

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH JAIPUR.

O.A. No. 158/2003

Date of decision: 17.11.2003.

D.L. Malhotra, S/o Shri late Snri L.R. Malhotra, aged about 55 years, resident of L-33, Income Tax Colony, Tonk Road, Durgapura, Jaipur. at present posted as Income Tax Officer, Ward 4(2) Jaipur under the administrative control of Commissioner of Income Tax, Jaipur. 11

Applicant.

versus

1. Union of India through Chairman, Central Board of Direct Taxes, North Block, New Delhi.
2. The Chief Commissioner of Income Tax, Jaipur Region, NCR Building, Statue Circle, Jaipur.
3. Commissioner of Income Tax, Jaipur -II NCR Building, Statue Circle, B.D. Road Jaipur.
4. Zonal Accounts Officer, Central Board of Direct Taxes, NCR Building, Statue Circle, B.D. Road, Jaipur.

: Respondents.

Mr. R. N. Mathur: Counsel for the applicant.

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

CORAM:

The Hon'ble Mr. J.K. Kaushik : Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

O R D E R

Per Mr. J.K. Kaushik, Judicial Member.

Snri D.L. Malhotra, has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, wherein the following reliefs have been sought.

that the Hon'ble Tribunal may kindly call for the entire record pertaining to the applicant and after perusal of the same be

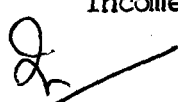


pleased to quash and set aside the impugned order dated 17.01.2003, (Annex. A.1) and the amount already recovered from the salary of the applicant in pursuance to impugned order dated 17.01.2003, (Annex,. A.1) may be directed to be returned to the applicant along with interest.

- ii) that the respondents may be directed to fix pay of the applicant by giving him benefit of FR 22 (C) from the date he was promoted on the post of Inspector, Income Tax Department.
- iii) that if any order detrimental to the interest of the applicant passed by the respondents during the pendency of the O.A. the same may kindly be taken on record and be quashed and set aside
- iv) any other order or direction which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case, the same may kindly be passed in favour of the applicant.
- (v) cost of this Original Application may be awarded in favour of the applicant.

2. Filtering out the unnecessary details, the material facts necessary for resolving the controversy involved in the instant case are that the applicant was appointed to the post of LDC (Stenotypist) vide order dated 27.10.1967 in the Income Tax Department. The said post was converted into the post of Stenographer (Ordinary Grade). The applicant was further promoted as Stenographer(Selection Grade) in the pay scale of Rs.425-700/- w.e.f. 1.1.1976. The applicant had passed the departmental examination for promotion to the post of Inspector, vide order dated 5.1.79. He was appointed to the post of Inspector vide order dated 29.10.86. Prior to the said promotion, the applicant was working on the post of Stenographer (Spl Grade) in the pay scale of Rs.500-900/-. He was allowed the corresponding revised pay scale in the pay scale of Rs.1640-2900/- in the year 1987.

3. The further case of the applicant is that the post of Income Tax Inspector is promotional post for the post of Stenographers. As per the policy in vogue, the promotion to the post of Inspector of Income Tax was done after qualifying the departmental test and one is



entitled to get advance incentive increments and the cadre of Stenographer was covered by the said policy. A decision was taken to grant two advance increment to the applicant and he was granted two advance incentive increments with effect from 15.07.78 and the due fixation was done vide order dated 09.03.84 (Annex. A.9). The same has also been reflected in the service book.

4. It is also the case of the applicant that he came to be further promoted to the post of Income Tax Officer in the year 1993. He was issued a show cause notice dated 1.1.2003 that advance increments given to him on qualifying the departmental examination for the post of Inspector of Income Tax was wrongly given and why the same be not withdrawn. A reply was submitted by the applicant. But the respondents have issued another communication dated 17.01.2003, whereby it has been ordered that a sum of Rs.91,287/-be recovered from the salary of the applicant. The applicant has also averred that he was rightly granted the benefit of two advance increments and was also in fact entitled to get the benefit of fixation of pay under FR 22 (C), which was denied to him. The OA has been filed on diverse grounds narrated in para 5 and its sub-paras, which we shall deal a little later in the order.

