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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 13.04.2000

OA No.263/97

R.S.Sarasar S/o late Shri Chhaju Ram, retired Income Tax Officer, 34, Shyam Puri, Hida Ki Mori, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Government of India, Ministry of Finance, Central Board of Direct Taxes, New Delhi.
2. Chief Commissioner of Income Tax, Rajasthan, NCRB, Bhagwan Das Road, Jaipur.
3. Commissioner of Income Tax, New Central Revenue Building, Jaipur.
4. Income Tax Officer-cum-Drawing and Disbursing Officer, Ward No.1, Ayyakar Bhawan, Moti Dungari Road, Alwar.
5. Accounts Officer, Office of the Zonal Accountants Office, CBDT, NCRB, Bhagwan Das Road, Jaipur.

.. respondents

Mr. Lajpat Rai, Counsel for the applicant

Mr. N.K.Jain, counsel for the respondents

CORAM:

Hon'ble Mr. Justice B.S.Raikote, Vice Chairman

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

ORDER

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

In this Original Application, the applicant prays that the order of recovery and stepping down of pay contained in Ann.A21 and Ann. A19 respectively be quashed and respondents be directed to refund the amount recovered on account of implementation of above mentioned orders with interest @ 18% per annum.

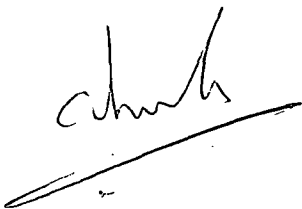
2. The learned counsel for the applicant has stated that the controversy in this case is similar to one decided by various Benches of this Tribunal, some of which he has annexed

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at Anns. A23 to A27 and he being similarly situated person should also be given the same relief. It is the case of the applicant that his pay was stepped up vide order dated 16.9.1978 (Ann.A13) but having allowed the applicant to draw the enhanced pay and allowances, the respondents issued the impugned order dated 13.1.1987 (Ann.A19) by which the stepping up allowed as long back as 16.9.1978 was withdrawn giving no reasons and with no notice to him. This order of withdrawal as also the subsequent order of recovery (Ann.A21) were not only bad in law but were issued in violation of the principles of natural justice.

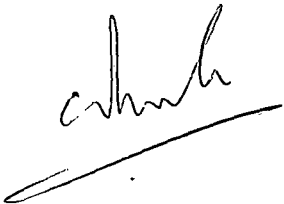
3. The respondents have stated that the applicant was not senior to Shri Sultan Singh on account of which he is claiming the correctness of the stepping up allowed on 16.9.1978. In fact, the applicant had not passed the departmental examination for ministerial staff held in November, 1965 whereas Sultan Singh passed it whereby Sultan Singh was promoted to the post of UDC on 17.12.1965 and the applicant on 18.4.1966. Thus Sultan Singh was junior to the applicant only in the cadre of LDC and in the cadre of UDC, Head Clerk and Supervisor Grade-II, he was senior to the applicant. However, stepping up of pay in favour of the applicant was allowed by the Commissioner of Income Tax, Jaipur vide order dated 16.9.1978 (Ann.A13) on the basis of orders issued by the Ministry of Finance and the benefit was withdrawn on 13.1.1987 (Ann.A11).

4. It is not disputed that the applicant was given the benefit of stepping up of his pay to the level of his juniors vide order dated 16.9.1978 (Ann.A13) and it is specifically mentioned in the said order that the pay of the applicant is stepped up w.e.f. 2.2.1971, the date from which his junior Shri Sultan Singh, Supervisor had started drawing pay at the rate of Rs. 200/- per month. Thereafter vide order dated 13.1.1987 (Ann.A19) the benefit so given was withdrawn. This being the



case, the orders of the various Benches of this Tribunal, including those annexed at Ann.A23 to Ann.A27, squarely cover the controversy raised in the present OA. At this belated stage, the respondents cannot now come up with a plea that Sultan Singh had passed the departmental examination for the ministerial staff held in November, 1965 and was appointed as UDC w.e.f. 17.12.1965 and the applicant had not passed the said departmental examination and was promoted as UDC only w.e.f. 18.4.1966 and, therefore, the applicant was junior to Sultan Singh in the cadre of UDC and subsequently also in the cadres of Head Clerk and Supervisor Grade-II. Such belated contentions of the respondents is not acceptable at this point of time. We are also aware of the latest development of law with regard to stepping up of pay and the law laid down by Hon'ble the Supreme Court in the case of R.Swaminathan reported in (1997) 7 SCC 690 that stepping up of pay is not admissible to senior on account of local, ad-hoc or fortitious promotion enjoyed by the juniors. In the case of M.Suryanarayana Rao reported in (1998) 6 SCC 400, the Apex Court also rejected the plea that the Swaminathan's case required reconsideration.

5. In the present case, however, the main issue is whether the respondents were right in first allowing stepping up of pay in case of the applicant w.e.f. 2.2.1971 and after the applicant has enjoyed a slightly higher pay for around 16 years withdrew the same by giving no reasons and without complying with the principles of natural justice by not even giving a notice to the applicant. The answer in our mind is emphatic No. It will be still more unacceptable that by order dated 17.6.1996 (Ann.A21) recovery to the extent of Rs. 36,902/- which included Rs. 23,371/- on account of pay and allowances, was made from the gratuity of the applicant after he had retired. The applicant was allowed higher pay fixation by respondents suo-moto without any mis-representation or fraud on the part of the applicant. It has also to be considered that over those long 16 years, the applicant having drawn a slightly



higher pay, would have spent the amount on his day-to-day family expenditure. To effect the recovery from the gratuity, which the government gives in recognition of the long service put in by its employees, would almost amount to cruelty. Such recoveries, have rightly been disallowed by the Courts in a catena of judgments.

6. In Laxmanchand v. Union of India, 1998 (1) SLR 599, it was held that if the order involves civil consequences and has been issued without affording opportunity to the applicant, such order cannot be passed without complying with the audi alteram partem, i.e. parties should be given the opportunity to put forward his case before an adverse decision is taken. In Sahib Ram v. State of Haryana and ors., 1995 Suppl.(1) SCC 18, the upgraded pay scales as given to the appellant due to wrong construction of relevant orders by the authority concerned without any representation by the employee and the Government was restrained from recovering the overpayment made. In Collector of Madras and anr. v. K.Rajamanickam, (1995) 2 SCC 98, the respondent was continued in service beyond the date of superannuation under a wrong decision and it was held that while the period of service beyond the date of superannuation should not be counted, recovery of any amount was specifically prohibited.


7. In view of the legal position as brought out in the preceding paragraph and the facts and circumstances of this case, we are of the considered view that the orders dated 13.1.1987 (Ann.A19) and dated 17.6.1996 (Ann.A21) have been issued without following the principles of natural justice and no recovery can be made in pursuance of such orders. In the index, the applicant himself has mentioned an amount of Rs. 23,371/- as the amount to be recovered as per Ann.A21, which relates to pay and allowances and we consequently limit the scope of ^{our} order to this amount, the other two amounts recovered being Rs. 12,704/- on account of interest on HBA and Rs. 827/-

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as interest on Scooter Advance.

8. In the circumstances, we dispose of this Original Application with a direction to the respondents to refund the amount of Rs. 23,371/-, which seems to have been already recovered from the gratuity, to the applicant within two months of receipt of a copy of this order.

Parties to bear their own costs.


(N.P. NAWANI)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman