

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

29.10.2014

OA No. 291/00064/2014 with MA 291/00047/2014

Mr. Amit Mathur, Counsel for applicant.
Mr. Gaurav Jain, Counsel for respondents.

The learned counsel for the applicant had submitted before the Joint Registrar on 08.10.2014 that he does not wish to file rejoinder. Thus the pleadings are complete.

Heard the learned counsel for the parties.

ORDER RESERVED.

Anil Kumar
(Anil Kumar)
Member (A)

Abdul

OA 291/00036/2014, OA 291/00062/2014, OA 291/00064/2014 with MA 291/00047/2014,
OA 291/00065/2014 with MA 291/00048/2014, QA 392/00377/2014 with MA 291/00318/2014,
OA No. 291/00378/2014 and OA No. 291/00379/2014

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORDER RESERVED ON 28.10.2014

DATE OF ORDER : 31.10.2014

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. ORIGINAL APPLICATION NO. 291/00036/2014

Brij Mohan Pandey son of N.D. Pandey, aged about 46 years, resident of 102, Suraj Nagar, East, Civil Lines, Jaipur. Presently working as Inspector, Income Tax Department, Jaipur.

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, New Delhi.
3. The Director General (Intelligence and Criminal Investigation), NCR Building, Statue Circle, Jaipur.

... Respondents

(By Advocate: Mr. Gaurav Jain)

2. ORIGINAL APPLICATION NO. 291/00062/2014

Vivek Choudhary son of Bhoopendra Singh, aged around 45 years, resident of 35-36, Vivek Nagar, Sindhi Camp, Jaipur. Presently working as Inspector, Department of Income Tax, Jaipur.

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. 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 (Investigation), Department of Income Tax, NCR Building, Statue Circle, Jaipur.

OA 291/00036/2014, OA 291/00062/2014, OA 291/00064/2014 with MA 291/00047/2014,
 OA 291/00065/2014 with MA 291/00048/2014, OA 392/00377/2014 with MA 291/00318/2014,
 OA No. 291/00378/2014 and OA No. 291/00379/2014

... Respondents

(By Advocate: Mr. Gaurav Jain)

**3. ORIGINAL APPLICATION NO. 291/00064/2014
 WITH
 MISC. APPLICATION NO. 291/00047/2014**

Anil Jain son of Shri Bhanwar Lal Jain, aged around 38 years, resident of A-139, Shyam Nagar, Sodala, Jaipur. Presently working as Inspector, Department of Income Tax, Jaipur.

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

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

... Respondents

(By Advocate: Mr. Gaurav Jain)

**4. ORIGINAL APPLICATION NO. 291/00065/2014
 WITH
 MISC. APPLICATION NO. 291/00048/2014**

Subhash Chand Sharma son of Late Shri Het Ram Sharma, aged around 49 years, resident of 257- Officers Campus Extension, Sirsi Road, Khatipura, Jaipur. Presently working as Inspector, Department of Income Tax, Jaipur.

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. 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 Commissioner of Income Tax (1), Department of Income Tax, NCR Building, Statue Circle, Jaipur.

... Respondents

(By Advocate: Mr. Gaurav Jain)

OA 291/00036/2014, OA 291/00062/2014, OA 291/00064/2014 with MA 291/00047/2014,
OA 291/00065/2014 with MA 291/00048/2014, OA 392/00377/2014 with MA 291/00318/2014,
OA No. 291/00378/2014 and OA No. 291/00379/2014

**5. ORIGINAL APPLICATION NO. 291/00377/2014
WITH
MISC. APPLICATION NO. 291/00318/2014**

Ravinder Kumar Son of Shri Kanhaiya Lal, aged around 32 years, resident of Plot No. 04, Lav Kush Nagar II, Tonk Phatak, Jaipur. Presently working as Senior TA, Department of Income Tax, Jaipur.

... Applicant
(By Advocate: Mr. Amit Mathur)

Versus

1. 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.

... Respondents
(By Advocate: Mr. Gaurav Jain)

6. ORIGINAL APPLICATION NO. 291/00378/2014

Davender Murariya son of Shri Subodh Kumar, aged around 36 years, resident of Plot No. 108, Maruti Nagar, Sanganer, Jaipur. Presently working as Inspector, Department of Income Tax, Jaipur.

... Applicant
(By Advocate: Mr. Amit Mathur)

Versus

1. 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. Commissioner of Income Tax (Central), Statue Circle, NCR Building, Jaipur.