5. The respondents have contested the case and have filed a detailed reply to the O.A. It has been averred that the applicant was promoted to the post of Inspector of Income Tax on 29.12.86 and never challenged the fixation of pay regarding the grant of benefit under FR 22 (C) and the same cannot be allowed to be challenged now as the same is barred by law of limitation.


6. The defence as set out in the reply is that the applicant had passed the Income Tax Inspector examination while serving on the



post of Stenographer (Selection Grade) and therefore not entitled for grant of advance increments. The cadre of stenographer has three grades i.e. Gr. III, Gr. II and Gr. I in the pay scale of Rs.1200-2040, Rs.1400-2600/- and Rs.1640-2900/- respectively. He was promoted to the post of Inspector of Income Tax in the scale of pay of Rs.1640-2900/-. As such his pay was rightly fixed under FR 22 (B). The advance increments were permissible only to Stenographers (Ordinary Grade) on passing the Income Tax Inspector examination as per Annex. R.1 & R.2. Stenographer Gr. II, and Supervisors were not entitled to advance increments. Further while issuing the letter dated 20.10.94, the contents of the letter dated 6.4.83 were taken into account. The representation of the applicant was duly considered and the recovery order was passed against the applicant in accordance with the provisions of law. The grounds raised in the O.A have generally been denied for want of knowledge. It is submitted that the O.A is therefore liable to be dismissed.

7. We have heard the learned counsel for the parties at considerable length and have bestowed our earnest consideration to the pleadings and records of the case.

8. The learned counsel for the applicant has submitted that the applicant was admittedly promoted to the post of Inspector of Income Tax, which is a promotional post carrying higher duties and responsibilities than that of the feeder post of Stenographer. i.e. the applicant ought to have been given the benefit of pay fixation under FR 22 (C). He has next contended that the word 'stenographer' has been mentioned in the policy for grant of advance increments in the main order Annex. R.2 and bifurcation like Stenographer Gr. I or Gr. II or Gr. III did not exist at the relevant point of time. There is no term 'stenographer' Ordinary Grade has been pleaded in the



reply of the respondents. He has invited our attention to especially to Annex. R.2 and pointed out that Stenographer on passing the departmental examination for the post of Inspector was entitled to advance increments and there is no condition that the Stenographer should pass the departmental examination for the post of Income Tax Officer for enjoying such benefits. He also submitted that there was no mis-representation on his part and if at all the respondents have wrongly given the advance increments no recovery could be made from the salary of the applicant. In support of the above contention he has cited number of decisions passed by this Tribunal and also relied on the judgement of the Apex Court. He has also submitted that the letter dated 5th March 2003, makes it amply evident that the post of Income Tax Inspector carries higher duties and responsibilities and greater importance attached than the posts of Superintendents and Stenographer Gr. I

9. On the contrary the learned counsel for the respondents has strenuously opposed the contentions raised by the learned counsel for the applicant. He has reiterated the pleadings, grounds and the contents averred in the reply. He also laid greater stress on Annex. R.2 and submitted that the Stenographer Special Grade is not governed by the scheme. He has also submitted that for the post of Stenographer Gr.II advance increments can only be granted had the person concerned passed the Income Tax Officer which the applicant did not do. Our attention was invited to the communications Annex. R.3 and R.2. It has been submitted that in Annex. R.3 the word Stenographer Gr.III is there and for Stenographer Gr.II one of the conditions for grant of advance increments is that the person concerned should pass Income Tax Officer's examination. It is also stated that vide Annex. R.4 a decision was taken to make recovery in respect of the persons in whose cases there was no order from the



Court. He has next contended that as per Rule 73 of CCS(Pension) Rules 1972, recovery can always be made from the employees in case any over payment is there and it is the prerogative of the employer to rectify its mistakes at any time. As regards the fixation of pay and the grant of benefit under FR 22 -C is concerned he has referred to FR 22 (C) (iii) that no fixation benefit under FR. 22 (C) would be permissible when one is promoted in identical scale of pay. He also stated that this plea has been taken as an after thought since he had accepted the fixation long back. It is further stated that the respondents have not committed any illegality and no relief can be granted to the applicant.

