

(16)

OA 305/2003  
12.03.2007

Present : Mr. K.K. Mathur, proxy counsel for  
Mr. R.N. Mathur, counsel for applicant.  
Mr. Gaurav Jain, counsel for respondents.

This case has been listed before the Deputy Registrar due to non-availability of Division Bench. Be listed before the Hon'ble Bench on 26.04.2007.

  
(GURMIT SINGH)  
DEPUTY REGISTRAR

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26.04.2007  
OA 305/2003

Present : None for applicant.  
Mr. Balveer Singh, proxy counsel for  
Mr. Gaurav Jain, counsel for respondents.

This case has been listed before the Deputy Registrar due to non-availability of Division Bench. Be listed before the Hon'ble Bench on 24.07.2007.

Akv

  
(GURMIT SINGH)  
DEPUTY REGISTRAR

24.7.07

Mr. Mukesh Tyral, Proxy Counsel for  
Mr. R.N. Mathur, Counsel for applicant.  
Mr. Gaurav Jain, Counsel for respondents  
Heard. The OA is disposed of by a separate  
order.

  
(M.R. Shukla)  
M.C.A.

  
(Kuldeep Singh)  
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 24<sup>th</sup> day of July, 2007

ORIGINAL APPLICATION NO.305/2003

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN  
HON'BLE MR. J.P.SHUKLA, ADMINISTRATIVE MEMBER

S.N.Dadhich  
s/o Shri Hem Rajji Dadhich,  
aged about 57 years,  
r/o 34, Shiva Colony,  
Imaliwala Phatak,  
Jaipur.

.. Applicant

(By Advocate: Shri Mukesh Goyal proxy counsel to Shri  
R.N.Mathur)

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. The Commissioner of Income Tax, Jaipur-III,  
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

(By Advocate: Shri Gaurav Jain)

### O R D E R (ORAL)

The applicant has filed this OA seeking following reliefs:-

- i) 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 17.2.2003 (Annexure A/1) and the amount already recovered from the salary of the applicant in pursuance to impugned order dated 17.2.2003 (Anx.A/1) may be directed to be returned to the applicant alongwith interest;
- ii) that the respondents may be directed to fix pay of the applicant by giving him benefit of F.R. 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. Facts as alleged by the applicant in brief are that the applicant was initially appointed as LDC vide order dated 18<sup>th</sup> July, 1967 and thereafter promoted as Stenographer (Ordinary Grade) vide order dated 15<sup>th</sup>/16<sup>th</sup> May, 1974. Thereafter he was further promoted as



Stenographer (Selection Grade) in the pay scale of Rs. 425-700 and was given second selection grade in the scale of Rs. 550-900 vide order dated 8<sup>th</sup> September, 1983. The applicant qualified the departmental examination conducted for the post of Inspector which post is also in the pay scale of Rs. 550-900 and his pay was fixed by granting him two advance increments.

It is further stated that the appointment on the post of Inspector from the post of Stenographer Special Grade is a promotion which promotion is granted only after qualifying the departmental examination. Perusal of the duties of the Inspector would reveal that the appointment on the post of Inspector is a promotion, hence the applicant is entitled to get benefit of F.R. 22-C. It is further stated that the decision of the respondents not to grant benefit to the applicant only on the ground of pay scale is ex-facie illegal, arbitrary, unreasonable and unjust inasmuch as merely pay scale is not indicative of promotion, the determination factor of the promotion is responsibilities assigned and attached with a particular post. Hence, the applicant has prayed that the impugned order may be quashed and the amount already recovered may be directed to be returned to the applicant and the respondents may be directed to fix the pay of the applicant by giving benefit of FR 22-C from the date he was promoted on the post of Inspector.

[Signature]

3. The respondents are contesting the OA by filing reply.

4. We have heard the learned counsel for the parties and gone through the record.

5. At the outset we may mention that the controversy involved in this case has already been decided by this Bench vide order dated 17<sup>th</sup> November, 2003 passed in OA No.158/2003 and the present case is fully covered by the order passed in OA No.158/2003 wherein this Bench in para 13 and 14 has held as under:-

"13. Since we reach the conclusion that the applicant was entitled for the grant of two advance increments and he was rightly granted the two advance 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 17.1.2003 (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."

6. On the same set of lines, the present OA is allowed and the impugned order dated 17<sup>th</sup> February,

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2003 (Ann.A1) is quashed. The applicant ~~was~~ <sup>is</sup> 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. No order as to costs.



(J.P. SHUKLA)

Administrative Member



(KULDIP SINGH)

Vice Chairman

R/