

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

CA 272/2001

DATE OF ORDER: 25-4-03

R.L. Singhal son of Sita Ram Singhal aged about 69 years,
resident of D.97, Vaishali Nagar, Jaipur.

.... Applicant.

VERSUS

1. Secretary, Union of India, Ministry of Finance, Deptt. of Revenue, North Block, Central Secretariate, New Delhi.
2. Chief Commissioner of Income Tax, Raj. C.R. Building, Statue Circle, Jaipur.
3. Commissioner of Income Tax, Rajasthan, C.R. Building, Statue Circle, Jaipur.

.... Respondents.

Mr. K.R. Guglani, Counsel for the applicant.

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

CORAM:

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

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

ORDER

PER HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)

The applicant is a retired Supervisor of Income Tax Department having retired on superannuation on 31.7.1990. While working as Head Clerk, the pay of the applicant was stepped up under FR 27 from Rs. 470/- to Rs. 485/- per month w.e.f. 13.2.1973 vide order dated 1.4.1977 (Annexure A/2). Subsequently another order was passed by the Inspecting Asstt. Commissioner of Income Tax mentioning therein that Commissioner of Income Tax Jaipur vide his order dated 16.4.1982 has withdrawn his earlier order of stepping up of pay w.e.f. 13.2.1973. Copy

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of this order has been placed on record as Annexure A/3.


Accordingly the pay of the applicant was stepped down and recovery of the excess payment was ordered to be effected

@ Rs. 50/- per month; The further case of the applicant is that some of the officials of the Department have filed Civil Suits/OA and some others have filed petition before the Hon'ble High Court regarding the action of the respondents, withdrawing the benefit of stepping up of pay and actions of the respondents were held illegal and the officials were granted the benefit of stepping up of pay as was granted to them and recovery so made was ordered to be refunded. Pensionary benefits granted to them was also directed to be recalculated. The applicant has referred

some of the decisions so rendered by the CAT in Para 3 of the application. The applicant has further alleged that ⁱⁿ one of the decisions rendered by CAT, Jodhpur Bench in RP 35/86 in TA 529/86 decided on 13.7.1990, the Income Tax Board decided that no SLP should be filed and the order of the CAT be implemented immediately. It was further decided by the Income Tax Board that similar pay anomaly cases be also decided in the light of said CAT decision. Copy of said decision has been placed on record as Annexure A/5. The further case of the applicant is that when nothing was done in pursuance of Board's decision (Annexure A/5), he made a representation dated 22.06.92 to the Commissioner of Income Tax, Jaipur whereby stating that the pay once fixed under FR 27 cannot be refixed by withdrawing the benefit given thereunder. The copy of the said representation has been annexed with OA Annexure A/4. In this representation, the attention of the Income Tax Commissioner was also fixed invited to the aforesaid decision of the Jodhpur Bench rendered in RP No. 35/1986 in TA No. 529/1986 and request was made to refund the amount recovered and also grant pensionary



benefits on the basis of refixation of pay as if no order of stepping down the pay has been passed. The applicant has further stated that he also issued notice of demand of justice dated 12.1.1997 (Annexure A/6) to the Secretary, Govt. of India, Ministry of Finance department of Revenue. The request of the applicant was turned down vide impugned order dated 22/23.1.2001 (Annexure A/1) whereby the applicant was informed that his request for application of Hon'ble CAT's judgements in various cases has ~~not~~ not been accepted. The applicant has also placed on record the letter dated 25.2.1997 (Annexure A/7) addressed by the Standing Counsel to the Chief Commissioner of Income Tax Rajasthan. The Standing Counsel has opined that the applicant is entitled to the benefit of judgement rendered by the ~~various~~ CAT Jaipur whereby stepping down of pay was not held justified. It is on this basis, the applicant has filed the present application whereby praying that the order (Annexure A/1) may kindly be struck down as been illegal and the respondents may be directed to treat the case of the applicant at par with the cases of other officials as already decided by the Hon'ble Tribunal as mentioned in Para 4 of the application and as a consequence of this, the order of stepping down of pay dated 30.7.1982 (Annexure A/3) be ordered to be withdrawn and the applicant's pay be restored in accordance with stepping up pay order dated 1.4.1977 (Annexure A/2). The applicant has also prayed that the recovery effected from the applicant be refunded alongwith interest and pensionary benefits may be ordered to be recalculated and pay arrears alongwith interest.



2. The ground taken by the applicant in this OA are :-

(i) that the order Annexure A/1 is violative of Article 14 of the Constitution and is against the judicial propriety and principles of uniformity of judicial decision in as much as the benefit has been given to certain persons who sought relief from the Hon'ble Tribunal whereas such benefits has not been extended to the applicant. The impugned order dated 22/23.1.2001 (Annexure A/1) is illegal order which contains that the case of the applicant was not identical to the cases decided by the Tribunal and the applicant is not similarly situated person.

(ii) That the action of the respondents is against the Govt. of India, Ministry of Law order dated 8.8.1962 which lays down that once fixation was down by the competent authority in exercising the discretion vested in FR 27, that authority was not competent under law to reduce the initial pay originally fixed even when such pay was fixed on some data which subsequently proved to be incorrect.

3. The respondents have contested the case by filing the reply. It is submitted that this OA has been filed after a delay of nineteen years as the present OA is against the order dated 30.7.1982 (Annexure A/3) and the present OA has been filed in the year 2001. It is hopelessly time barred. The second objection raised by the respondents in the reply is that the applicant has not challenged the order passed by the Commissioner of Income Tax Jaipur dated 16.4.1982. The order dated 30.7.1982 (Annexure A/3) is only a consequential order of the order dated 16.4.1982 and as such the present OA is not maintainable. On merits, the respondents have submitted that the pay of the applicant was wrongly stepped up from Rs. 470/- to Rs. 485/- under FR 27 vide order dated 1.4.1977 (Annexure A/2) w.e.f. 13.2.1973. Therefore, the pay of the applicant was again stepped down vide order dated 16.4.1982 and 30.7.1982 (Annexure A/3). It is

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further submitted that the applicant has suppressed material facts from the Hon'ble Tribunal. The applicant has made a representation dated 27.6.1994, which was considered and decided and the applicant was informed vide order dated 29.11.1994 (Annexure R/1). It is also submitted by the respondents that the facts of the judgement as relied upon by the applicant is not applicable to the facts & circumstances of the present case. Regarding Annexure A/7, the opinion given by the Standing Counsel, it has been stated that it is a privileged document and no reliance can be drawn.

4. The applicant has also file the rejoinder, in which he has also filed the copy of the order passed by the CAT, Jaipur Bench in OA No. 896/92, Devi Prasad vs. Union of India, decided on 24.3.93 which according to the applicant is applicable to the facts & circumstances of this case and where the learned Tribunal has held that in the matter of fixation of salary, the juniors should not be allowed to draw higher salary only on the ground that the senior has not approached the court. The right of equality generates from Article 14 of the Constitution and it is a continuous right and if there is any infringement of Article 14, the limitation may not be applied.

5. We have heard the learned counsel for the parties and have gone through the material placed on record.

6. The learned counsel for the applicant while relying upon the judgements of the Tribunal as mentioned in Para 3 of the OA and more particularly upon the judgement of this Tribunal dated 24.3.93 passed in OA 896/92, Devi Prasad vs. Union of India & Others and also the order of the Railway Board dated 19.12.90 (Annexure A/5), the decision given by the Standing Counsel dated 25.2.97 (Annexure A/7) and Government of India order dated ^{Hd/B} ₆₉

8.8.62 under FR 27 argued that the pay once fixed under FR 27 could not have been withdrawn and the applicant was entitled to the similar treatment as was given to other similarly circumstanced employees who have obtained reliefs from various Tribunals. The action of the respondents in passing the impugned order dated 23.1.2001 (Annexure A/1) which is cryptic and violative of Article 14 of the Constitution of India, cannot be sustained in law and the same deserves to be quashed and set aside.