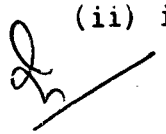
10. At the very outset, it would be expedient to examine the relief for grant of fixation of pay under FR 22 (C). It is a fact that the scale of pay of Stenographer (Spl. Gr.) and that of Income Tax Inspector are identical i.e. Rs.500-900 (revised as Rs.1640-2900). The law on this point is very clear that no fixation benefit can be given in view of FR 22 (C) (iii). The relevant portion reads as under

FR 22 (III):

For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith.

In this view of the matter the contention of the learned counsel for the respondent is well founded and does have our concurrence, thus no relief on this count can be allowed.

11. Now two primary questions remain viz. (i) whether at all the applicant ~~was~~ was entitled to the grant of advance increments and (ii) if not entitled whether any recovery can be made from him for



the over payment. The second question is only required to be answered only in case the first question is in negative.

12. Now we shall come to the first question. To appreciate the controversy the contents of the letter dated 08.12.60(Annex. R.2). para 1 of the said letter reads as under:

I am directed to say that the President is pleased to extend the benefit of the order contained in the Ministry of Finance (Revenue Division) letter No. 2(29)Ad(VII)/53 dated the 24th May 1955, and subject to the conditions prescribed therein to stenotypists, 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."

The other letters like R.3 and R.4 etc are only some clarificatory orders and in case, the case of the applicant is covered by Annex. R.2 he shall swim otherwise he shall sink. In the letter dated 8.12.60, the word 'Stenographer' has been mentioned, wherein it has been stated that the Stenographer on passing the departmental examination for Inspector and that was the only condition mentioned. There is no other words i.e. such as Stenographer Gr. III, Gr. II or Gr. I or Stenographer Ordinary Scale, or Selection Scale or Special Gr. Therefore at the relevant time, stenographers were governed by the Scheme and were entitled for the grant of incentive advance increments on passing departmental examination for the post of Inspectors. In the same letter it is also mentioned that persons working as Head Clerks, and Supervisors, for the grant of advance increments they have to pass the departmental examination for the post of Income Tax Officer. From a plain reading, it is clear that for grant of two advance increments stenographers are required to pass only the departmental examination for the post of Inspectors.

22

In this view of the matter, we are of the firm opinion that the case of the applicant is fully covered by the letter dated 08.12.60 and he was rightly granted two advance increments. We are unable to subscribe to the submissions of learned counsel for the respondents that subsequent orders Annex. R.3 or R.4 would govern the issue since the accepted principles of law is that every legislation would be prospective and the judgement would be retrospective until it is directed to be otherwise in specific terms. In the instant case there is nothing to suggest that any rule/circular has been issued having application from a retrospective date.

13. Since we reach the conclusion that the applicant was entitled for the grant of two advance increments and he has been rightly granted the two advance incentive increments, there is no question of making any recovery in the instant case. Hence we are refraining from examining the other aspect of the matter and also from referring the number of decisions cited by the learned counsel for the applicant in support of his contention that no recovery should be made from the applicant since there was no mis-representation on the part of the applicant.

14. The upshot of the aforesaid discussion is that the O.A has a force and the same stands allowed and the impugned order dated 17.01.2003 (Annex. A.1) is hereby quashed. The applicant was also entitled to all consequential benefits, However, the applicant is not entitled to have the benefit of pay fixation under FR. 22 (C) on the post of Inspector of Income Tax as observed above. The rule already issued is made absolute. No order as to costs.

(A.K. Bhandari)

Administrative Member.

(J.K. Kausnik)

Judicial Member.