

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No. 624/04

Bilaspur this the 18th day of March, 2005

CORAM

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

Smt.M.Varghese
W/o Shri C.C.Varghese
18, Bafna Colony
Berasia Road
Bhopal 462 001.

Applicant


(By advocate Shri Nitesh Pillai on behalf of
Smt.S.Menon)

Versus

1. Union of India through
Secretary
Ministry of Finance
New Delhi.
2. Chief Commissioner of Income Tax
Aayakar Bhawan
Hoshangabad Road
Bhopal (M.P.)
3. Principal Chief Controller of Accounts
Central Board of Direct Taxes
9th Floor, Lok Nayak Bhawan
Khan Market, 'A' Wing
New Delhi.
4. Zonal Accounts Officer
Central Board of Direct Taxes
Modi Complex, Zone II
M.P.Naagar
Bhopal - 462 011.

Respondents.

(By advocate Shri B.Dasilva)



ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following relief:

- (i) To quash the impugned order dated 31.5.2004 (Annexure A15) passed in compliance of Principal Chief Controller of accounts letter dated 19.5.2004 and to restore the order passed by C.I.T.'s letter dated 1.6.99.

2. The brief facts of the case are that the applicant is presently working as Inspector of Income Tax under respondent No.2. The applicant while working as Supervisor Grade II as on 1.1.96 in the pay scale of Rs.1600-2660 at the stage of Rs.2200, exercised option and her pay fixation was under process. Her annual increment fell due on 30.1.96. The CBDT vide order dated 16.1.98 revised the pay scales of Head Clerk and Supervisor Grade II from Rs.1400-2600 to Rs.1600-2660 and from 1600-2660 to 1640-2900 to Rs.5000-8000 and 5500-9000 respectively i.e. 1.1.96. The said pay fixation was duly approved by the Office of Zonal Accounts Officer on 25.5.99 (Annexure A3). The applicant was promoted to the post of Inspector on 4.8.97 and her pay fixation in the cadre of Supervisor Gr.II as well as Inspector was made vide revised order dated 1.6.99. In compliance with the CBDT's order of 16.1.98, the pay of the applicant in the cadre of Supervisor Gr.II was fixed in the pre-revised scale of Rs.1640-2900 at Rs.2300 as per FR 22 (i) (a) (ii) as there was no stage of Rs.2250/-. The internal Audit Party took objection stating that the pay was to be reduced to Rs.2250/- (Annexure A5). The applicant submitted a reply on 2.2.2000 for dropping the audit objection (Annexure A6). No outcome of the reply was communicated to the applicant. After a lapse of nearly 2 years, the Accounts Officer, A.C.I.T (Admn.) passed a revised order on 28.9.2001, re-fixing the pay of the applicant in the cadre of Supervisor Gr.II and withdrawing the benefit of FR 22 (i) (a) (i) (Annexure A7). The applicant made a representation to the Commissioner of Income Tax and the Principal Chief Controller of Accounts. No response was received. The Zonal Accounts Officer vide letter dated 20.10.2003 changed the point of objection and again fixed the

applicant's pay at Rs.6900/- as on 1.1.96 stating that the order of 16.1.98 did not postulate about fixation of the pay scale as Rs.1640-2900 (Annexure A11). Aggrieved, the applicant made a further representation dated 13.11.2003 (Annexure A12). The Office of the Chief Commissioner of Income Tax, Bhopal also moved the Principal Chief Controller of Accounts, New Delhi to reconsider his earlier decision. However, without giving any reference to the aforesaid correspondents, the Office of the Principal Chief Accounts Officer, New Delhi vide his letter of 19.5.2004 advised the CCIT to fix the pay of the applicant at Rs.6900 as on 1.1.96 as per Model Table 25. The said Model Table 25 is not at all applicable in as much as the pay fixation of the applicant is to be made in accordance with para 66.110 and not in accordance with para 46.11 and 55.1777 of the report. The applicant submitted a representation dated 16.6.2004 (Annexure A16). The applicant retired on 30.9.2004. Hence this OA is filed for quashing the impugned order.

3. Heard the learned counsel for the parties. It is argued on behalf of the applicant that the applicant has neither concealed nor misrepresented any facts before the respondents and if any error or omission was committed by or on behalf of the respondents, the applicant is not at all responsible and no recovery can be made by the respondents. Our attention is drawn towards 1994 ATC 747 SC Sahib Ram Vs. State of Haryana and others, decided on 19th September, 1994 and further argued that the respondents have stated that in pursuance to the order dated 9.10.2001, issued by Central Board of Direct Taxes, fixation of pay of the applicant was effected and as a consequence of the said clarification, the mistake was detected and the error was removed. In the light of CCIT's revised order dated 31.5.2004, i.e. the impugned order, the counter reply is vague and has no force as the CBDT's order dated 16.1.98 was correctly implemented while determining the pay of the applicant as on 1.1.96 at Rs.2240 in the revised/replacement scale of Rs.1640-2900 and at Rs.6900 in the new pay scale of Rs.5500-9000. In the said order, the annual increment falling due on 30.1.96 (with monetary

benefit from 1.1.96) was also allowed by raising her pay to Rs.2300 in the pre-revised scale of Rs.1640-2900. However, this was not considered while finding the stage in the new scale of Rs.5500-9000. This has resulted in deprivation of annual increment for 1996 falling due on 30.1.96 (monetary benefit from 1.1.96) amounting to Rs.175/- (i.e one increment in the new scale of Rs.5500-9000). The learned counsel further argued that it is clear that the applicant is entitled for one increment and her pay is to be revised at Rs.7075 (in the new scale of Rs.5500-9000) as on 1.1.96 by restoring the order of Chief Commissioner of Income Tax, Bhopal dated 1.6.99. Hence the OA is liable to be allowed.

4. In reply, the learned counsel for the respondents argued that the applicant cannot take the benefit of any error, omission or mistake inadvertently committed by the respondents by which the applicant's pay was wrongly fixed and when the error was detected, the same was rectified by the respondents vide the impugned order and further argued that the CCIT's revised order dated 31.5.2004 fixing the notional pay as on 1.1.96 in the pre-revised scale scales of 1600-~~2300~~²⁶⁶⁰ of Supervisor, Gr.II is as per the rules. In response to this, the respondent No.4 had raised objections and also communicated the correct procedure of fixation of pay vide letter dated 20.10.2003. This was communicated on the basis of the letter dated 9.10.2001 of the Principal Chief Controller of Accounts, New Delhi, wherein it was directed that the pay would be fixed under the provisions of the respective revised pay rules in the upgraded revised pay scale directly. The matter was also referred to Principal Chief Controller of Accounts, New Delhi for clarification. The Principal CCA vide his letter dated 19.5.2004 informed that the correct table for revised replacement amount in the scale of Rs.5500-9000 should be table No.25. Accordingly, it was advised that he pay of the applicant was to be fixed at Rs.6900~~0~~⁷⁵ as on 1.1.96. As on 1.1.96, the pay of the applicant in the scale of Rs.1600-2660 was fixed at Rs.2200. According to the table No.25, the corresponding pay in the new scale of Rs.5500-9000 is Rs.6725 as on 1.1.96. The annual increment of Rs.175 due as on 1.1.96 was allowed and the pay of the applicant was fixed at Rs.6900

as on 1.1.96. The next date of increment was 1.1.97. Thus the claim of the applicant that she has been deprived the increment of Rs.175 is incorrect. The request of the applicant to restore the order of CCIT, Bhopal dated 1.6.99 cannot be acceded to as the same was not according to rules.

5. After hearing the learned counsel for the parties and carefully perusing the records, we find that admittedly the applicant has neither concealed nor misrepresented any facts before the respondents regarding the matter in question. The respondents have admitted in their return that the mistake in the pay fixation of the applicant had come to light during the audit inspection and it was corrected after thorough consideration by the authorities concerned. Apparently, if there was a mistake or error regarding the pay fixation of the applicant, it was on the part of the respondents alone and the applicant was not at fault at all. We have perused the ruling cited by the applicant (*supra*) in which the Hon'ble Supreme Court has held that "Pay – Excess payment – Recovery- Upgraded pay scale given due to wrong construction of relevant order by the authority concerned without any misrepresentation by the employee – In such circumstances recovery of the payment already made, restrained." The respondents have not denied the fact that the applicant has not misrepresented or concealed any facts. So far as the alleged correction of the error by the respondents is concerned, we have carefully perused the contentions of both parties and it is revealed that the CCIT, Bhopal revised order dated 31.5.2004 fixing the notional pay as on 1.1.96 in the pre-revised scale scales of 1600-2300 of Supervisor, Gr.II is as per the rules. In response to this, the respondent No.4 had raised objections and also communicated the correct procedure of fixation of pay vide letter dated 20.10.2003. This was communicated on the basis of the letter dated 9.10.2001 of the Principal Chief Controller of Accounts, New Delhi, wherein it was directed that the pay would be fixed under the provisions of the respective revised pay rules in the upgraded revised pay scale directly. The matter was also referred to Principal Chief Controller of Accounts, New Delhi for clarification. The Principal CCA vide his letter dated 19.5.2004 informed that the correct table for revised replacement

amount in the scale of Rs.5500-9000 should be table No.25. Accordingly, it was advised that the pay of the applicant was to be fixed at Rs.6900 as on 1.1.96. As on 1.1.96, the pay of the applicant in the scale of Rs.1600-2660 was fixed at Rs.2200. According to the table No.25, the corresponding pay in the new scale of Rs.55000-9000 is Rs.6725 as on 1.1.96. The annual increment of Rs.175 due as on 1.1.96 was allowed and the pay of the applicant was fixed at Rs.6900 as on 1.1.96. The next date of increment was 1.1.97. Thus the claim of the applicant that she has been deprived the increment of Rs.175 is incorrect.

6. In this view of the matter we do not find any irregularity in issuance of the revised order dated 31st May, 2004 regarding re-fixation of the pay of the applicant. However, in view of the aforesaid ruling of the Hon'ble Supreme Court no recovery on account of this re-fixation can be made from the pay of the applicant. In the result the Original Application is allowed partly and the impugned order dated 31st May, 2004 re-fixing the payment of the applicant is upheld and the respondents are directed not to make any recovery from the pay of the applicant on account of this re-fixation of pay.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

aa.

Issued
On 23.03.05

प्रमाणित सं ओ/प्रा.....जयपुर, दि.....

प्रमाणित सं ओ/प्रा.....जयपुर, दि.....

(1) सचिव, उच्च न्यायालय, जयपुर

(2) आदेशक श्री/श्रीमती/.....के कार्यालय S. Mohan D.N. 0038

(3) प्रत्यक्षी श्री/श्रीमती/.....के कार्यालय B. D. S. 107

(4) बांधपाल, पौडा, जयपुर के कार्यालय B. D. S. 0038

सूचना एवं आवश्यक कार्यवाही हेतु

23/3/05