

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No. 1033 of 2004

Indore, this the 18th day of August, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

C.P. Mishra, Son of Shri Ram Kripal
Mishra, Retired Joint Commissioner of
Income Tax, Kashikunj, Opp. Sai Mandir,
27/3186, Narmada Road, Jabalpur-482002. Applicant

(By Advocate – Shri A.P. Shrivastava)

V e r s u s

1. Union of India,
Through Secretary,
Ministry of Finance, North Block,
New Delhi – 110001.
2. Chief Commissioner of Income Tax,
Central Revenue Bldg., Aaykar Bhavan,
Hoshangabad Road, Bhopal-462001.
3. Commissioner of Income Tax-I,
Central Revenue Bldg., Aaykar Bhavan,
Napier Town, Jabalpur – 482001.
4. Zonal Accounts Officer, Central Board
of Direct Taxes, Income Tax Department,
184, M.P. Nagar, Bhopal-462011. Respondents

(By Advocate – Shri B.da.Silva)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the following main reliefs :

“8.1 to fix the pay as Joint Commissioner of Income Tax, Korba and thereafter as Joint Commissioner of Income Tax-II, Bilaspur



after merging special pay of Rs. 400/- drawn by him as Junior DR and as Sr. DR for more than 3 years,

8.2 the respondent may be directed to pay arrears together with interest."

2. The brief facts of the case are that applicant was a senior Group-A officer of the Income Tax Department. He retired on 31.12.2003. While he was working as Junior Departmental representative (DR) in Income Tax Appellate Tribunal (in short ITAT), Jabalpur Bench, Jabalpur from September, 1997 to June, 2001 he was paid special pay of Rs. 400/- per month as the post of Junior DR carried the special pay. He was promoted as Joint Commissioner of Income Tax vide order dated 28.6.2001 and he was posted as Senior DR in ITAT, Jabalpur. The applicant drew the special pay for more than three years. Thereafter he was transferred in the same capacity as Joint Commissioner of Income Tax-II at Korba and further as Joint Commissioner of Income Tax at Bilaspur in October, 2001. While fixing his pay as Joint Commissioner of Income Tax at Korba and thereafter as Joint Commissioner of Income Tax at Bilaspur, the special pay of Rs. 400/- per month which was drawn by him earlier as Junior DR was not merged for the purpose of fixation of pay as Joint Commissioner of Income Tax. The Central Administrative Tribunal, Madras Bench in OA No. 632 of 1995 has allowed the similar benefits of special pay to the applicant there. This decision was accepted by the Central Board of Direct Taxes, New Delhi. The applicant moved a representation to the Chief Commissioner of Income Tax, Bhopal in this regard. But no decision has been taken by the respondents till now. Hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicant that while the applicant was serving as senior Group-A officer of the Income Tax Department as



Junior Departmental Representative (DR) in ITAT Jabalpur Bench, Jabalpur from September, 1997 to June, 2001, he was paid special pay of Rs. 400/- per month and while fixing his pay on the post of Joint Commissioner of Income Tax on his promotion, the special pay of Rs. 400/- was not merged. Our attention is drawn by the applicant on Annexure A-3 in which the contention of the applicant is accepted. Hence, the applicant is legally entitled for the reliefs claimed.

5. In reply the learned counsel for the respondents argued that in the instant case the applicant was eligible to draw special pay only as long as he hold the post of Junior Departmental Representative. Once he was transferred out of that post, he was ineligible to receive the special pay attached to that post. Hence, the applicant was ineligible for protection of the special pay as per Government of India order dated 29.7.1963. Our attention is drawn towards appendix-8 filed by the respondents, i.e. orders regarding special allowance/special pay. He further argued that by the letter dated 28.4.2004 (Annexure A-3) it is not revealed that what was the facts of the case which was decided by the Madras Bench of the Tribunal. Hence, the applicant cannot take the benefit on the basis of this letter and the order passed by the Madras Bench of the Tribunal in OA No. 632/1995. Thus, this Original Application deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that according to Appendix-8 i.e. orders regarding special allowance/special pay in paragraph 1(d) it is mentioned that the special pay would henceforth be termed as special allowance as recommended by Vth Central Pay Commission in para 109.5 of the report and would be granted as hitherto subject to same conditions as are stipulated in FR 9 (25). We have also perused the letter dated 28.4.2004 (Annexure A-3) produced on behalf of the learned counsel for the applicant and find that in this letter the facts of the OA No. 632/1995 decided by the Madras Bench of the Tribunal is not mentioned.



According to paragraph 1(d) of appendix-8 the word special pay is termed as special allowance as per the recommendations of the Vth Central Pay Commission. Thus, special allowance cannot be merged for the purpose of fixation of pay under any rule.

7. Considering all the facts and circumstances of the case, we are of the opinion that this Original Application is liable to be dismissed as having no merits. Accordingly, the same is dismissed. No costs.


(Madan Mohan)
 Judicial Member


(M.P. Singh)
 Vice Chairman

“SA”

पृष्ठांकन सं. ओ/न्या.....जबलपुर, दि.....
 प्रतिलिपि अवृत्तिः—

- (1) सचिव, उच्च न्यायालय, राज एवं देश विधायक, जबलपुर
- (2) अधिकारी विधायक, राज एवं देश विधायक, जबलपुर
- (3) प्रत्यक्षी श्री/ मीरा बाई, राज एवं देश विधायक, जबलपुर
- (4) काशीपाल, अंडमान एवं निकोबार द्वीप समुद्र, अंडमान एवं निकोबार द्वीप समुद्र

उप रजिस्ट्रार


 30/8/05