... Respondents
(By Advocate: Mr. Gaurav Jain)

7. ORIGINAL APPLICATION NO. 291/00379/2014

Brijendra Singh son of Late Shri Chitra Deo Singh, aged around 43 years, resident of Jaipur. Presently working as Office Superintendent, Department of Income Tax, Jaipur.

OA 291/00036/2014, OA 291/00062/2014, OA 291/00064/2014 with MA 291/00047/2014,
OA 291/00065/2014 with MA 291/00048/2014, OA 392/00377/2014 with MA 291/00318/2014,
OA No. 291/00378/2014 and OA No. 291/00379/2014

... Applicant
(By Advocate: Mr. Amit Mathur)

Versus

1. 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. Commissioner of Income Tax (Audit), Lal Kothi, Jaipur.

... Respondents
(By Advocate: Mr. Gaurav Jain)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

With the consent of the parties the case was heard today. Since the facts and law points in all these OAs are similar, therefore, they are being disposed of by a common order. The facts of OA No. 291/00036/2014 (Brij Mohan Pandey vs. Union of India & Others) are being taken as a lead case.

2. The learned counsel for the applicant at the outset submitted that in all these OAs, the applicants have prayed that the respondents be directed to allow the benefit of two advance increments to them from the date they have qualified the departmental examination for the post of Inspector of Income Tax and their pay may be fixed accordingly after giving the benefit of two advance increments. He also submitted that the respondents may further be directed to give them arrear alongwith interest. He also argued that in OA No. 291/00036/2014, the respondents have also recovered the amount from the applicant vide order dated 22.03.2013/04.04.2013 (Annexure A/1) which should be

A. A. V. ...

OA 291/00036/2014, OA 291/00062/2014, OA 291/00064/2014 with MA 291/00047/2014,
OA 291/00065/2014 with MA 291/00048/2014, OA 392/00377/2014 with MA 291/00318/2014,
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refunded to him. He submitted that this controversy has already been settled by this Tribunal in OA No. 513/2009 decided on 05.09.2011 (Pooran Lal Verma vs. Union of India & Others) and in the case of Mohan Lal Meena vs. Union of India & Others (OA No. 834/2012 decided on 26.07.2013) and by the Jodhpur Bench of the Central Administrative Tribunal in OA Nos. 127/2001 (Mrs. Aliamma Mathew & Others vs. Union of India & Othres) and OA No. 128/2001 (N.K. Gehlot vs. Union of India & Others) vide common order dated 21.08.2002. He further submitted that the order of the Central Administrative Tribunal, Jodhpur Bench, was challenged by the respondents by way of Writ Petition No. 800/2004 (Union of India & Others vs. Aliamma Mathew) before the Hon'ble High Court of Rajasthan, Jodhpur Bench. The Hon'ble High Court vide order 11.12.2006 dismissed the Writ Petition filed by the respondents against the order of the Central Administrative Tribunal, Jodhpur Bench.

3. The learned counsel for the applicant further submitted that the question of limitation has also been considered by this Tribunal in the case of Pooran Lal Verma vs. Union of India & Others (Supra). That the Tribunal after considering the cases of the Hon'ble Supreme Court in case of **M.R. Gupta vs. Union of India & Others** [Civil Appeal No. 7510/1995 decided on 21.08.1995] and **Union of India & others vs. Shantiranjan Sarkar** decided on 13.01.2009 [Civil Appeal No. 103/2009 (arising out of SLP (C) No. 23770/2005)] condoned the delay and the claim of the applicant was decided on merit.

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Therefore, he submitted that the same ratio is applicable in OA No. 291/00064/2014 with MA 291/00047/2014 (Anil Jain vs. Union of India & Others), OA No. 291/00065/2014 with MA 291/00048/2014 (Subhash Chand vs. Union of India & Others) and OA No. 291/00377/2014 with MA 291/00318/2014 (Ravindra Kumar vs. Union of India & Others).

4. The learned counsel for the applicant argued that since the controversy involved in the present cases has already been settled by the Tribunal, which has been upheld by the Hon'ble High Court of Rajasthan and, therefore, these OAs also be decided in terms of the settled position of law and the applicants be allowed two advance increments from the date of passing of the examination for the post of Inspector and arrears be paid to them. In the case of Brij Mohan Pandey, the respondents be directed to refund the amount recovered from the applicant.

