

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00619/2014

ORDER RESERVED ON: 17.03.2015

DATE OF ORDER: 19.3.2015

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Om Prakash Sain S/o late Ramratan, aged around 60 years,
R/o F-82, Chaitnya Magar, C-Scheme, Jaipur.

...Applicant

Mr. Amit Mathur, counsel for applicant.

VERSUS

1. The Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chief Commissioner of Income Tax, Statue Circle, NCR Building, Jaipur.
3. The Director General (Investigation), Department of Income Tax, NCR Building, Statue Circle, Jaipur.

...Respondents

Mr. Gaurav Jain, counsel for respondents.

ORDER

The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was initially appointed as L.D.C. with the respondent-department in the year 1979. He was promoted to the post of U.D.C. in the year 2000-2001. In 2001, the applicant was promoted to the post of Senior Tax Assistant. The respondents conducted the written examination for promotion to the

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post of Inspector Income Tax in January, 2002 and the applicant qualified the examination. In pursuance to the qualifying the written examination of the Inspector Income Tax, the applicant was allowed two advance increments vide order dated 06.04.2009 (Annexure A/3).

2. The applicant attained the age of superannuation on 30.06.2014. The respondents without giving any notice to the applicant recovered an amount of Rs. 1,63,408/- from the gratuity amount of the applicant at the time of his superannuation. The applicant was informed orally that he was wrongly given two increments and he was not entitled for the same. The order of recovery dated 21.07.2014 has been annexed at Annexure A/1.

3. The learned counsel for the applicant submitted that the similar controversy has already been settled by this Bench of the Tribunal in the case of **Mohan Lal Meena vs. Union of India & Ors.** (OA No. 834/2012) vide order dated 26th July, 2013 (Annexure A/4). Therefore, he argued that the respondents may be directed to refund the amount recovered with interest @ 18% per annum and the respondents be directed to allow the pensionary benefits after adding two advance increments in the pay of the applicant..

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4. On the other hand, the respondents have filed their written reply. In their written reply, the respondents have submitted that the Board vide letter F. No. A36017/44/94-Ad.IV dated 20.10.1994 (Annexure R/1) stated that question of grant of advance increment to Head Clerk or Stenographer Gr. II for passing the Inspectors Departmental Examination does not arise at this stage. Moreover, passing of the examination itself is an incentive to employee to become eligible for appointment to a higher post on passing of such an examination. On these considerations, the existing scheme of advance increment needs to be abolished. However, considering that in Income Tax Department, the benefit of two advance increments is already admissible to some category of employees it would be difficult to withdraw this incentive at this stage. It has, therefore, been decided that while the existing scheme of grant of advance increments for income tax side may be continued on historical grounds. No fresh categories of staff can be added to this Scheme.

5. Learned counsel for the respondents further submitted that the Board vide letter F. No. I-11020/47/2007-Ad. IX dated 9th September, 2009 has further clarified that new designated post consequent upon restructuring in view of "Head Clerk" is "Senior Tax Assistant", therefore, in view of this clarification the candidates who pass the departmental

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examination for Inspectors in the cadre of "Senior Tax Assistant" cannot be granted advance increment.

6. Therefore, the applicant is not entitled for the grant of two advance increments and, hence, the recovery has rightly been made from the gratuity amount of the applicant. In support of his arguments, he relied upon the judgment of the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal and Others vs. State of Uttarakhand and Others**, reported in 2012 (7) SC 460.

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

8. It is admitted between the learned counsels for the parties that the present O.A. is covered by the order of this Bench of the Tribunal in the case of **Mohan Lal Meena vs. Union of India & Ors.** (supra). It is admitted between the parties that the applicant was promoted to the post of Senior Tax Assistant in the year 2001. Since the applicant qualified the written examination for the post of Income Tax Inspector, therefore, he is entitled for two advance increments. It is also admitted between the parties that the nomenclature of the post of Tax Assistant was earlier Head Clerk. The employee who was posted as Head Clerk

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was given two advance increments on passing examination for promotion / appointment to the post of Inspector. Therefore, the applicant being similarly situated person is also entitled for grant of two advance increments from the date he passed the departmental examination for the post of Inspector. Therefore, the respondents cannot make any recovery from the applicant.

9. With regard to the submissions of the learned counsel for the respondents regarding the case of **Chandi Prasad Uniyal and Others vs. State of Uttarakhand and Others** (supra), I am of the view that the ratio decided by the Hon'ble Supreme Court in that case is not applicable in the facts and circumstances of the present case. In the present O.A. the recovery has wrongly been made by the respondent-department from the applicant. In fact the applicant is entitled for the refund of the amount of recovery made from him vide order dated 21.07.2014 (Annexure A/1).

10. Therefore, in view of the above discussions, the respondents are directed to refund the amount of Rs. 1,63,408 recovered from the applicant on account of payment of two advance increments on passing the written examination for the post of Inspector Income Tax. The respondents are further directed to count the two advance

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increments for the purpose of pensionary benefits, if similar benefits have been accorded to the similarly situated other employees. However, under the facts and circumstances of the present case, no order is issued with regard to the interest as prayed for by the applicant in the present O.A.

11. Consequently, the present Original Application is allowed to the extent indicated herein above. There shall be no order as to costs.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat