

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 17.07.2003

OA No.247/2002

Panna Lal Tailor (Retd. ITO) Sikar s/o Shri Sagarmal Ji Tailor, aged about 60 years r/o 2/54, Rajasthan Housing Board, Devipura, Sikar.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Finance, Govt. of India, New Delhi.
2. Chief Commissioner of Income Tax, New Central Revenue Building, Statue Circle, Jaipur.
3. Zonal Accounts Officer, New Central Revenue Building, Statue Circle, Jaipur.

.. Respondents

Mr. Nand Kishore - counsel for the applicant

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

CORAM:

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

O R D E R (ORAL)

Per Hon'ble Mr. M.L.Chauhan

The applicant was initially appointed as LDC/Stenographer in the respondent department on 26.5.62. He was further promoted as Upper Division Clerk in the year 1966 and subsequently promoted as Head Clerk in the year 1979. While working as Head Clerk, the applicant qualified the departmental examination for the post of Income Tax Inspector which was held in June, 1981. It is the case of the applicant that he was sanctioned two advance increments vide order dated 9.5.85 in view of the Ministry of Finance circular dated 24.7.55 read with circular dated 19.6.65 and 9.8.83 for passing the

department examination. The applicant ^{was} further posted as Supervisor on 10.8.87 and promoted as Income Tax Inspector in the year 1988. Further, he was promoted as Income Tax Officer (ITO) in the year 2001 and retired as such on superannuation on 30.3.2002. The grievance of the applicant is that while settling his pensionary dues and sanctioning the amount of gratuity, it was advised by the respondent No.3 that an over payment of advance increments granted to the applicant vide order Ann.A3 amounting to Rs. 95,145/- be recovered from the gratuity payable to the applicant. Copy of this letter has been placed on record at Ann.A1. Further grievance of the applicant is that the respondent No.3 vide letter dated 19th March, 2002 while checking the pension papers of the applicant intimated that two advance increments on passing the departmental examination of Income Tax Inspector are not admissible to the Head Clerk whereas the same are admissible to the LDC/UDC and Stenographers and consequently the pay of the applicant was refixed and reduced as Income Tax Inspector w.e.f. 1.7.83 from Rs. 600 to Rs. 560 and the earlier order issued in this behalf vide letter dated 9.5.85 (Ann.A3) was withdrawn vide letter dated 26.3.02 (Ann.A2). Feeling aggrieved by these orders, the applicant has filed the present OA praying that the recovery of Rs. 95,145/- be declared null and void and set-aside and the said amount be paid to the applicant with 18% interest. Further prayer of the applicant is that the impugned order Ann.A2 vide which two advance increments were granted to the applicant have been withdrawn arbitrarily be declared null and void and set-aside and the respondents be directed to revise the pension of the applicant taking into consideration two advance increments sanctioned to the

applicant in the year 1985 and the respondents be further directed to arrange revised pension with 18% interest.

2. The grounds taken in this OA by the applicant in support of his grievances are that the amount of gratuity has been recovered without following the normal procedure of law and such recovery could not have been effected after a long time without show-cause notice even if it is held that the benefit of advance increments was wrongly given. The applicant has further contended that the applicant was not served any show-cause notice for withdrawing the increments granted in the year 1985.

3. The respondents have filed reply to the OA. The stand taken by the respondents in their reply is that two advance increments sanctioned to the applicant vide order dated 9.5.85 were not in accordance with the rules. As per clarification dated 20.10.94 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi addressed to Chief Commissioner of Income Tax, Kanpur and copy endorsed to all CCIT/CITs, advance increments for passing the Income Tax Inspector examination was introduced vide letter dated 24.7.55 to LDCs and UDCs. This concession was further extended to Stenographer Grade-III vide letter dated 8.12.60. This concession of advance increments was not extended to any fresh category of staff. In the light of aforesaid letter dated 22.10.94 and 17.11.2000. it is further averred that the applicant was intimated of the fact of erroneous advance increments and its over payments by the Assistant Commissioner, Sikar vide order dated 26.3.02 (Ann.A2) (date wrongly mentioned as 23.3.02). According to the

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respondents, the applicant is not entitled to any relief.

4. The applicant has filed rejoinder reiterating the stand taken in the OA. It is further contended that the circular dated 17.11.2000 is not applicable in the facts and circumstance of this case. The recovery has been effected after 16 years that too from the retiral benefits and without any show-cause notice. The respondents have failed to produce the Ministry of Finance circular dated 24.7.55 as amended by circular dated 19.3.65 and 9.8.83 which will clarify the position under what provision the increment was sanctioned to the applicant vide order dated 9.5.85 (Ann.A3) where the reference to GOI circular finds mention.

5. Since the entire case of the applicant hinges upon the interpretation of Ministry of Finance circular dated 24.7.55 as amended vide circular dated 8.12.60 and 9.8.83, this Tribunal vide order dated 21.4.03 directed the learned counsel for the respondents to place these documents on record whereby it can be seen that Head Clerks were not entitled to advance increments on passing the departmental examination. The respondents have placed these documents on record.

6. I have heard the learned counsel for the parties and gone through the material placed on record.

6.1 Without going into the merits of the case, the matter can be disposed of only on the short point that before reducing the pay of the applicant after a lapse of almost 16 years and ordering recovery of sum of Rs. 95,145/- from the gratuity amount of the applicant, no

show-cause notice was issued to the applicant. Such action on the part of the respondents is not legally sustainable and is in violation of the principles of natural justice. The aim of the rule of natural justice is to secure or to put it negatively to prevent miscarriage of justice. In a sense, it is meant to assure that the party concerned has an opportunity of being heard on the principle of audi-alteram-partem. The violation of rule of natural justice results in arbitrariness which is the same as discrimination. Where the discrimination is a result of State action, it is a violation of Article 14. Therefore, a violation of principle of natural justice by a State action is a violation of Article 14. It is further judicially settled that an order by a State to the prejudice of a person in derogation of his vested right may be made only in accordance with the basic rule of justice and fairplay. Since the recovery of huge amount of Rs. 95,145/- from the gratuity amount of the applicant and also reducing his pay by two increments w.e.f. 1.7.83 after a lapse of about 17 years certainly effects the rights of the applicant and as such, such an order could not have been passed without affording opportunity to the applicant to show-cause against the said action. Thus, the action of the respondents in passing the impugned order Ann.A2 dated 26.3.02 thereby reducing the pay of the applicant by two increments w.e.f. 1.7.83 till 1.1.02 and withdrawing the earlier order dated 9.5.85 (Ann.A3) is arbitrary and as such not legally sustainable and the same deserves to be quashed and set-aside.

6.2 The instant case is also squarely cover^{ed} by the decision of the Apex Court in the case of Bhagwan Shukla vs. Union of India and ors., 1994 (4) SLR 614 wherein the pay of the appellant therein was reduced with

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retrospective effect without affording any opportunity of being heard on the ground that it was wrongly fixed initially and that position continued due to administrative lapses for about 20 years. The Hon'ble Apex Court in para 3 observed as under:-

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3. We have heard learned counsel for the parties. That the petitioner's basic pay had been fixed since 1970 at Rs. 190/- p.m. is not disputed. There is also no dispute that the basic pay of the appellant was reduced to Rs. 181/- p.m. from Rs. 190/- p.m. in 1991 retrospectively w.e.f. 18.12.1970. The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a feargrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee, suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant. The order of the Tribunal deserves to be set aside. We, accordingly, accpet this appeal and set aside the order of the Central Administrative Tribunal dated 17.9.93 as well as the order (memorandum) impugned before the Tribunal dated 25.7.1991 reducing the basic pay of the appellant from 190/- to Rs. 181/- w.e.f. 18.12.1970."

