

(V)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.113/98

Date of order: 30/11/99

N.C.Chouhan, S/o Shri Kanagi, R/o 26/4, Income Tax Colony, Jyoti Nagar, Jaipur, presently working as Income-Tax Officer, Jaipur.

...Applicant.

Vs.

1. The Union of India through Secretary, Ministry of Finance, Deptt of Revenue, Govt. of India, New Delhi.
2. The Chief Commissioner of IncomeTax, Rajasthan, New Central Revenue Bldg, Statue Circle, B.D.Road, Jaipur.
3. Accounts Officer, Zonal Accounts Office, Central Board of Direct Taxes, New Central Revenue Bldg, Statue Circle, Jaipur.

...Respondents.

Mr.P.P.Mathur, Proxy of Mr.R.N.Mathur - Counsel for applicant.

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

Mr.Gaurab 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 a prayer to quash and set aside the order dated 8.5.97 and 20.5.97 and to direct the respondents not to recover any amount in pursuance of those orders.

2. Facts of this case as stated by the applicant are that the applicant was initially appointed as U.D.C on 9.12.1968. He was promoted as Head-clerk on 29.9.1975 and Supervisor Grade-II on 30.5.1981. The applicant appeared in the Departmental Examination for Inspector of Income Tax and qualified the same in June 1981. He was allowed two advance increments w.e.f.June 1981. It is stated by the applicant that the Govt of India issued a circular dated 6.4.1983 which provides for two advance increments after qualifying the departmental examination such as Inspector of Income Tax/I.T.O. In accordance with the aforesaid decision, two advance increments were sanctioned to the applicant vide order dated 14.9.83 w.e.f. 1.6.1981. But abruptly a decision was taken by the respondents to recover the amount of advance increments granted to the applicant earlier and to fix the pay of the applicant merely on the basis of clarification sought vide order dated 20.10.94. It is stated that there was no order restricting the benefits of two advance increments to Supervisor Gr.II. Therefore, relying on the order dated 20.10.94, no recovery can be made. It is also stated that two advance increments were paid to the applicant w.e.f. June 1981 by an order issued by the competent authority on 14.9.1983. Therefore, no recovery can be made from the applicant vide the

*Sushil*

impugned orders at such a belated stage. The applicant, therefore, files this O.A for the relief as mentioned above.

3. Reply was filed. It is stated that the applicant was wrongly granted two advance increments w.e.f. June 1981. The post of Supervisor Gr.II was never identified to make available two advance increments on passing the departmental examination for the post of Inspector of Income Tax and there is no rule to this effect. It is further stated that the letter dated 6.4.83 was wrongly interpreted so as to sanction two advance increments w.e.f. June 1981. Therefore, the respondents was duty bound to recover the wrong payments and there can be no estoppel against the statute, hence there is no illegality if the amount wrongly paid is recovered now.

4. Rejoinder has also been filed, which is on record.

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

6. The learned counsel for the applicant submits that the orders dated 8.5.97 and 20.5.97 are void and illegal, which are liable to be quashed. On the other hand the learned counsel for the respondents submits that the order dated 20.5.97 was issued in pursuance of the order dated 20.10.94 which was a clarification of the order dated 6.4.83, therefore any wrong payment made by the department is recoverable.

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

8. It is not disputed that the applicant <sup>was</sup> declared qualified in the departmental examination for the post of Inspector of Income Tax in June 1981 and in view of passing the departmental examination he was allowed two advance increments w.e.f. June 1981 for which orders were issued on 14.9.83 was passed on the basis of the circular letter dated 6.4.83. The letter dated 20.10.94 appears to be the clarification of the letter dated 6.4.83. We find that the scheme of granting advance increments on passing the departmental examination is not new but was continuing since the year 1955 and the benefit of this scheme are available irrespective of the year and date of passing the departmental examination and restriction of the pay to the minimum of pay scale of Inspector/ITO was also removed. On a perusal it also appears that the applicant did not challenge the letter dated 20.10.94 on the basis of which the respondents have issued order dated 8.5.97.

9. The learned counsel for the applicant vehemently argued that sanction of two advance increments was suo moto action of the government on passing the departmental examination by the applicant and it is a settled law that even if a wrong fixation of pay was done by the government suo moto no recovery can be made after a long lapse. On the other hand the learned counsel for the respondents has submitted that in case of wrong payment recovery can be made from the applicant at any stage



and there is no illegality in passing the impugned order dated 8.5.97 for recovery from the applicant.

10. Law is well settled on the point that in all cases where the government has fixed the pay suo moto even if the government has fixed wrong pay no recovery can be made after a long lapse.

11. 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.

12. 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.

13. In Collector of Madras & Anr. Vs. K.Rajamanickam, (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.

14. 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 Apprentices 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 judgments of various Tribunals would cause hardship to the respondents/appellants concerned and, therefore, the respondents (Union of India) were directed not to recover the amount already paid.

15. 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.

16. 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.

17. In view of the legal position as stated above and the facts and circumstances of this case, we are of the considered view that no recovery can be made from the applicant in pursuance of the impugned orders dated 8.5.97 and 20.5.97.

18. On the basis of the foregoing, we allow this O.A to the extent that no recovery can be made from the applicant in pursuance of the orders dated 8.5.97 and 20.5.97. We, therefore, direct the respondents not to recover any amount from the applicant in pursuance of the orders dated



8.5.97 and 20.5.97.

19. No order as to costs.



(N.P.Nawani)

Member (A).



(S.K.Agarwal)

Member (J).