

(10)

17/08/2011  
O.A. 513/2009

Present: None for the applicant.  
Mr. Sumer Singh proxy for  
Mr. Gaurav Jain counsel for the respondents.

This case has been listed before Deputy Registrar  
due to non-availability of Division Bench. Let the matter  
be placed before the Hon'ble Bench on 05/09/2011.

  
(Gurmit Singh)  
Deputy Registrar

20

05/09/2011 [O.A. No. 513/2009]

Mr. Amit Mathur, 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)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

*Jaipur, the 5<sup>th</sup> day of September, 2011*

**ORIGINAL APPLICATION No. 513/2009**

CORAM :

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

Pooran Lal Verma son of Shri Bodhu Ram Verma, age around 61 years, resident of D-965, Chitrakoot, Ajmer Road, Jaipur.

... Applicant  
(By Advocate : Mr. Amit Mathur)

Versus

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue, New Delhi.
2. Chief Commissiner, Income Tax, NCR Building, Statue Circle, Jaipur.
3. Commissioner, Income Tax (Audit), NCR Building, Statue Circle, Jaipur.

... Respondents  
(By Advocate : Mr. Gaurav Jain)

**ORDER (ORAL)**

In this OA, the applicant has prayed that the respondents be directed to allow the benefits of two advance increments to him since he had qualified the departmental examination for the post of Inspector and his pay may be refixed accordingly after giving him the benefit of two advance increments. He has also prayed that the respondents may further be directed to give him arrear alongwith interest.

2. The applicant is claiming the benefit of the judgment wherein it is held that head clerks and stenographer- II are

*Anil Kumar*

entitled for two advance increments after qualifying the departmental examination for the post of Inspector. The view of the learned Tribunal has been affirmed by the Hon'ble High Court. The applicant submitted that as the controversy has been settled by the court of law, therefore, there is no reason for the respondents to act arbitrarily and discriminatorily. The respondents are bound by the law of equity and they cannot make discrimination between the two similarly situated persons. The applicant further stated that the action of the respondents has created difference in the pay of two similarly situated persons, therefore, prayer sought in the present OA deserves to be allowed.

2. The respondents have filed their reply. The respondents have stated that in the present matter, the cause of action arose to the applicant in the year 1994 but the OA has been filed in the year 2009. That the applicant had passed the departmental examination in the year 1994 but had not made any claim for grant of advance increments till 2008. Thereafter, he approached the Tribunal only in the month of November, 2009. There is thus a lapse of almost 14 years from the date when the cause of action arose to the applicant. The respondents have stated that in view of the judgment passed in **Bhoop Singh vs. Union of India, reported in 1992(3) SCC 322**, the Hon'ble Supreme Court has clearly held that the period of limitation for filing an application under Section

*Anil Kumar*

19 of the Administrative Tribunal's Act, 1985 is to be counted from the original date of cause of action and the submission of representation does not extend the period of limitation. The limitation for filing of the OA is one year from the date when the cause of action arose. Therefore, the present OA is time barred.

3. The respondents have further submitted that instructions of the Board dated 09.08.1983 was further clarified vide letter No. A-36017/44/94-Ad.IV dated 20.10.1994 wherein it was stated that:-

"the question of grant of advance increment to Head Clerks or Stenographer Gr. II for passing the Inspector Departmental Examination does not arise at this stage. More-over, passing of the examination itself is an incentive to employee to become eligible for appointment to a higher post on passing of such an examination. On these considerations, the existing scheme of advance increment need to be abolished. However, considering that in the Income Tax Department, the benefit of two advance increments is already admissible to some category of employees. It would be difficult to withdraw this incentive at this stage. It has, therefore, been decided that while the existing scheme of grant of advance increments for income tax side may be continued on historical grounds, no fresh categories of staff can be added to this scheme."

4. The respondents have further stated that the facts & circumstances of the applicant are different from that of others. In that it suffers from the defect of latches i.e. the applicant had passed the departmental examination in the year 1994 but had not made any claim for grant of advance increment till 2008. Thereafter, he has approached the Tribunal only in the month of November,

Anil Kumar

2009. Thus there is a lapse of about 14 years from the date of when the cause of action arose. Further, it is clear from the letters dated 01.03.1978 and 21.11.2002 issued by the Central Government that the applicant was not eligible to be granted any advance increment as the applicant was Head Clerk when he cleared the departmental examination for Inspectors. The respondents have also stated that their action is not illegal, arbitrary, unjustified and contrary to the provisions of law and accordingly, the applicant is not entitled for any advance increments, as mentioned earlier. Therefore, the OA filed by the applicant has no merit and is liable to be dismissed.

