

Central Administrative Tribunal
Jabalpur Bench

OA No.61/05

Indore, this the 18th day of October 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

K.S.Thakur
Sr.TA (Retired)
Resident of 4/1433
Gangaram Nagar, Ramkund
Raipur (CG).

Applicant

(By advocate Shri A.P.Shrivastava)

Versus

1. Union of India through
Chairman
Central Board of Direct Taxes
North Block
New Delhi.
2. Chief Commissioner of Income Tax
Central Revenue Building
Raipur.
3. Commissioner of Income Tax
Central Revenue Building
Raipur.
4. Joint Commissioner of Income Tax
Range II Central Revenue Building
Raipur.
5. Zonal Accounts Officer
Central Board of Direct Taxes
Income Tax Department
184 M.P.Nagar
Bhopal.

Respondents.

(By advocate Shri B.Da'Silva)



ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following reliefs:

- (i) Quash Annexure A1.
- (ii) Direct the respondents to pay DCRG along with interest.
- (iii) Direct the respondents to pay interest on late payment of GPF
- (iv) Direct the respondents to make payment of retiral dues and CDS.

2. The brief facts of the case are that the applicant who was working as Sr.T.A. under Joint Commissioner of Income Tax, Range II, Raipur retired on superannuation on 31.8.03. While working as LDC in the pay scale of Rs.260-400, the applicant was not allowed to cross E.B. which was due in February 1984. The commissioner of Income Tax, Jabalpur, by order-dated 12.3.92 allowed the applicant to cross EB with effect from 10.2.1986. The pay of the applicant was wrongly fixed in February 1986 at Rs.1325 by giving notional increment of February 1984 and of February 1985. Respondent No.5 suggested that pay of the applicant may be fixed at Rs.1275 in February 1986 and arrears may be recovered and retirement dues may be revised. The fixation was made by the department and the applicant is not responsible for getting the benefits on account of any manipulation or otherwise. Hence the recovery proposed is illegal. Respondents also did not pay interest on GPF from 1.9.03 to 8.9.04. They also did not pay CDS dues to the applicant. Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the pay of the applicant in February 1986 was correctly fixed by granting two notional increments of February 1984 and February 1985 after allowing EB. Hence the respondents are



responsible for wrong fixation of pay. The applicant has not in any way misrepresented or contributed to the wrong committed. The action of the respondents in recovering any amount paid in excess on account of wrong fixation of pay is arbitrary and illegal. The learned counsel further argued that the respondents have wrongly withheld the payment of DCRG of the applicant. The respondents are not justified in unnecessarily delaying payment of GPF and not granting interest on it. They have also not made the payment of CDS to the applicant.

4. In reply, learned counsel for the respondents argued that the E.B. of the applicant was held up as on 2/84 and was allowed to cross it with effect from 10.2.86. However, while fixing his pay, increment was granted from February 1984 incorrectly. As the applicant was fit for crossing EB only from 10.2.86, the increment granted in February 1984 and February 1985 were wrong. Due to the incorrect fixation, the applicant is liable to receive lesser amount of retirement benefit and also lesser amount of pension. The applicant enjoyed the benefits of the wrong fixation of pay for a fairly long period from 11986 to 2003. Hence the action of the respondents is perfectly legal and justified.

5. After hearing learned counsel for the parties and perusing the records, we find that the argument advanced on behalf of the respondents is that the applicant was allowed to cross the EB with effect from 10.2.1986 while the benefit was given to him on the basis that he crossed the EB with effect from February 1984. This mistake was subsequently detected and corrected vide Annexure A2 order. Hence the applicant cannot take the benefit of wrong fixation. This argument seems to be legal and correct. We have perused Annexure A2 in which the applicant is allowed to cross E.B. with effect from 10.2.86. The applicant has not challenged this order. As regards non-payment of CDS, we have perused Annexure A5 letter. Respondents have mentioned in the reply that this matter is under consideration and will be decided as per rules in force. It shows that the respondents have not paid the amount of CDS to the applicant. So far as the



recovery of the excess amount paid to the applicant due to wrong fixation of pay is concerned, the respondents have nowhere stated that the applicant has misrepresented or concealed any fact before the respondents. Hence, now after retirement, they cannot recover this amount from the applicant in view of the ruling of the Apex Court in Sahib Ram Vs. State of Haryana, 1994 (28) ATC 747.

6. Considering all the facts and circumstances of the case we find that admittedly the applicant himself neither mis-represented or concealed any fact in this regard before the respondents. The respondents are directed to pay the amount of CDS which is not yet finalized by the respondents themselves. As regards all other dues the matter relates to the documents. The applicant is directed to submit a fresh representation within a period of 15 days from the date of receipt of a copy of this order giving complete details. If he complies with so, the respondents are directed to consider and decide the said representation of the applicant within a period of three months from the date of receipt of the representation of the applicant by passing a speaking, detailed and reasoned order. The respondents are further directed to permit the applicant to inspect the concerned records relating to the said dues in question and if any amount is found to be paid to the applicant then the same shall be paid to the applicant within the aforesaid period with interest at the prevalent rates.

7. In view of the aforesaid terms the Original Application stands disposed of. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman