

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.171/1997

Date of order: 3/5/2000

Uma Dutta Gupta, S/o late Shri Sree Ramji, R/c B-195,  
Janata Colony, Jaipur, retired as Income Tax Inspector.

...Applicant.

Vs.

1. Union of India through Secretary to the Govt, Mini. of Finance, Deptt. of Income Tax, New Delhi.
2. Chief Commissioner, Deptt. of Income Tax, Aayakar Bhawan, Near Statue Circle, Jaipur.
3. Asstt. Director Income Tax (Investigation), Deptt. of Income Tax, Central Revenue Bldg, Near Statue Circle, Jaipur.
4. The Accounts Officer, Zonal Accounts Office, Central Board of Direct Taxes, Jaipur, C.R. Building.

...Respondents.

Mr. Surender Singh - Counsel for applicant.

Mr. N.K. Jain ) - Counsel for respondents.

Mr. Gaurav Jain)

CORAM:

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

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

PER HON'BLE MR. S.K. AGARWAL, JUDICIAL MEMBER.

In this Original application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes the following prayers:

- (i) to quash and set aside the impugned orders at Annx.A1 to Annx.A6 issued by respondent No.4 whereby the recovery of Rs.46446 has been ordered to be effected.
- (ii) to direct the respondents to refund the amount so illegally recovered from the applicant alongwith interest @ 18% per annum.
- (iii) to direct the respondents to allow the applicant all the benefits of earlier fixation of pay without taking into effect the impugned orders at Annx.A1 to A6.

2. Facts of the case as stated by the applicant are that he was initially appointed as Steno-typist in Income Tax department on 29.4.61 thereafter he was promoted as UDC on 30.4.64, Stenographer ordinary scale on 4.4.66, Stenographer Sr. grade on 31.2.73 and Income Tax Inspector on 28.2.76. It is stated that the applicant was reverted on his own request from the post of Inspector to Stenographer Selection scale. Thereafter, the applicant was promoted again on the post of Stenographer Scale Rs.550-900 vide order dated 11.8.78. The applicant was promoted on the post of Inspector of Income Tax vide order dated 11.7.79 in the scale of

Rs.425-800 this pay scale was revised to Rs.550-900 w.e.f. 1.1.80 and further revised as Rs.1640-2900 on 1.1.86. It is also stated that after unusual delay of 29 years and by violating the basic principle of natural justice, the impugned orders at Annxs.A1 to Annxs.A6 were issued by respondent No.4 and an illegal recovery of Rs.46446 was effected from the applicant against the amount of gratuity payable to the applicant as the applicant retired from service in March 1997. It is also stated that the applicant filed representation which was also rejected by respondent No.4 and communicated to the applicant vide letter dated 9.4.97 by the Asstt. Commissioner of Income Tax. It is further stated that the impugned orders are issued without following the basic principles of natural justice and the action of the respondents in modifying the fixation of pay of the applicant is irrational and illegal. Therefore, the applicant filed the O.A for the reliefs as mentioned above.

3. Reply was filed. In the reply it is stated that only excess payment made to the applicant was recovered from his gratuity and the recovery was perfectly in order and in accordance with the provisions of law. It is stated that there has not been any violation of the principles of natural justice and the fixation of pay of the applicant was void ab initio and contrary to the rules, therefore, the same was corrected. It is further stated that the wrong fixation does not give any right to the applicant and as and when it is detected the respondents are fully justified in making the recovery of the excess payment made to the applicant. It is stated that this O.A having no merits is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant has argued that (i) the earlier fixation of pay of the applicant was made suo motto by the respondents and there was no misrepresentation of any kind on the part of the applicant, therefore, the recovery made from the applicant after such a long lapse is arbitrary, void and illegal. (ii) No show cause notice was given to the applicant before passing the impugned orders or effecting the recovery from the gratuity payable to the applicant. In support of his contentions he has referred to: (i) Bhagwan Shukla Vs. UOI & Ors, 1994(4) SLR 614, (ii) Sri Ganesh Chandra & Ors Vs. UOI & Ors, 1997(3) CAT AISLJ 586, (iii) Mohan Singh Vs. State of Punjab & Ors, 1991(7) SLR 128, (iv) Sharad Vs. Director General (Works) CPWD & Ors, 1997(2)(CAT) AISLJ 256 and (v) Shri M.S.Mandhaiya Vs. UOI & Ors, 1997(2) AISLJ CAT 260.