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That apart, the present applicant deserves to be

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succeeded yet on another ground. It has been judicially determined and settled by the Apex Court that where a Govt. servant is allowed to draw higher pay due to no fault of the Govt. servant concerned and the pay has been reduced subsequently after a lapse of considerable period, no step should be taken to recover or to adjust any excess payment paid to the employee. In the instant case, the advance increments have been paid due to the fault of the respondents and the applicant in no way can be held responsible for the same. In this behalf reference may be made to the decision of the Apex Court in the case of Shyam Babu Verma Vs. Union of India and ors. (1994) 27 ATC 121, Gabriel Saver Fernandes and Ors. v. The State of Karnataka and Ors., 1994 (5) SLR 625 and P.H.Reddy and ors. vs. National Institute of Rural Development and ors., 2002 (2) ATJ 208. Thus, the recovery of Rs. 95,145/- is not justified in view of the law laid down by the Apex Court even if it is held that the applicant was not entitled to two increments on account of passing of departmental examination. The learned counsel for the applicant has also relied upon the decision of CAT-Jodhpur Bench rendered in the case of Arjun Singh vs. Union of India in OA No.130/95 whereby it has been held that recovery from the retiral benefits of over payment made during the past 13 years solely due to administrative error, is not in conformity with the rules/instructions and as such withheld amount be refunded alongwith interest from the date of its due. Applying the ratio as laid down by the Apex court, the recovery of Rs. 95,145/- could not have been effected from the applicant after a lapse of 16 years that too from the retiral benefits, even if it is assumed that the applicant was not

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entitled to two increments. Thus, the application must succeed on this ground also.

6.4 Now let me make passing references to the circular dated 24.7.55, 8.12.60 and 9.8.83 according to which the applicant was held not entitled to grant of two increments on passing the departmental examination. So far as circular dated 24.7.55 is concerned, it specifically states that the President is pleased to decide that subject to fulfilment of under noticed condition, the Lower Division Clerk, Upper Division Clerks and Inspectors of Income Tax Department should be given two advance increments in the grade in which they were working from the date they qualified in the departmental examination prescribed for the next higher grade. This circular was followed by another circular dated 8.12.60 according to which the benefits of earlier circular dated 24.7.55 was extended to certain categories including the Head Clerk to which category the applicant belongs and was given benefit of two increments on passing the departmental examination for Inspectors. It will be useful to quote para 1 of this circular which will have bearing in this case.

"The President is pleased to extend the benefit of the orders contained in the Ministry of Finance (Revenue Division) letter No. 2(29) Ad.VII/53, dated the 24th July, 55 and subject to the conditions prescribed therein to 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., a Steno-typist on passing the Departmental Examination for Ministerial Staff, Stenographer on passing the Departmental Examination for Inspectors, and Head Clerks and Supervisors on passing, the Departmental Examination for Income Tax Officers will be granted two advance increments.

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Another circular which will have bearing in this case is dated 9.8.83 which reads thus:-

"I am directed to invite reference to this Department's letter of even number dated 6.4.1983 on the above subject and to clarify that the two advance increments may be granted to all persons, who have qualified in the Departmental Examination for promotion to the next higher grade, irrespective of the year or date of passing, but restricting the drawl of the increased pay and allowances (Arrears) from 6.4.83 the date of issue of the letter under reference."

As can be seen from the order dated 9.5.85 (Ann.A3) the benefit of two advance increments was given to the applicant w.e.f. 25.6.81 in view of the circular dated 24.7.55 and 9.8.83 but the arrears were confined w.e.f. 6.4.83 in view of the circular dated 9.8.83. From the portion as quoted above, it is quite evident that benefit of two advance increments was also extended to the Head Clerks, besides Steno-Typist, Stenographer and Supervisors on passing the departmental examination for promotion to next higher grade. The specific case as pleaded by the respondents in their reply and more particularly in para 4(2) is that advance increments for passing the Income Tax Inspector Examination was effective vide letter dated 24.7.55 to LDCs and UDCs. This concession was further extended to Stenographer Grade-III vide letter dated 8.12.60 and this concession of advance increment was not extended to any other fresh category of of staff. This submission made by the respondents in the reply affidavit is not factually correct ~~as can be~~ seen in

