled by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur in OA No. 127/2001 and OA No. 128/2001 and by this Tribunal in the case of Pooran Lal Verma vs. Union of India & Others (OA No. 513/2009) and Virendra Kumar Godiwal vs. Union of India & Others (OA No. 291/00297/2014), as referred to by the learned counsel for the applicant.

6. Heard the rival submissions of the parties, perused the documents on record and the case laws referred to by the learned counsel for the applicant. It is not disputed between the parties that a similar controversy has been settled by this Tribunal and the present OA can be decided in terms of the settled position of law, as referred to by the learned counsel for the applicant. 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 Income Tax Inspector. That the present applicant is also similarly situated person.

7. Therefore, 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

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of law, the applicant in the present OA is entitled to two advance increment from the date of passing of the departmental examination for the post of Income Tax Inspector.

8. The ratio decided by the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal & Others vs. State of Uttarakhan & Others (supra)**, as referred to by the learned counsel for the respondents, is not applicable under the facts & circumstances of the present OA. Since the applicant is entitled for two advance increments, therefore, no recovery can be issued against the applicant on account of excess payment. On the contrary if any recovery has been made from the applicant then he is entitled for its refund.

9. Since the applicant is entitled for two advance increments, hence, any recovery on the ground that the applicant was recently granted two advance increments is illegal. Therefore, there is no question of recovery in the present OA. The order dated 18.09.2014 (Annexure A/1) with regard to recovery and pay fixation of the applicant is quashed and set aside. Since the OA has been allowed, the order dated 15.10.2014 passed by this Tribunal granting the interim relief to the applicant is merged with the order passed in the OA.

10. In view of the above discussion, the respondents are directed to continue the payment of two advance increments to the applicant on account of his passing the departmental examination for the post of Income Tax Inspector and also not

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to recover any amount from him on this account. The respondents are directed to complete this exercise within a period of three months from the date of receipt of a copy of this order.

11. Consequently, the OA is allowed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

Abdul