

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 321 of 2001

Jabalpur, this the 1st day of August 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member  
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

D.L. Uprit  
Inspector of Income Tax (Retired)  
1051A. Shastri Nagar, Medical College Rd  
Jabalpur

APPLICANT

(By Advocate - Shri A.P. Shrivastava)

VERSUS

1. Union of India  
through Secretary  
Ministry of Finance  
North Block, New Delhi - 110001
2. Chief Commissioner of Income Tax  
Aayakar Bhavan, Hoshangabad Road,  
Bhopal - 462011
3. Commissioner of Income Tax  
Central Revenue Building  
Napier Town, Station Road  
Jabalpur - 482001
4. Deputy Commissioner of Income Tax  
Circle 1(i), Central Revenue Building  
Napier Town, Station Road  
Jabalpur - 482001
5. 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 J.K.Kaushik, Judicial Member -

Shri D.L.Uprit has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 assailing the order dated 16.3.2001 (Annexure-A-3) by which his pay has been proposed to be fixed by reducing two advance increments which were given to him with effect from 24.6.1986. He has also sought a direction for quashing of the subsequent and consequential order regarding proposed recovery (Annexure-A-5).

2. The brier facts of this case are at very narrow compass. The applicant while...

Supervisor Grade-II in the pay scale of Rs.1600-2600, passed departmental examination for Inspector of Income-tax in June, 1986. As per instructions in force at the relevant time the applicant was granted two advance increments by order dated 3.2.1987 and his pay was raised with effect from 24.6.1986 from Rs.2050/- to Rs.2150/-. He was, thereafter promoted to the post of Inspector of Income-tax with effect from 23.4.1987 and his pay was also revised as per the recommendations of the fifth Pay Commission from the pay scale of Rs.1640-2600 to Rs.5500-9000. He retired from service on 31.3.2001 as Income-tax Inspector.

3. Just 10 days before his retirement the applicant received a communication from respondent no.4 on 20.3.2001 that the Supervisors were not eligible for two advance increments on passing the departmental examination for Income-tax Inspectors. The order contained direction to respondent no.5 to work out the excess payment made to the applicant and recover the same from his DCRG bill. In pursuance with this development the applicant received lesser amount of pension as well as commutation of pension. His gratuity amount was also reduced by deducting the alleged excess amount. It is also said that the gratuity has not been paid at all to him. Further case of the applicant is that two advance increments were given to him correctly and the gratuity has been wrongly withheld. Certain other amounts have been withheld from the gratuity and he is facing financial hardship. He has also averred that certain clarifications were issued in the matter and it was made clear that the claim of granting two advance increments would continue to have effect. The Original Application has been filed on number of grounds but we shall be discussing only the grounds which have been pressed by the learned counsel for the applicant during the course of arguments at a later part of this judgment.

4.

The respondents have contested the case and have

benefit was granted to the applicants. They were not responsible for getting the benefit on account of any manipulation or otherwise. In the circumstances the recovery of the amount from the officer who has already retired is hardship. In respect of those who are continuing in the department they should also not be punished. Of course wrong fixation and wrong payments made do not confer any right or benefit but then the recovery at this stage would be harsh and demoralize the officers.

14. Though we hold that the applicants were not entitled to the said benefit, we restrain the respondents from recovering the over payments. The applications are accordingly allowed".

8. While the controversy is fully covered by the aforesaid decision of this Bench of the Tribunal, by now issue relating to the recovery in cases where the payment has been erroneously made earlier, no recovery can be made from the employee concerned until there was any misrepresentation on the part of the employee. This proposition of the law is evident from a recent decision of the Chandigarh Bench of the Tribunal in the case of Ram Parkash Bhatti Vs. Union of India and others, 2002(3)A.T.J.430 wherein it has been held that-

