

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

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ORDERS OF THE BENCH

21.09.2011

OA No. 108/2007

Mr. Surendra Singh, proxy counsel for  
Mr. M.S. Gupta, counsel for applicant.  
Mr. Vishal Jain, proxy counsel for  
Mr. Gaurav Jain, counsel for respondents.

At the request of learned counsel appearing for the parties,  
put up the matter for hearing on 28.09.2011.

*Anil Kumar*

(ANIL KUMAR)  
MEMBER (A)

*K. S. Rathore*

(JUSTICE K.S. RATHORE)  
MEMBER (J)

Kumawat

*[Signature]*

28/09/2011 [OA 108/2007]

Mr. Surendra Singh, <sup>proxy</sup> Counsel for ~~app~~  
Mr. M. S. Gupta, Counsel for applicant.  
Mr. Gaurav Jain, Counsel for respondents.

Heard.

The O.A. is disposed of by a  
separate order on the separate-sheets  
for the reasons recorded therein.

*Anil Kumar*

[Anil Kumar]  
Member (A)

*K. S. Rathore*

[Justice K.S. Rathore]  
Member (J)

*[Signature]*

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 108/2007

**DATE OF ORDER:** 28.09.2011

**CORAM**

**HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER**  
**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Bhimsen Asudani S/o Shri Mohan Das Ji, aged about 68 years,  
R/o 303, Raja Park, Sindhi Colony, District Jaipur.  
- since retired as Income Tax Inspector Department of Income  
Tax, Jaipur.

...Applicant

Mr. Surendra Singh, proxy counsel for  
Mr. M.S. Gupta, counsel for applicant.

**VERSUS**

1. Union of India through Secretary to the Govt., Ministry of Finance, Department of Income Tax, New Delhi.
2. Commissioner, Department of Income Tax, Aaykar Bhawan, Near Statue Circle, Rajasthan, Jaipur.
3. Director, Income Tax (Investigation), Central Revenue Building, Statue Circle, Rajasthan, Jaipur.

...Respondents

Mr. Gaurav Jain, counsel for respondents.

**ORDER (ORAL)**

The brief facts of the case are that the applicant was initially appointed as LDC in the Department of Income Tax on 03.11.1959. Thereafter, he was promoted to the post of UDC on 30.09.1967 and was further promoted to the post of Tax Assistant on 05.06.1981 and then elevated to the post of Head Clerk on 09.07.1991, Supervisor on 21.12.1994 and further promoted on the post of Inspector on 27.12.1995, and after attaining the age of superannuation, the applicant retired from service in the month of June, 1996.



2. Prior to the present Original Application, the applicant has filed OA No. 172/1997 before this Bench of the Tribunal challenging the orders of recovery and re-fixation. This Bench of the Tribunal has allowed the said OA No. 172/1997 vide its order dated 03.05.2000 and observed as under: -

"In view of the foregoing discussions as above, we allow the O.A. and quash the impugned orders as Annex. A1 to A6 and direct the respondents to refund the amount so recovered in pursuance to Annex. A1 to Annex. A6 within 3 months from the date of receipt of a copy of this order, along with interest @ 12% per annum from the date of recovery till the amount is refunded to the applicant. The respondents are at liberty to pass appropriate order regarding fixation of pay of the applicant after giving him an opportunity of hearing but no recovery of arrears of pay can be made from the applicant."

3. The aforesaid order dated 03.05.2000 passed by this Bench of the Tribunal in OA No. 172/1997 has been assailed by the respondents before the Hon'ble High Court by way of filing D.B. Civil Writ Petition No. 993/2001, which was dismissed vide order dated 21.12.2004.

4. The controversy in the present Original Application is with regard to computation of 'average emoluments' in the case of those opting or revised scales of pay under C.C.S. (R.P) Rules, 1986 and retiring within ten months. A sum of Rs. 20/- which was being paid as special pay to the applicant while he was holding the post of UDC/Cashier the same could not have been re-fixed or re-determined or re-calculated in view of the provisions of Rule 34 and Rule 59 and notification dated

28.02.1976. Thus, the applicant submitted that he is entitled to get the pensionary benefits on the basis of his emoluments, which received Rs. 2540/- in the last 10 months preceding from the date of retirement in the pay scale of Rs. 1640-2900 which was revised w.e.f. 01.01.1996 as 5500-9000.

5. The learned counsel appearing for the respondents has strongly controverted the submissions advanced on behalf of the applicant, and submitted certain documents with regard to order of appointment of Cashier, fixation order on promotion as Tax Assistant, letter claiming wrong fixation of pay by Shri P.L. Kelkar ITO (Company Circle), and likewise other documents to show that the respondents have rightly deducted the amount. But admittedly no specific order to this effect has been passed and without passing the order has started deducting the amount from the pension. At the time of argument, the learned counsel appearing for the respondents referred the letter dated 27<sup>th</sup> June, 2011 with regard to the direction issued by this Bench of the Tribunal, while issuing the notice to the respondents vide its order dated 27.07.2007 in the present Original Application, in which it is mentioned that in compliance to CAT and Hon'ble High Court order, the amount of Rs. 22405/- deducted from his gratuity at the time of retirement was repaid to him with interest @ 12% (Total amount of Rs. 33383/- was paid to him vide bill dated 17.07.2000). It is also mentioned in the said letter dated 27<sup>th</sup> June, 2011 that further direction of the CAT were regarding re-fixing the pay of the applicant. For this, opportunity to the applicant to represent his case was provided on 03.02.2006,

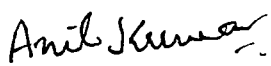


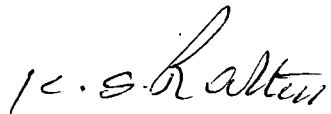
20.02.2006 and 28.03.2006, and the applicant presented his case vide representation dated 10.02.2006 and 05.04.2006. Admittedly, no order whatsoever has been passed on the representation(s) and it is indicated in this letter that no specific order re-fixing his pay was passed.

6. Having heard the rival submissions made on behalf of the respective parties, and upon careful perusal of the pleadings and material available on record, and in view of the directions issued by this Bench of the Tribunal in the earlier ~~CA No.~~ OA No. 172/1997 (supra) and affirmed by the Hon'ble High Court vide its order dated 21.12.2004 in D.B. Civil Writ Petition No. 993/2001, no doubt the opportunity of being heard regarding re-fixing his pay has been provided to the applicant, but we are not convinced with the observation made in the letter dated 27<sup>th</sup> June, 2011 (supra), as after providing opportunity to represent his case, the representation of the applicant is required to be considered in accordance with the provisions of law and the respondents are required to pass a fresh order whether the applicant is entitled to claim that special pay of Rs. 20/- as earlier has been included in the pay at the time of promotion or not. As in compliance of the order dated 03.05.2000 passed by this Bench of the Tribunal in OA No. 172/1997 (supra), the respondents have already refunded the amount of Rs. 22405/- with interest @ 12%, to avoid such circumstances, in our considered view the respondents are required to pass specific order on the representations dated 10.02.2006 and 05.04.2006 (supra) submitted by the applicant, which admittedly as per the

letter dated 27<sup>th</sup> June, 2011 is still pending with the respondents for consideration, and till the disposal of the aforesaid representations, no recovery is to be made effective by deducting amount out of the pensionary benefits.

7. With these observations and directions, this Original Application stands disposed of with no order as to costs.

  
(ANIL KUMAR)  
MEMBER (A)

  
(JUSTICE K.S. RATHORE)  
MEMBER (J)

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