

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 16.10.2003

OA No. 491/2002

A.P.Verma s/o Shri Badri Prasad Verma, r/o 2/443, Aravali Vihar, Alwar (Raj.), retired as Inspector, Income Tax Department, Alwar.

.. Applicant

Versus

1. Union of India through the Chief Commissioner of Income Tax, Income Tax Department, Statue Circle, N.C.R. Building, Jaipur.
2. The Principal Chief Controller of Accounts, Zonal Accounts Officer, Central Board of Direct Taxes Statue Circle, N.C.R. Building, Jaipur.
3. The Commissioner of Income Tax, Income Tax Department, Alwar.

.. Respondents

Mr. Arun Chaturvedi- counsel for the applicant

Mr. Gaurav Jain, proxy counsel to 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 has filed this OA thereby praying for the following reliefs:-

- i) That the illegal and non speaking rejection orders dated 5.8.2002 and 29.7.2002 Annex. A/3 and A/4 respectively may kindly be quashed and set aside and also the letter No.2109 dated 5.9.2001 (copy not served) by which recovery of Rs. 29,984/- has been made from the gratuity of

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the applicant may also be quashed and set aside and the respondent may be directed to refund Rs. 29,984/- to the applicant deducted in the garb of refixation of pay/reduction of pay from 1977 alongwith interest @ 12% per annum till realisation;

- ii) That any other beneficial orders or directions which this Hon'ble Tribunal deems just and proper in the facts and circumstances of the case be kindly passed in favour of the applicant.
- iii) Costs be quantified in favour of the applicant."

2. The main contention raised by the applicant in this case is that the respondent No.2 ordered recovery of Rs. 29,984/- from the retiral gratuity without show-cause notice. It is further contended that the applicant also submitted representation dated 24.12.01 to respondent No.3 which was forwarded by respondent No.3 to respondent No.2. However, the same was rejected by a cryptic order, as can be seen from letter dated 5.8.02 (Ann.A3) whereby the applicant was informed that as per reply of the Sr. Accounts Officer dated 29.7.02, which has also been annexed with this OA as Ann.A4, it has been mentioned that the pension case was finalised by the office after examining the revised fixation statement and recovery of over payment of Rs. 29,984/- was based on the revised fixation and no comments on the representation of the applicant is required to be given at this end. The further contention of the learned counsel for the applicant in this OA is that the pay of the applicant has been revised by the respondents after a lapse of 25 years. All the pay fixation orders were endorsed to the ZAO from time to time

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by the DDO. The audit party of the office of A.G.Rajasthan, Jaipur has also checked the entries of the service book and they did not point out any anomaly or mistake. The Jr. A.O. of the internal Audit of the ZAO also checked the entries of the service book on 6.2.85 and again on 23.5.88 but had not pointed out any mistake in the fixation of pay and its drawals. The applicant has never been informed about any amount due as recoverable from the applicant on account of over payment made on account of wrong fixation of pay. The payments made to the applicant were suo moto and the applicant received pay and allowances fully under the impression that the amount disbursed by way of pay and allowances was legally and rightly due to the applicant. It is in these circumstances, it cannot be contended that any over payment had been made to the applicant 25 years back and the applicant is asked to refund the same.

3. Notice of this application was given to the respondents. The respondents have stated that the applicant was promoted from the post of UDC to the post of Tax Assistant vide order dated 15.5.78 passed by the Commissioner of Income Tax and his pay was fixed as Rs. 455/- as on 15.5.78 after giving benefit of 1 grade increment of the lower post i.e. UDC and benefit of FR-26. The applicant was receiving Rs. 440/- as UDC. Rs. 12/- was added as one increment for post of UDC which comes to Rs. 452 and after fixing the pay under FR 26, the pay of the applicant was fixed as Rs. 455. The next increment was due as on 1.5.79. The pay of the applicant should have been fixed as Rs. 470/- but due to clerical mistake or otherwise it was fixed as Rs. 485/-. The applicant was

aware about this fact as his service book bears his signatures. The discrepancies in pay was pointed out by Zonal Accounts Office vide letter dated 19.9.96. As such, according to the respondents the recovery was rightly effected from the applicant.

4. I have considered the matter. Admittedly, the recovery was effected from the applicant after a lapse of 25 years without even giving show-cause notice to the applicant. Such action on the part of the respondents cannot be upheld. It is the minimum requirement of the principle of natural justice that before effecting any recovery, a show-cause notice has to be given to the person so affected and it is only after consideration of the reply, appropriate order can be passed by the authorities. In the instant case no such procedure was followed. Thus, there is violation of the principle of natural justice.

4.1 This view has also been upheld by the Apex Court in the case of Laxmi-Narayan-Mukhopadhyay-vs.-Union-of India and ors., JT 2002 (5) SC 355. In that case the appellant who was employee in the Ministry of Railway as Inspector of Works retired voluntarily from service on 30.11.1991. Since the post retiral benefits were not paid to him in full, he approached the Tribunal. The Tribunal on perusal of record produced by the respondents held that the appellant, Inspector of Works supplied to contractors excess of material and a sum of Rs. 49,535 was recoverable from the appellant's gratuity amount and the impugned order dated 24.11.1992 was upheld. The appellant filed a Civil Appeal before the Hon'ble Apex Court thereby contending that the Tribunal has erred in law inasmuch as

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this amount was arrived at by the respondents without giving opportunity to the appellant. On behalf of the respondents it was contended that by letter dated 12.6.1991 the appellant was asked to explain and thereafter the DRM (Engg.) by letter dated 24.11.1992 i.e. after the voluntary retirement of the appellant, directed that the amount should be recovered from the amount of gratuity of the appellant. The Apex Court after considering the matter held that the impugned order of the Tribunal is not sustainable and the same was set-aside. The respondents were directed to pay interest at the rate of 12%. Besides this a cost of Rs. 10,000 was also awarded in favour of the appellant. In the instant case also, as already stated, recovery has been effected from the amount of gratuity of the applicant without any opportunity. Thus the matter is squarely covered by this decision of the Apex Court.

4.2 Accordingly the impugned orders Ann.A3 and A4 are hereby quashed and set-aside. The recovery of Rs. 29,984/- effected from the gratuity amount of the applicant shall be refunded to the applicant within 2 months from the date of receipt of this order. However, the respondents will be at liberty to pass appropriate order, if any, after giving opportunity to the applicant.

5. With these observations, this OA is allowed and disposed of at the admission stage.


(M.L. CHAUHAN)

Member (J)