"10. The recent decision of the Apex Court rendered by a Bench of Hon'ble three Judges in the case of P.H.Reddy and others Vs. National Institute of Rural Development and others, 2002(2)A.T.J.208 clinches the issue. The Apex Court found that on facts the authorities were entitled to refix the pay if the same is erroneously fixed earlier, but, no recovery can be made from the employee concerned. To be precise and accurate we would do better to extract the observations of the Apex Court which runs as follows:-

"...the employees-appellants, who had been in receipt of a higher amount on account of erroneous fixation by the authority should not be asked to repay the excess pay drawn, and, therefore, that part of directions of the appropriate authority requiring reimbursement of the excess amount is annulled". "

9. It has also been brought to our notice that the applicant has already accepted the pension at the rate which is reduced by two increments which were wrongly given to him and he is now only interested in getting his amount of DCRG released but without any deduction on account of the recovery. Thus, there hardly remain any dispute regarding the correctness or otherwise of the revised fixation of his pay. He is right in doing so since the very judgment he has relied on squarely

filed a detailed reply wherein the facts and grounds raised in the Original Application have been controverted. It has been specifically averred that as per the order issued by the Government of India only the Supervisors were entitled for two advance increments for passing the ITO Group-B examination and not for Inspector Grade Examination. Hence the claim of the applicant for grant of two advance increments was incorrect. The recoveries which were due against the applicant have been <sup>ordered to be</sup> recovered. When the case of the applicant was being considered for grant of pension, respondent no. 5 pointed out that it is an error by which two increments have been granted to the applicant.

5. A detailed rejoinder has been filed and the grounds mentioned in the reply have been refuted.

6. We have heard the learned counsel of the parties and have carefully perused the records of this case.


7. The learned counsel for the applicant has reiterated the facts and grounds raised in his pleadings and has submitted that firstly the applicant has been allowed two increments as per rules applicable in force. Secondly, he submitted that the applicant has not made any misrepresentation and he has no hand in the grant of the two advance increments. The respondents have also not issued any notice and have also not given pre-decisional hearing in the matter. Thus, no recovery can be made for the over payment from the applicant as it was the mistake of the respondents. He has also placed reliance on a decision of this Tribunal in the case of Ku. C. P. Amini Vs. Union of India & others, O.A. No. 274 of 1991 decided on 19.2.1996 wherein a similar controversy has arisen. Paragraphs 12, 13 & 14 of the said decision are relevant and the same are reproduced as under:-

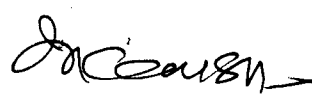
"12. It is clear from the instructions that the benefit of two advance increments has to be made only if it is held that the promotion is to the higher grade. The fact that the post of Inspector carries higher responsibilities does not change this equation as the post of Inspector and that of Stenographer Special Grade is of the equivalent grade."

13. The fixation was made by the department and the

covers the controversy and we appreciate the fairness the learned counsel for the applicant has shown. Thus, this question is not required to be re-examined. The position of law stated above makes it evident that no recovery on account of over payment made due to wrong fixation of pay can be made from the individual until the employee was responsible for it or has in any way misrepresented or contributed to the wrong committed. But, such is not the case here. Therefore, the Original Application has force on this count.

10. In the premises, the Original Application is allowed in part. The respondents are directed not to make any recovery on account of over payment made to the applicant due to wrong fixation of pay by grant of two increments. They are further directed to release the due amount of the gratuity and other retiral benefits within a period of one month from the date of receipt of a copy of this order. If the due amounts are not so released within the specified time, the respondents shall be liable to pay interest at the rate of eight per cent per annum after expiry of the said date. No costs.

  
(Anand Kumar Bhatt)  
Administrative Member

  
(J.K. Kaushik)  
Judicial Member.

rkv.

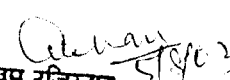
पूरांकन में से/का..... दि.....

- (1) को
- (2) को
- (3) को
- (4) को

सूचना एवं आवश्यक कार्रवाई के

उप रजिस्ट्रार

A.P. Shrivastava - Ac  
B. da Silva - Ac

  
5/8/03

Issued  
on 5.8.03  
BS