

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JATPUR BENCH, JATPUR.

DATE OF ORDER : 9/5/2012

OA No. 169/2001

S.R.M. Chishti son of S. Shafi Mohd. aged 58 years Income Tax Officer, 2nd Ward, in Income Tax Office, Ajmer under the Ministry of Finance and resident of Peerzada House, Khadim Mohalla, Imam Bara, Ajmer.

....Applicant.

VERSUS

1. Union of India through Secretary to the Ministry of Finance (Department of Revenue) Central Board of Direct Tax, New Delhi.
2. Chief Commissioner of Income Tax, Rajasthan, Central Revenue Building, Bhagwandass Road, Jaipur.

....Respondents.

Mr. N.K. Gautam, Counsel for the applicant.

Mr. Gaurav Jain, Proxy counsel for

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

CORAM

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

Hon'ble Mr. H.O. Gupta, Member (Administrative)

ORDER

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

In this OA filed u/s 19 of the Administrative tribunal's Act, applicant makes a prayer not to withdraw the incentive of advance increments from the applicant and to



direct the respondent not to effect any recovery from him on account of withdrawal of such advance increments.

2. The applicant was initially appointed as UDC in 1964 and was promoted as Head Clerk in 1979. Applicant passed the Income Tax Inspector Examination in 1981. As per Notification No. F.No. 2(29) Ad.VII/53 dated 24.7.55, the applicant was granted two advance increments vide order dated 10.3.95 w.e.f. 1981 but vide order dated 17.11.2000, the respondent department withdraw the two advance increments granted to the applicant vide order dated 10.3.95, and in pursuance of this order recovery is to be made from the applicant. It is stated that department has granted two advance increments suo motto and there was no misrepresentation on the part of the applicant. Therefore, it is stated that withdrawal of these incentives already granted to the applicant is unjust and improper. It is also stated that CAT, Jabalpur Bench has already taken a view not to withdraw the advance increments already granted. Therefore, the applicant is similarly situated and not applying this decision in the case of applicant is discriminatory. Hence this application.

3. Reply was filed. In the reply, it is stated that applicant was wrongly granted two advance increments on the basis of Circular dated 24.7.1955. It is stated that Supervisors were not entitled to advance increments as per Circular dated 24.7.55 unless they pass the examination of Income Tax officer. Since the applicant was wrongly granted two advance increments, therefore, respondents are right to withdraw the same and to recover the amount wrongly paid from the applicant and there is nothing wrong in withdrawing and recovering the same. it is stated that applicant has not placed any copy of the order of CAT, Jabalpur Bench. Therefore, applicant is not entitled to any relief on the ground of similarly placed persons. Thus applicant has no case.



4. Rejoinder has been filed reiterating the facts stated in the OA.

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

6. Circular No. F. No. 2(29) Ad. VII/53 dated 24.7.55 makes it further very clear that Stenographers in the Income Tax Department on passing the examination of Income Tax Inspector and Head Clerks & Supervisors on passing the departmental examination for Income Tax officer can be granted two advance increments. Admittedly, the applicant was holding the Supervisor Grade II on the date when he appeared and qualified the examination of Income Tax Inspector and he was not in the category of LDC/UDC. The Circular dated 24.7.55 was clarified by subsequent circular dated 8.12.60, issued by Ministry of Finance to All commissioners of Income Tax, that Steno typists, stenographers, Head Clerks and Supervisors in the Income Tax Department who have qualified or qualify in future in the next higher departmental examination, i.e. Steno typist on passing departmental examination for Ministerial Staff, Stenographers on passing the Departmental examination for Inspector and Head Clerks & Supervisors on passing the Departmental Examination for Income Tax Officers will be granted two advance increments and in view of the clarification made by the department, department was ready to withdraw the order vide which two advance increments were granted to the applicant as an incentive on passing of examination of Income Tax Inspector.

7. The learned counsel for the applicant has also argued that the two increments were granted to the applicant by the department suo motto and there was no misrepresentation on the part of the applicant. Therefore, no recovery can be made from the salary of the applicant. On the other hand, learned counsel for the respondents has argued that benefit wrongly granted to the applicant can be recovered.



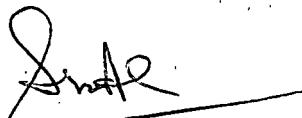
8. We have given our anxious consideration to the rival contention of both the parties and also perused the whole record.

9. In Laxmichand vs. Union of India 1998(1) SLR 599, it was held that if the order involves civil consequences and has been issued without affording opportunity of hearing to the applicant, such an order cannot be passed without complying with audi alteram partem, i.e. parties should be given the opportunity to meet his case before an adverse decision is taken.

10. In Shyam Bau Verma & Ors vs. Union of India & Others (1994) 2 SCC 521, the third Pay Commission had recommended two scales of pay for the post of Pharmacist and accordingly, the petitioners were allowed the higher scale w.e.f. 1.1.1973 though they were entitled to the lower scale. The pay scale of the applicants was reduced in 1984. It was held that the petitioners received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them.

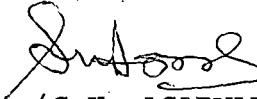
11. In Sahib Ram vs. State of Haryana & Ors 1995 Supp (1) SCC 18, upgraded pay scale was given to the appellant due to wrong construction of relevant order by the authority concerned without any misrepresentatin by the employee and the Govt. was restrained from recovering the overpayment already made.

12. In view of the above legal position as referred above and facts and circumstances of this case, we are of the considered opinion that no recovery can be made from the applicant by the department after such long lapse.



13. We, therefore, allow this OA in part and direct the respondents not to make any recovery from the salary of the applicant in pursuance of the order dated 17.11.2000 and if any recovery has already been made, that amount shall be refunded to the applicant within two months from the date of receipt of a copy of this order. No order as to costs.


(H.O. GUPTA)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)

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