

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

.....

Original Application No. 632/2003

Jabalpur, this the 24<sup>th</sup> day of June, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Member (J)

Subhash C.Jain,  
Income Tax Officer,  
Central Revenue Building,  
Jabalpur (Madhya Pradesh).

...Applicant

(By Advocate: Shri A.P. Shrivastava by Sh. Pulok Maithy)

-versus-

1. Union of India through  
Secretary,  
Ministry of Finance,  
North Block,  
New Delhi-110 001.
2. Chairman,  
Central Board of Direct Taxes,  
North Block,  
New Delhi.
3. Commissioner of Income Tax - I,  
Central Revenue Building,  
Napper Town,  
Jabalpur (Madhya Pradesh).
4. Zonal Accounts officer,  
Central Board of Direct Taxes,  
Income Tax Department,  
82, M.P. Nagar, Zone-II,  
Bhopal - 462 011.

...Respondents

(By Advocate: None)

O R D E R


By Madan Mohan, Member (Judicial) -

By filing this original application, the applicant has sought the following main reliefs:-

- i) The respondents may be directed to fix the pay at Rs. 8300/- in place of Rs. 7775/- as proposed by him.
- ii) The applicant most humbly prays that alternatively the respondents may be allowed to withdraw the option and may be allowed to draw pay as per scale proposed by Vth Pay Commission.
- iii) The respondents may be directed to refund recovery of excess pay from 1.1.1996 to 30.9.1996."




2. The brief facts of the case are that the applicant joined the department as Lower Division Clerk on 21.8.1964. On 1.1.1996 he was working as Inspector of Income Tax in the pay scale of Rs. 1640-2900/-. After the report of the Vth Pay Commission, the applicant was placed in the revised pay scale of Rs. 5500-9000/- and his pay as on 1.1.1996 was fixed at Rs. 7600/- with the next date of increment w.e.f. 1.10.1996 as such his pay was fixed at Rs. 7775/- on 1.10.1996. However, the applicant did not opt Rule 5 and continued to draw pay in the revised scale as recommended by Vth Pay Commission as on 1.1.1996. Subsequently, Govt. of India, Ministry of Finance (Deptt. of Revenue) issued Circular dated 26.3.1998 and permitted the government employees to opt for the existing pay under Rule 5 of the CCS(Revised) Rules, 1997. In compliance of the said circular, the applicant gave his option to draw pay in the existing scale/fix his pay at Rs. 8300/-. The Zonal Accounts Officer (ZAO for short) i.e. respondent no. 4 fixed his pay as on 1.10.1996 while considering rates of DA and IR as on 1.1.1996 at Rs. 7775/-. The ZAO vide its letter dated 7.9.1998 proposed that pay fixed at Rs. 8300/- is not correct and pay may be allowed to be drawn at Rs. 7775/- inspite of the option of the applicant. He further proposed to recover the excess of pay drawn by him from 1.1.96 to 30.9.1996. Aggrieved by the said proposal of the ZAO, the applicant made a presentation to the Chairman, Central Board of Direct Taxes on 21.9.1998 which is placed at Annexure A-6. When no decision was taken by the Chairman, the applicant made representation to the Finance Minister on 3.3.1999(A/7). The applicant thereafter made representation to his Excellency President, Union of India on 16.8.2000 (A/8). The applicant received reply dated 23.7.2002(A/1), 2.7.2002 (A/2) and on 25.5.2000 that representation has not been entertained. The applicant submits that in case pay as proposed was not acceptable, the applicant should have been given the option to opt for the pay scale as proposed by the Pay Commission. This has also not been permitted. The applicant has, therefore,



been put to grave loss by way of recovery of arrears from 1.1.1996 to 30.9.1996; by fixation of pay at Rs. 7775/- against Rs. 8300/- as proposed and by rejecting the opportunity of withdrawing the option exercised in favour of Rule 5 of CCS (Revised) Rules, 1997. Hence, the applicant has filed the present application seeking the aforesaid reliefs.

3. Heard the learned counsel for the applicant. Since none is present on behalf of the respondents and this matter is an old one pertaining to the year 2003, we proceed to dispose of this O.A. by invoking the provisions of Rule 16 of Central Administrative Tribunal (Procedure) Rules, 1987.


4. It is argued on behalf of the applicant that Vth Pay Commission submitted its report which was made effective from 1.1.1996. The applicant was placed in the pay scale of 5500-175-9000 and his pay as at 1.1.1996 was fixed at Rs. 7600/-. The next <sup>date of</sup> increment was 1.10.1996 and as on 1.10.1996 the pay of the applicant was fixed at Rs. 7775/-. The applicant did not opt Rule 5 which provides the applicant to continue to draw pay in the existing pay scale until he earns his next increment but continue to draw pay as per revised pay rules, 1997. Subsequently, Govt. of India, Ministry of Finance issued a Circular dated 26.3.1998 (Annexure A-4) permitting the Govt. employees to opt for the existing pay under Rule 5 of the CCS (Revised) Pay Rules, 1997. The applicant gave his option to draw pay in the existing scale in view of the aforesaid circular and accordingly proposed his pay on the existing emoluments as on 1.10.1996 at Rs. 8300/-. The ZAO proposed vide its letter dated 7.9.1998/ <sup>that the</sup> proposed ~~pay to be~~ fixed at Rs. 8300/- is not correct and pay may be allowed to be drawn at Rs. 7775/- in spite of his option, and also proposed to recover the excess pay drawn by the applicant from 1.1.1996 to 30.9.1996. Learned counsel for the applicant further argued that in case the pay as proposed by the applicant was not acceptable to the respondents, the




applicant should have been allowed to opt for the pay in the scale as proposed by the Pay Commission which has not been permitted.

5. After hearing the learned counsel for the applicant and careful perusal of the record, we find that after coming into force the recommendations of the Vth Pay Commission, the pay of the applicant was revised w.e.f. 1.1.1996 but after issuance of OM dated 26.3.1998 vide which government employees were permitted to opt to draw their pay in the existing scale, the applicant opted his pay to be drawn in the existing emoluments as on 1.10.1996. Since the applicant himself opted to draw his pay in the existing scale as on 1.10.1996, the ZAO has rightly fixed his pay at Rs. 7775/- from 1.10.1996 and accordingly order to recover the excess amount of payment made to the applicant w.e.f. 1.1.1996 to 30.9.1996 was passed which seems to be legally correct, as the option once exercised by the individual cannot be withdrawn and become final. Rather the applicant was given opportunity by the respondents vide OM dated 30.7.1999 to exercise his option within a period of six months from the date of issue of the said O.M. but the applicant failed to do so. Hence, the impugned orders passed by the respondents do not suffer from any infirmity as no illegality or irregularity has been committed by them in fixing the pay of the applicant and in directing the recovery of excess amount of pay made to the applicant.

6. In view of the facts and circumstances and in the light of observations made above, we find that the O.A. is bereft of merit and deserves to be dismissed which is accordingly dismissed. No costs.

  
(Madan Mohan)  
Member (Judicial)

  
(M.P. Singh)  
Vice Chairman