7. We have considered the submissions made by the learned counsel for the applicant and according to us, there are considerable force in the submissions ~~made~~ by the learned counsel for the applicant. It is not disputed that the pay of the applicant was stepped up from Rs. 470/- to 485/- per month w.e.f. 13.2.1973, the date from which his juniors had started drawing pay of Rs. 485/- per month in exercise of power conferred under FR 27 vide order dated 1.4.77 (Annexure A/2). This order was subsequently withdrawn by the Commissioner of Income Tax, Jaipur vide order dated 16.4.1982 and subsequently order dated 30.7.1982 (Annexure A/3) came to be passed by Inspecting Asstt. Commissioner of Income Tax, Range I, Jaipur and the pay of the applicant was re-fixed and recovery of excess payment was ordered to be effected @ Rs. 50/- per month. The learned counsel for the applicant has argued that the order dated 16.4.1982 passed by the Commissioner of Income Tax withdrawing the earlier order (Annexure A/2) was passed on a noting portion of the file and was never communicated to the applicant and as such there was no occasion for the applicant to challenge the said order. The learned counsel for the applicant has argued that the order dated 30.7.1982 (Annexure A/3) whereby the pay of the applicant was reduced and recovery of excess payment was ordered to be made with immediate effect @ Rs. 50/- per month and copy of the said order was also communi-

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cated to the applicant being the impugned order, the same has been challenged by the applicant and no grievance can be made by the respondents to the effect that the order passed by the Commissioner of Income Tax dated 16.4.1982 passed on file, which was never communicated to the applicant, has not been challenged. We see considerable force in the submissions made by the applicant. The applicant has challenged the order Annexure A/3, which was communicated to him and by which the pay of the applicant was reduced and refixed and excess payment was ordered to be recovered. Regarding the question of limitation, our attention was invited by the learned counsel for the applicant to the decision of the Railway Board dated 19.12.90 (Annexure A/5). This order has been passed by the Railway Board pursuant to the decision of CAT, Jodhpur Bench dated RP No. 35/86 in TA 529/86 and it was decided by the Railway Board that no SLP is to be filed against this order and the said order of the CAT should be implemented. It was further observed in last line of this order that similar pay anomaly case be settled in the light of said CAT decision. In view of this decision taken by the Railway Board that similar pay anomaly cases be settled in the light of the said CAT decision, it was expected from the respondents to reconsider the case of the applicant and grant the same relief. It was not done by the lower functionary of the Government. Ultimately the applicant was compelled to make representation to the Commissioner of Income Tax, Jaipur which he made on 22.6.92 (Annexure A/4). In para 2 of this letter, it has been specifically stated by the applicant that as per Govt. of India decision No. 13 below FR 27 the pay once fixed under FR 27 cannot be reduced subsequently even if it is based on some incorrect data. The attention of the authority was also invited towards the decision of the CAT Jodhpur Bench in RP 35/86 in TA 529/86 decided on 12.7.90



that the Tribunal has held that the pay once fixed under FR 27 cannot be withdrawn by any authority and the benefit of this decision should also be given to him. Once the Income Tax Board has taken the decision that the cases of pay anomaly in respect of other similarly situated persons should be decided in the light of the aforesaid decision rendered by the Jodhpur Bench, it is not understood how the respondents can plead that the cause of action arose in the year 1982 when the impugned order dt. 30.7.1982 (Annexure A/3) was passed. From the material placed on record, it is evident that after the decision rendered by the Jodhpur Bench in RP 35/86 in TA 529/86, which decision was accepted by the Railway Board vide order dated 19.12.90 (Annexure A/5) and made applicable to the persons ~~and~~ similarly situated, the applicant was expecting favourable decisions from the authorities and when no such decision was forthcoming, he within reasonable time made a representation dated 22.6.1992 (Annexure A/4). In this representation as already stated above, the applicant has pleaded that the pay once fixed under FR 27 cannot be reduced in view of Govt. of India decision No. 13 below FR 27 as well as the decision of the CAT, Jodhpur Bench. The respondents have not disputed the receipt of this representation and also stated in the reply that the decision was ~~even~~ taken on such representation of the applicant. Rather the lower functionary of the respondent authorities were expounding the cause of the applicant, that he is also entitled to similar benefit as was extended to similarly situated persons but ~~the~~ ^{passing of} ~~passed~~ impugned order dated 22/23.1.2001 (Annexure A/1). Thus we are of the view that there is no delay on the part of the applicant in filing the present OA as ^{he} ~~has~~ filed a representation within reasonable time on the basis of the decision taken by the Railway Board vide Annexure A/5 whereby it was decided that similar pay anomaly cases may be decided in the light of the decision rendered by the CAT, Jodhpur vide order dated 13.7.1990. The department was

recommending the case of the applicant to the higher authorities for favourable decision and it was only vide impugned order dated 22/23.1.2001 (Annexure A/1) that the applicant was informed that he is not entitled to the benefit of decisions rendered by CAT in similar cases.