5. The respondents have filed their reply. The learned counsel for the respondents agreed that controversy involved has been settled by this Tribunal in the cases referred to by the learned counsel for the applicant and the respondents have implemented the orders passed by the Central Administrative Tribunal, Jaipur in those cases. He also agreed that the present OAs can be decided in terms of the settled position of law, as stated by the learned counsel for the applicant.

6. However, the learned counsel for the respondents drew my attention to the judgment passed by the Hon'ble Supreme

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OA 291/00065/2014 with MA 291/00048/2014, OA 392/00377/2014 with MA 291/00318/2014,
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Court in the case of **Chandi Prasad Uniyal & Others vs.**

State of Uttarakhan & Others, 2012 (7) SC 460 wherein the

Hon'ble Supreme Court in Para No. 16 of the judgment has held that we are concerned with the excess payment of public money which is often described as 'tax payers money' which belongs neither to the officers who have effected over-payment nor that of the recipients. The Hon'ble Supreme Court has further held that any amount paid/received without authority of law can always be recovered baring few exceptions of extreme hardship but not as a matter of right, in such situation law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment. The learned counsel for the respondents submitted that in view of the judgment of the Hon'ble Supreme Court, if any, excess payment has been made then the respondents can always recover the payment made to its employees.

7. Heard the learned counsel for the parties, perused the documents on record and the case laws referred to by the learned counsel for the parties. In OA No. 291/00064/2014 (Anil Jain vs. Union of India & Others), OA No. 291/00065/2014 (Subhash Chand vs. Union of India & Others) and OA 291/00377/2014 (Ravindra Kumar vs. Union of India & Others), the applicants have also filed Misc. Applications for condonation of delay in filing the OA. This aspect has been dealt by this Tribunal in OA No. 513/2009 decided on 05.09.2011 (Pooran Lal Verma vs. Union of India & Others). The Tribunal in Para nos. 11 and 12 of the order after

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considering the judgments of the Hon'ble Supreme Court in the case of M.R. Gupta vs. Union of India (supra) came to the conclusion that the Government servant has a right to be paid correct salary through his tenure according to computation made in accordance with rules which is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. Therefore, it held that by not granting two advance increments to the applicants was a continuing wrong based on recurring cause of action. Moreover, if the applicant is granted two advance increments then other employees will not be adversely affected. Thus the law of limitation will not apply in this case. Therefore, the OA was decided on merit. The same ratio is applicable in the present three OA and they are also decided on merit. The delay, if any, is condoned.

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

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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."

9. In my opinion the respondents are bound by law on equity and they cannot make discrimination between two similarly situated persons. Thus in view of the settled position of law, the applicants in the present OAs are entitled to two advance increments from the date of passing the departmental examination of Inspector, Income Tax/ ITO. It is also made clear that if any recovery has been made from any of the applicants on this account then it would be refunded to those applicants. The respondents are directed to take action accordingly.

10. With regard to the submission of the learned counsel for the respondents that the Hon'ble Supreme Court in the case of Chandi Prasad Uniyal & Others vs. State of Uttarakhan & Others (supra) has laid down law with regard of recovery of over payment made to its employees. This point was also considered by this Tribunal in the case of Mohan Lal Meena vs. Union of India & others (OA No. 834/2012 decided on 26.07.2013). Para No. 17 of this order is quoted below:-

"17. With regard to the submission of the learned counsel for the respondents that Hon'ble Supreme Court of India in the case of Chandi Prasad Uniyal and Others

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 OA 291/00065/2014 with MA 291/00048/2014, OA 392/00377/2014 with MA 291/00318/2014,
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vs. State of Uttarakhand and Others (supra) has laid down the law with regard to the recovery of overpayment made to the employees, 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 Original Application, no recovery of excess payment is to be made from the applicant. On the contrary, the applicant is entitled for two advance increments on qualifying the departmental examination for promotion to the post of Inspector."

Therefore, I am of the view that the ratio decided by the Hon'ble Supreme Court in the case of Chandi Prasad Uniyal & Others vs. State of Uttarakhan & Others (supra) is not applicable in the facts & circumstances of the present case. In the present case, no recovery of excess payment is to be made from the applicant but on the contrary the applicants are entitled for two advance increments on qualifying the departmental examination for the post of Inspector.

11. The respondents are directed to complete the exercise, as directed in Para No. 9 of this order, within a period of three months from the date of receipt of a copy of this order.

12. The Registry is directed to place the copy of this order in the respective files of the OAs.

(ANIL KUMAR)
 MEMBER (A)

Abdul

933 & 934

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