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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 15.11.2000

OA 230/97

1. Subodh Kumar Agarwal s/o Shri P.P. Agarwal r/o 113,
Saini Colony, Kartarpura, Jaipur.
2. Sohan Lal Sahu s/o Shri Harinarain Sahu r/o 3953,
Jagannath Shah Ka Rasta, Teliyon ka Mohalla, Ramganj,
Jaipur.

... Applicants

V/s

1. Union of India through Comptroller & Auditor
General of India, 10, Bahadur Shah Zafar Marg,
New Delhi.
2. Accountant General (Audit), Rajasthan, Near Statue
Circle, Jaipur.

... Respondents

CORAM:

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

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

For the Applicants

... In person.

For the Respondents

... Mr. Javed Choudhary

O R D E R

PER HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

In this application u/s 19 of the Administrative

Tribunals Act, 1985, the applicants, named above, have

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prayed for setting aside the impugned orders dated 29.2.96 and 24.1.96, at Anns.A/1 and A/5 respectively, and for a direction to the respondents to allow the applicants ~~to~~ the benefit as was given to them on passing the Intermediate Examination of ICWA/AICA.

2. Applicants' case is that they have been working as Assistant Audit Officer with the respondent department. Both the applicants had passed the Intermediate Examination of ICWA/AICA. Applicant No.1 has passed the said examination in May, 1995 and applicant No.2 has passed the said examination in June, 1995. In terms of respondents' circular dated 7.9.87 (Ann.A/2), applicants were entitled to the benefit of two advance increments on passing the said Intermediate Examination. Both the applicants were granted two advance increments vide respondents' letters dated 6.9.95 and 21.11.95 (Anns.A/3 & A/4). This benefit of advance increments has however been withdrawn vide respondents' letter dated 29.2.96 (Ann.A/1) in compliance to the respondents' circular dated 24.1.96 (Ann.A/5). Representation made by the applicants had evoked no response from the respondents, hence this application.

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3. In the counter it has been stated by the respondents that the existing incentive scheme for grant of advance increments for acquiring higher qualifications was replaced by respondents' circular ~~dated~~ letter dated 24.1.96 with a lump-sum ~~amount~~ incentive scheme and this scheme was made effective from 31.1.95. Since ~~xx~~ both the applicants had passed the Intermediate Examination after 31.1.95, the advance increments granted to them were withdrawn and instead they were sanctioned a lumpsum amount. It is also asserted by the respondents that the question of giving any show-cause notice to the applicants in this regard did not arise since it was a policy decision taken by the respondents. It has, therefore, been averred by the respondents that the application is devoid of any merit and deserves dismissal.

4. We have heard the learned counsel for the parties and perused the records of the case.

5. It is seen from the records that in terms of respondents' circular dated 7.9.87 incentive of cash award on passing the Intermediate Examination of ICWA etc. was substituted by grant of two advance increments. We

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consider it appropriate to extract below the relevant provision of the circular dated 7.9.87 :-

"(iii) It has been decided to liberalise the existing scheme of granting incentives for passing ICWA exam. to the following extent :

a) At present, departmental officials qualifying in ICWA-Final are entitled to two advance increments. It has been decided to put them on par with fresh recruits coming in with the same qualifications. In other words, departmental candidates will also now be entitled to six advance increments on their qualifying ICWA-Final Exam.

b) The above benefit has been extended to the officials qualifying AICA Exam. also.

c) Currently, officials who qualify the intermediate stage of ICWA get a cash award of Rs.200/-. They will now get two advance increments which would get absorbed in the six advance increments granted after qualifying the Final Exam.

At present, the above incentive is granted to non-gazetted staff only. It has been decided to extend this incentive to Group 'B' officers also."

It is also seen from this circular that the order dated 7.9.87 in regard to grant of advance increments on passing the Intermediate/~~xxxxxx~~ Final Examination of ICWA etc. was made effective from the date of issue of that order i.e. 7.9.87. It is however seen from the circular order dated 24.1.96 (Ann.A/5), replacing the grant of advance increments by lumpsum ~~xxx~~ incentive for acquiring higher

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professional qualifications, that passing of Intermediate Examination of ICWA/AICA would entitle an incentive of a lumpsum amount of Rs.400/- in place of existing incentive of two advance increments and this circular dated 24.1.96 has been made effective from 31.1.95. It has nowhere been clarified by the respondents as to why the date of 31.1.95 has been adopted for implementing this benefit. Understandably, there would have been many candidates who might have passed this examination between 31.1.95 and 24.1.96 and all those candidates must be hoping to get two advance increments in lieu of passing the said examination. As has been mentioned above, the circular dated 7.9.87 was made effective from the date of issue of that circular. However, the circular dated 24.1.96 has been made effective retrospectively w.e.f. 31.1.95. However, it has nowhere been clarified either in the circular or in the reply statement by the respondents as to why they have adopted this date. As has been mentioned above, the applicants had already been granted advance increments on their passing the Intermediate Examination as per the earlier scheme. However, with the retrospective implementation of circular dated 24.1.96 they have been

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deprived of that benefit and instead have been granted a lumpsum of Rs.400/- . Retrospective implementation of circular dated 24.1.96 has resulted into civil consequences to the applicants and such action should not have been taken by the respondents without giving show-cause ~~xx~~ notice to the applicants. It is also seen from the circular dated 24.1.96 that the candidates who had passed the said Intermediate Examination prior to 31.1.95 were entitled to continue to avail the benefit of two advance increments. However, this benefit has been denied to the candidates who had passed the said examination after 31.1.95. This, we find, is a clear case of discrimination. In the light of the above discussion, we do not find any reason for fixing 31.1.95 as the cut off date for implementation of the circular dated 24.1.96. This, to our mind, is arbitrary. The circular dated 24.1.96 can at best be made effective from the date of its issue and not retrospectively.

6. The learned counsel for the respondents has cited following cases in support of his contentions :-

- i). AIR 1990 SC 334, Supreme Court Employees Welfare Association V/s Union of India & Ors.

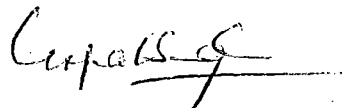
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- ii) AIR 1993 SC 978, R.L. Bansal & Ors. v/s Union of India & Ors.
- iii) AIR 1993 SC 2285, V.K. Sood v/s Secretary, Civil Aviation & Ors.
- iv) AIR 1994 SC 268, S.P. Gupta v/s Union of India
- v) JT 1997 (2) SC 342, Rajasthan State Electricity Board Accountants Association, Jaipur v/s Rajasthan State Electricity Board & Anr.

We have carefully gone through these citations and we do not find that any of the citations help the respondents.

Accordingly, we pass the order as under :-

The OA is allowed. The circular dated 24.1.96 would be effective only prospectively. Refixation done vide letter dated 29.2.96 (Ann.A/1) would be reversed and the applicants would be entitled to continue to avail the benefit of advance increments at par with the candidates who had passed the Intermediate Examination prior to 31.1.95. No costs.


(GOPAL SINGH)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)