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the light of the circular dated 8.12.60 relevant part of which has been extracted above. The benefit was not only extended to Stenographers but the same was also extended to Steno-Typist, Head Clerks and Supervisors. It is not the case of the respondents in the reply that there are two separate departmental examination i.e. for Income Tax Inspector and ITO and the applicant qualified the examination for Income Tax Inspector. Be that as it may, the benefit of earlier circular dated 24.7.55 was not only extended to Stenographers but it was also extended to 3 categories namely Steno-Typist, Head Clerk and Supervisors and as such the contention of the respondents that the benefit of this circular was only available to the Stenographers cannot be accepted. That apart, the basis of effecting recovery and reducing pay of the applicant at the fag end of retirement is on the basis of the clarification issued on 20.10.94 and 17.11.2000 (Ann.R1 and R2). If the letter dated 20.10.94 is perused, this letter makes it clear that the said letter is prospective and the grant of advance increments to Head Clerks or Stenographers for passing the Inspector's Departmental Examination was not to be granted at this stage and no fresh category of staff be added to this scheme and further it has been decided that the benefit according to the existing scheme of advance increments be continued to the categories which have been granted such advance increments but no fresh category of staff be added to this scheme. The letter dated 20.10.94 is reproduced in extenso which thus reads:-

".....The concession of advance increment was not extended to any other fresh category of staff, except those to whom this concession had earlier been sanctioned, as indicated above. The

question of grant of advance increment to head clerk or stenographer Gr.II for passing the Inspectors Department Examinations does not arise at this stage. Moreover, passing of the examination itself is an incentive to employee to become eligible for appointment to a higher post on passing of such an examination. On these considerations, the existing scheme of advance increment needs to be abolished. However, considering that in the Income Tax Department the benefit of two advance increments is already admissible to some category of employees. It would be difficult to withdraw this incentive at this stage. It has, therefore, been decided that while the existing scheme of grant of advance increments for income tax side may be continued on historical grounds, (no fresh category of staff can be added to this scheme."

Thus from the perusal of the letter dated 20.10.94 it is quite evident that the benefit of grant of advance increment was dispensed with, with regard to fresh category of staff and the staff who were already given the benefit under the existing scheme were allowed to continue to draw advance increments. Similarly, the respondents also cannot draw any assistance from the letter dated 17.11.2000 which says that the Head Clerks and Stenographers are not entitled to grant of advance increments on passing the Inspectors Examination. However, para 3 of the said letter states as under:-

"As regards recovery of excess payment, the matter has been considered in consultation with the Finance Division of this department. It has now been decided that recoveries may be made from all concerned officials except those who have got a judgment from CAT in their favour."

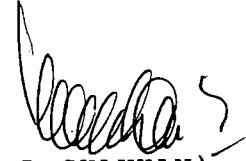
This letter is also discriminatory in nature in

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as much as the recovery of excess payment has been ordered from all concerned officials except those who got the judgment from the CAT in their favour. Once the department has accepted the decision of the CAT as final and not decided to challenge the same, it does not behove the department to make recoveries from persons who have not approached the Tribunal for redressal of their grievances and to waive the recovery in respect of persons who have obtained favourable order from the CAT.

7. For the reason aforementioned, taking any view of the matter, the impugned order Ann.A2 dated 26.3.02 is hereby quashed and set-aside. The respondents are directed to refund the amount of Rs. 95,145/- which was adjusted from the retirement gratuity payable to the applicant. The respondents are further directed to revise the pension of the applicant taking into consideration two advance increments sanctioned to the applicant vide order dated 9th May, 95 (Ann.A3) and on such refixation the applicant shall be entitled to the revised pension. The arrears on account of revised pension as well as recovery of Rs. 95,145/- recovered from the gratuity of the applicant shall be paid to the applicant within a period of 3 months from the date of receipt of a copy of this order. It is made clear that in case the arrears on account of enhanced pension and amount of Rs. 95,145 recovered from the gratuity of the applicant is not paid within 3 months from the date of receipt of this order, the amount which may become payable to the applicant ^{after the expiry of said period} shall carry interest at the rate of 12% p.a. from the date of filing of this application i.e. 23.5.02 till the amount is actually paid.

8. The OA is accordingly allowed with no order as to costs.



(M.L. CHAUHAN)

Member (Judicial)