

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.28/2005.

Jaipur, this the 31<sup>st</sup> day of March 2006.

**CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.**

Smt. Kanta Bhardwaj  
w/o Shri N. N. Bhardwaj,  
aged about 57 years,  
R/o C-328,  
Vaishali Nagar,  
Jaipur.

... Applicant.

By Advocate : Shri Vinod Goyal proxy for  
Shri R. N. Mathur...

Vs.

1. Union of India  
Through its Secretary,  
Ministry of Finance (Department of Revenue),  
Government of India,  
New Delhi.
2. Chairman,  
Central Board of Direct Taxes,  
North Block,  
New Delhi.
3. Chief Commissioner of Income Tax,  
Rajasthan, Jaipur, Statue Circle,  
Jaipur.

... Respondents.

By Advocate : Shri Gaurav Jain.

**: O R D E R (ORAL) :**

The applicant was initially appointed as LDC, which post was subsequently converted into Stenographer in the respondents department on October 1967. The applicant was further promoted as Stenographer selection grade w.e.f. 1997. While working on the post of Stenographer selection grade, the applicant qualified the departmental

examination for the post of Income Tax Inspector on 8.3.1981. It is the case of the applicant that she was sanctioned two advance increments in terms of Ministry of Finance Circular dated 9.8.1983. The applicant was further promoted as Income Tax Officer vide order dated 27.08.1996. The applicant has further stated that service verification of the applicant was conducted by the Senior Accounts Officer who vide order dated 9.9.2004 observed that two advance increments allowed to the applicant on passing the Income Tax Inspector examination is not in order and pay of the official may be refixed w.e.f. 6.4.1983 and onwards till date, by disallowing the two advance increments and the over payment on account of this may also be recovered from her. Consequently show cause notice dated 12.10.2004 was issued by the Income Tax Commissioner for withdrawal of two advance increments. The applicant submitted her reply on 14.10.2004. However, ultimately the respondents issued impugned order dated 10.01.2005 thereby excess payment for a period w.e.f. 6.4.1983 and onwards amounting to Rs.1,18,309/- was ordered to be recovered on account of two advance increments from the applicant. It is this order which is under challenge in this OA.

2. Notice of this application was given to the respondents on 28.01.2005 and this Tribunal stayed the operation of order dated 10.01.2005 (Annexure A/1). The applicant has placed reliance on the decision of this

Tribunal in the case of Panna Lal Tailor vs. Union of India & Ors., OA No.247/2002 which was decided on 17.07.2003 whereby this Tribunal has set aside the impugned order. ~~In~~ that case on three counts namely that 1) no show cause notice was issued to the applicant therein before effecting recovery which is contrary to the decision rendered by the Apex court in the case of Bhagwan Shukla vs. Union of India and Ors., 1994 (4) SLR 614, 2) that advance increments have been paid due to the fault of the respondents and the applicant in no way can be held responsible for the same as was held by the Apex Court in the case of Shyam Babu Verma vs. Union of India and ors., (1994) 27 ATC 121 that recovery is not justified, even if, it is held that the applicant is not entitled to two advance increments on account of passing of departmental examination and 3) the applicant was entitled to the grant of two advance increments on passing of departmental examination in terms of circular dated 24.7.55 and 9.8.83 and the contention of the respondents that the Stenographer Grade-II are not entitled to grant of advance increments on passing the Income Tax Inspector examination was negated.

3. Respondents have filed reply thereby taking the stand that the applicant at the relevant time on the post of Stenographer Grade-II was not entitled to the grant of advance increments on passing of Income Tax Inspector examination. Thus, according to the respondents the

44

impugned order dated 10.01.2005 (Annexure A/1) which has been passed after giving show cause notice to the applicant is valid order.


4. I have heard the Learned Counsel for the parties. Learned Counsel for the respondents has drawn my attention to the order dated 23.2.2004 passed in DB Civil Writ Petition No.800/2004 which writ petition was filed against the order passed by the CAT, Jodhpur Bench, against the judgment dated 21.08.2002 passed in OA No.127/2001 whereby the operation of the order passed by the Tribunal has been stayed. It was further observed that the recovery of amount already paid to Respondent No.1to4 of the advance increment shall not be made and this writ petition be connected with Writ Petition No.6661/2003. Since the similar issue is pending before the Hon'ble High Court of Rajasthan, Jodhpur Bench and in DB writ Petition No.800/2004 the Hon'ble High Court has restrained the department from recovering the said amount from the employee concerned, I am of the view that it will not be useful to keep this OA pending till the decision to be rendered by the Hon'ble High Court of Rajasthan, Jodhpur Bench, in the aforesaid writ petitions. Accordingly, I am of the view that the present OA can be disposed of with the observation that the decision to be rendered by the Hon'ble High Court of Rajasthan, Jodhpur Bench, in the aforesaid writ petitions shall also be made applicable to the applicant of this

case also. However, the respondents are directed not to recover the said amount from the applicant till the disposal of writ petitions by the Hon'ble High Court and will proceed with the matter only in accordance with the judgment to be rendered by the Hon'ble High Court in the aforesaid writs. It is, however, made clear that if the department does not ultimately succeed before the Hon'ble High Court, the applicant shall be extended all the benefits in terms of the High Court order within three months from the date of receipt of judgment, in case no time is prescribed by the Hon'ble High Court for implementing its decision.

Before parting with the matter, it will also be relevant to mention that though the judgment rendered by this Tribunal in OA No.247/2002 decided on 17.07.2003, Panna Lal Tailor vs. Union of India & Ors., was challenged by the department by filing Writ Petition in the Hon'ble High Court of Judicature for Rajasthan Bench at Jaipur, which petition was registered as DB Civil Writ Petition No.63/2004. The said writ petition along with other writ petitions was dismissed by the Hon'ble High Court vide order dated 21.12.2004 solely on the ground that no notice was given and no opportunity of hearing was afforded by the department before passing the impugned order. However, no finding was given by the Hon'ble High Court on merit, whether the department was justified to re-fix the pay and make recoveries of the

amount on account of disallowing the benefit of two advance increments which was allowed to the employees on passing the Inspector examination. However, in the instant case, the department has passed the impugned order after giving a show cause notice to the applicant, as such, I am of the view that it will not be appropriate to allow the petition at this stage solely on the basis of judgment rendered in the case of Panna Lal Tailor (supra), especially when the Hon'ble High Court on the aforesaid issue is already seized of the matter.

5. With these observations, the OA is disposed of.

  
(M. L. CHAUHAN)  
JUDICIAL MEMBER

P.C./