

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

C.A.No.172/1997

Date of order: 3/5/2000

Bhimsen Assudhani, S/o Shri Mohan Desji, R/o 303, Rajapark  
Sindhi Colony, Jaipur, retired as Income Tax Inspector.

...Applicant.

Vs.

1. Union of India through Secretary to the Govt, Min. of Finance, Deptt. of Income Tax, New Delhi.
2. 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.

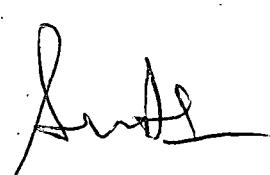
In this Original application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes the following prayers:

(i) to quash and set aside the impugned orders at Annex.A1 to Annex.A6 issued by respondent No.4 whereby the recovery of Rs.22405 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 Annex.A1 to A6.

2. Facts of the case as stated by the applicant are that he was initially appointed as Lower Division Clerk in the Income Tax Department on 3.11.1959 thereafter he was promoted as U.D.C on 30.9.67 and further promoted as Tax Assistant on 5.6.81 thereafter elevated to Head Clerk on 9.7.91 and to the post of Supervisor on 21.12.94. It is stated that the applicant was superannuated in the month of June 1996. It is stated that by violating the basic principles of natural justice the impugned orders at Annexes.A1 to A6 were issued by respondent No.4 and an illegal recovery of Rs.22405 was effected from the applicant against the amount of gratuity



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payable to the applicant. It is also stated that the applicant filed representation to which no response was received. 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 motu 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. UCI & Ors, 1994(4) SLR 614, (ii) Sri Ganesh Chandra & Ors Vs. UCI & Ors, 1997(3) CAT AISLJ 586, (iii) Mohan Singh Vs. State of Punjab & Ors, 1991(7) SIR 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.

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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 suc 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.Rajamnickam, (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 would not be recovered.

14. In State of Haryana Vs. Om Prakash & Anr. (1998) 8 SCC 733, it was directed by the Supreme Court that in case he had withdrawn that amount, the same should not be recovered from him.

15. In view of the above legal position as stated above and the facts and circumstances of the case, we are of the considered view that no recovery can be made from the applicant in pursuance of the impugned orders at Annexes A1 to A6 and the legal citation referred by the learned counsel for the respondents is

distinguishable as per the facts and circumstances of the case and is not helpful to the respondents in any way.

16. As regards the second contention of the learned counsel for the applicant is concerned, it is an admitted position that no show cause notice or opportunity of hearing was given to the applicant before issuing the impugned orders at Annxs.A1 to A6.

17. The law is well settled on this point also and catena of judgments of Hon'ble Supreme Court, High Courts and Tribunals have reached to the conclusion that any order which entails civil consequences is honest if it is issued without following the principles of natural justice.

18. In Menaka Gandhi Vs. UOI (1978) 1 SCC 248, it was held that before any punitive action is taken which deprives the employee of the benefits he is enjoying, an opportunity has to be given.

19. In Delhi Transport Corpn. Vs. DTC Mazdoor Congress, 1991 Supp(1) SCC 600, it was held that the rules of natural justice also requires that the applicant should be given an opportunity to be heard before subjecting him to any punitive action.

20. In Olga Tellis Vs. Bombay Municipal Corpn, (1985) 3 SCC 545, it was held that the applicant has been deprived of his livelihood without even being heard in the matter and without any notice merely on the basis of an ongoing police investigation. Right to life includes right to livelihood and thus the order is violative of Article 21 of the Constitution of India.

21. In E.P.Royappa Vs. State of Tamil Nadu, (1974) 4 SCC 3, it was held that right to fairness is irrespective of the legal rights of the employee.

22. In H.L.Trehan & Ors Vs. UOI & Ors, (1989) SCC(L&S) 246, it was held that it is now well settled principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a govt servant without complying with the rules of natural justice by giving him an opportunity of being heard.

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.

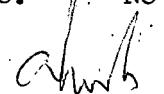
23. On the basis of the forgoing discussions and facts and circumstances of the case, we are of the considered view that principles of natural justice are violated in the instant case and

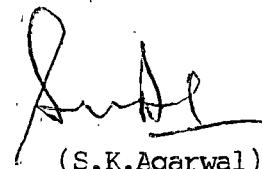
(17)

no recovery can be made from the applicant in pursuance of the impugned orders at Annexs.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 Annexs.A1 to A6 and direct the respondents to refund the amount so recovered in pursuance to Annex.A1 to Annex.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).