7. The matter is required to be look into yet from another angle. From the material placed on record, it is evident that the notice of demand of justice was made on behalf of the applicant vide notice dated 12.1.1997 (Annexure A/6) whereby he has pleaded that the benefit of the judgement rendered should also be extended to him. From Annexure A/7, it appears that the Chief Commissioner of Income Tax Rajasthan, Jaipur sought opinion of Standing Counsel vide letter dated 21.1.1997 and the Standing Counsel vide its letter dated 25.2.1997 enclosed the copy of opinion in the matter of notice of demand of justice given by the applicant. It will be useful to extract Para 2 of this opinion which will have bearing on this case, which reads as under:-

"Number of similar matter in connection with pay anomaly were filed before Hon'ble CAT Bench at Jaipur and in all the cases, the afore-said CAT has held that withdrawal of stepping up pay or stepping down pay which was earlier granted was not justified and was violation of principles of natural justice. All cases have been decided against the Department and the Central Board of Direct Taxes have also accorded the judgements in these matters passed by Hon'ble Court and has not filed any special leave petition in the Hon'ble Supreme Court. Hence in my opinion, the same benefit may be given to Shri R.L. Singhal, also. Opinion is given accordingly."

Thus from the portion as quoted above, it is quite evident that the case of the applicant is similar to that of other similarly situated ^{persons} and he was entitled to the benefit of the judgement rendered by CAT Bench at Jaipur and his pay was wrongly stepped down. It is also clear that case of the applicant was under active consideration of the Govt. The respondents have passed the impugned order dated 22/23.1.2001 (Annexure A/1) informing that the applicant's request for application of Hon'ble CAT's judgements in various

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cases in his case has not been accepted. From the perusal of impugned order (Annexure A/1), it is clear that the case of the applicant was not rejected on the ground of limitation. Thus the respondents cannot be permitted to plead that the present application should be rejected on the ground of limitation being highly belated when the case of the applicant has not been rejected by the respondents on the ground of limitation but the same was decided on merits. Even on merits, respondents have failed to justify the impugned orders. If impugned order (Annexure A/1) is perused, this order is cryptic and non speaking and does not disclose reasons as to how the case of the applicant is different to the cases relied upon by the applicant while rejecting the representation of the applicant. That part, the respondents have also failed to place any material on record in this OA to justify as on what basis the applicant is not entitled to the benefit of the judgement as mentioned in Para 3 of the OA and his case is different to the cases as mentioned by him. The respondents have also not controverted the specific plea taken by the applicant that in view of Govt. of India decision at Item No. 13 below FR 27 pay once fixed under FR 27 cannot be reviewed. However, in the interest of justice, we granted further opportunity to the respondents to file an affidavit clearly stating whether judgement dated 24.3.1993 of this Tribunal in OA No. 896/92 was applied to the similarly situated persons as per laid down law and if that has become final. It was further observed that the respondents should also state very categorically as to how the case of the applicant is different to the case in the said OA. Pursuant to the aforesaid direction given by this Tribunal, the respondents have filed the desired information through MA No. 36/2003 whereby annexing certain documents as Annexures R/2 to R/4. The Annexure R/2 is a letter dated 5.2.1997 written by Under Secretary to the Government of India to the Chief Commissioner of Income Tax whereby it was intimated that necessary action on the notice of demand of justice submitted by the applicant be taken in consultation with the Department's Standing Counsel and the report in this matter be sent to the Board, citing previous correspondence if any. As already stated above,

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the Standing Counsel has given his opinion which has been reproduced in the earlier part of the order, whereby clearly stating that the applicant is entitled to the same benefit as has been given to the other similarly situated persons who have obtained favourably order from the Jaipur Bench. After obtaining opinion from the Standing Counsel, the matter was sent to the Under Secretary, Govt. of India by the Chief Commissioner of Income Tax, Jaipur vide letter dated 24.2.1997 (Annexure R/3). In last para of this letter, it has been specifically stated that the case of the applicant is similar to other similarly pay anomaly cases. This Para which has bearing on this case is reproduced hereunder,