6. On the other hand, the learned counsel for the respondents has argued that in case of excess/wrong payment of pay & allowances to the applicant, recovery can be made from the applicant at any stage and there is no illegality in passing the impugned orders effecting the recovery from the applicant as such. In support of his contention he has referred to Alam Ali Vs. State of Rajasthan & Ors, 2000 LAB I.C.862.

7. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

8. As regards the first contention of the applicant is concerned, the law is well settled on the point that in all cases where the Govt has fixed the pay suo motto even if the Govt has fixed the pay wrongly, no recovery can be made after a long lapse.

9. In Shyam Babu Verma & Ors Vs. UOI & Ors., (1994) 2 SCC 521 it was held by the Supreme Court that the petitioner who had received the higher scale due to no fault of his own, it shall only be just and proper not to recover any excess amount already paid to him.

10. In Sahib Ram Vs. State of Haryana & Ors, 1995(Supp(1) SCC 18, it was held by the Supreme Court that upgraded pay scale as given to the appellant due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee and the Govt was restrained from recovering the overpayment already made.

11. In Collector of Madras & Anr. Vs. K.Rajamonickam, (1995) 2 SCC 98, it was held by the Supreme Court that the respondent was continued in service beyond the date of superannuation under a wrong decision of the Court. It was held that the period of service beyond the date of superannuation should not be counted. However, recovery of any amount paid during that period was prohibited.

12. In UOI & Ors Vs. M.Bhaskar & Ors, (1996) 4 SCC 416, in this case, the Supreme Court while setting aside the judgments of various Tribunals in regard to scale of pay of pre-1997 Traffic/Commercial Apprentice making them entitled to the pay scale of Rs.1600-2660, it was held that the recovery of the amount already paid because of the judgment of various Tribunals would cause hardship to the respondents/appellants concerned and therefore, the respondents (UOI) were directed not to recover the amount already paid.

13. In UOI & Ors Vs. Ram Gopal Agarwal & Ors, (1998)2 SCC 589, it was held by the Supreme Court that the recovery would result in great hardship and the amount already paid to them in terms of the order of this Court or by the order of the Tribunals as aforesaid


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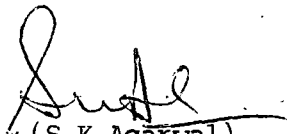
22. In Laxmi Chand Vs. UOI & Ors. 1998 ATC 599, If order involves civil consequences and has been issued without affording an opportunity to the applicant, such an order cannot be passed without complying with audi alteram partem, party should be given an opportunity to meet his case before an adverse decision is taken.

23. On the basis of the forgoing discussions and facts and circumstances of the case, we are of the considered view that principles of natural justice are violated in the instant case and no recovery can be made from the applicant in pursuance of the impugned orders at Annxs.A1 to A6. The same view has been taken by the Division Bench of this Tribunal in O.A No.123/98, N.C.Chouhan Vs. UOI & Ors passed on 30.11.99.

24. In view of the foregoing discussions as above, we allow the O.A and quash the impugned orders at Annxs.A1 to A6 and direct the respondents to refund the amount so recovered in pursuance to Annx.A1 to Annx.A6 within 3 months from the date of receipt of a copy of this order, alongwith interest @ 12% per annum from the date of recovery till the amount is refunded to the applicant. The respondents are at liberty to pass appropriate order regarding fixation of pay of the applicant after giving him an opportunity of hearing but no recovery of arrears of pay can be made from the applicant.

25. No order as to costs.

  
(N.P.Nawani)  
Member (A).

  
(S.K.Agarwal)  
Member (J).