"While disposing of the pay anomaly case of Shri D.P. Govil, ACIT (Retd.) vide their order dated 24.3.1993 (Copy enclosed), the CAT, Jaipur Bench had observed that it is the duty of the State not to compel all the employees to move to the Court of law for grant of relief, if they are similarly situated and their cases are identical in nature. The said decision was also accepted by the Board vide their letter F.No. C-18011/101/92-(V&L)(Pt) dated 17.11.1993 and necessary directions were issued for implementation of the said decision Balkish Chandra and 2 others vide this Office letter No. CC/AC(A)/JPR/Pension/VC/96-97/320 (copy enclosed) dated 30.10.1996 addressed to the Director (V&L), but the Board's decision is awaited. The facts of the case of the applicant are similar to other pay anomaly cases. The Board is accordingly requested to kindly examine the matter and convey its decision at an early date."

The respondents have also placed on record the letter dated 10.10.2000 (Annexure A/4) written by the Under Secretary to the Government of India to the Chief Commissioner of Income Tax whereby enclosing opinion of the Department of Personnel & Training in the case of one Shri Ram Chandra, Income Tax Inspector at relevant time. On the basis of opinion as was given in the case of Balkesh Chander, Income Tax Inspector, the same was also made applicable to the applicant and the impugned order (Annexure A/1) was passed. Despite out repeated query and further opportunity granted to the respondent vide order dated 16.1.2003, the respondents have not stated even remotely that the case of the applicant is different to the cases

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mentioned in Para 3 of the OA. Rather from the portion quoted above, the respondents have themselves accepted that the case of the applicants is similar to other pay anomaly cases and this Bench in the case of D.P. Govil had observed that it is duty of the State not to compel all the employees to move to the Court of law for grant of relief, if they are similarly situated and their cases are identical in nature. Despite this categorical stand of the department, no benefit was granted to the applicant and he was compelled to file the present OA. Thus the action of the respondents not extending the benefit of the judgement of the CAT is arbitrary and not sustainable in the eyes of law. At this stage it will be useful to reproduce the Government of India decision No. 13 under FR 27, which reads as under :-

"(13) WRONG FIXATION UNDER FR 27 INITIAL PAY FIXED NOT TO BE REDUCED. -


Once fixation was done by competent authority in exercise of the discretion vested in it under FR 27 that authority was not competent under the law to reduce initial pay originally fixed even when such pay was based on some data which subsequently turned to be incorrect."


The case of the applicant is also covered under this decision. Thus it will be ^{Transversely} ~~transversely~~ of justice if the applicant is not extended the benefit of that judgement rendered by this Bench in the case of D.P. Govil vs. UOI & Others and other cases as mentioned in Para 3 of the OA especially when the said benefit has been extended to number of persons who have filed OA before this Tribunal and obtained appropriate relief especially when the respondents have failed to place any material on record as to how the case of the applicant is not similar to other persons similarly situated whom such benefit has been extended. Besides it, the action of the respondents is contrary to Govt. of India decision dated 8.8.1962 under FR 27 as reproduced above ^{and also} ~~especially~~ in view of the decision of the Income Tax Board dated 19.12.1990 (Annexure A/5) in which it was decided that the said benefit should also be granted to similarly situated persons. That apart, the respondents have themselves

admitted that Tribunal in the case of D.P. Govil vs. UOI has decided that the said benefit be given to all the employees for grant of relief if they are similarly situated and if their cases are identical in nature. This being a judgement in rem, it was the duty of the respondents to implement the said judgement and grant the relief of the applicant. On this score also, the respondents were not justified in passing the order dated 22/23.1.2001 (Annexure A/1).

8. ^{Thus,} We are of the view that the applicants are entitled to the relief as prayed for and the respondents are directed to refix the pay of the applicant on the basis of order dated 1.4.1977 (Annexure A/2) and to re-calculate the pensionary benefits and arrears of pay, if any, within three months from today. The respondents are further directed to refund the excess payment as drawn from the pay of the applicant within the same period.

9. The OA is disposed of accordingly with no order as to costs.


(M.L. CHAUHAN)
MEMBER (J)


(H.O. GUPTA)
MEMBER (A)