5. The applicant has filed rejoinder.

6. Heard the learned counsel for the parties and perused the documents. The learned counsel for the applicant argued that it is now well settled by the orders of the Court that the applicant is entitled for two advance increments with other similarly situated persons who were party to the case have been granted two advance increments. The judgment of the Hon'ble Tribunal which has been affirmed by the Hon'ble High Court is a judgment in ram and is not a judgment in persona and, therefore, the principle laid down in that judgment should be applicable to the applicant. The controversy has been decided in favour of the employees with the findings that the employees are entitled to the benefit of two

*Anil Kumar,*

increments on passing the departmental examination for the post of Income Tax Inspector. The applicant is similarly situated to those employees who had approached the learned Tribunal. He further argued the question of delay is not admissible in this case because the issue does not affect the rights of other persons. If the applicant is granted two advance increments, then other employees will not be adversely affected. The applicant is only seeking the benefit to which he entitled under the statutory provisions. Learned counsel for the applicant also made reference to the case of **M.R. Gupta vs. Union of India & Others [Civil Appeal No. 7510/1995 decided on 21.08.1995]** wherein the Apex Court has held that the claim of payment of correct salary according to rules throughout the service giving rise to fresh cause of action each time the salary was incorrectly computed. Para 6 of the judgment is quoted below:-

“6. The Tribunal misdirected itself when it treated the appellant’s claim as ‘one time action’ meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary through his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind.”

*Anil Kumar*

7. Learned counsel for the applicant referred to another judgment in the case of **Union of India & Others vs. Shantiranjan Sarkar** decided on 13.01.2009 [Civil Appeal No. 103/2009 (arising out of SLP(C) No. 23770/2005)].

Para nos. 13 & 14 of the judgments are quoted below:-

"13. If, thus, for the reasons known to the respondents that he was entitled to the benefit of the status of the Scheduled Caste in the Andaman and Nicobar Islands, irrespective of the fact that the advertisement issued recognized only two categories viz., Scheduled Tribes and 'OC', there was no reason to deprive the respondent from the said benefit. Respondent, therefore, was not appointed because of a mistake committed on the part of the authorities of the appellants. They, thus, cannot be permitted to take advantage of the same.

14. In that view of the matter, the delay in filing the original application should not be held to be a bar in granting him an equitable relief. Union of India as a benevolent litigant cannot be permitted to take advantage of its own wrong. Furthermore, the appellants are guilty of suppression of material facts before this Court. It, in its lists of dates, did not state that the original order of the High Court dated 9.07.2004 had been recalled and reviewed by the Division of the said Court by an order dated 30.10.2004."

8. Learned counsel for the applicant argued that the ratio laid down in the case of **M.R. Gupta vs. Union of India & Others (Supra)** and **Union of India & Others vs. Shantiranjan Sarkar (Supra)** are squarely applicable in this case and, therefore, the question of limitation in this present OA does not arise and prayed that the claim of the applicant be decided on merit.

9. Learned counsel for the respondents argued that the present OA is barred by limitation because the applicant

*Anil Kumar,*

has filed his claim after 14 years. He passed the departmental examination in 1994 and he filed his claim for advance increments for the first time in the year 2008 and now the applicant has filed this OA in the month of November, 2009 and, therefore, as per the ratio laid down in the case of **Bhoop Singh vs. Union of India** (supra), this present OA is barred by limitation and, therefore it needs to be dismissed. He further argued that the instructions of the Board dated 09.08.1983 and 20.10.1994 make it clear that the applicant is not entitled for the grant of two advance increments. He further stated that the letter dated 01.03.1978 and 21.11.2002 issued by the Central Government make it clear that the applicant was not eligible to be granted any advance increments as the applicant was Head clerk when he cleared the departmental examination for the post of Inspector and thus on merit also, the present OA needs to be dismissed.

10. Learned counsel for the applicant in reply argued that instructions dated 09.08.1983 & 20.10.1994 and letters dated 01.03.1978 and 21.01.1972 were all considered by the Tribunal when they allowed the application for the grant of two advance increments for those employees who cleared the departmental examination for Inspector.

11. Having heard the rival submission of the parties and after perusal of documents, we are of the opinion that this

*Anil Kumar*

case merit intervention by this Tribunal. The ratio laid down by the Hon'ble Supreme Court in the case of M.R. Gupta vs. Union of India & Others (supra) is in our opinion squarely applicable in this case. In the case of M.R. Gupta, Hon'ble Supreme Court has clearly held the claim to be paid the correct salary on the basis of proper fixation is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary through his tenure according to computation made in accordance with rules is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. Thus in this case also, it cannot be treated as one time action meaning thereby it was in continuing wrong based on recurring cause of action.

12. We are in agreement with the arguments of the learned counsel for the applicant that if the applicant is granted two advance increments then other employees will not be adversely affected. Thus law on limitation will not apply in this case. The ratio as laid down in Bhoop Singh (supra), as mentioned by the respondents in their reply, is not applicable in the present case as the facts of that case are quite different.

*Anil Kumar*

13. It is not disputed between the parties that the learned Tribunal has allowed two advance increments to the similarly situated employees who have qualified the departmental examination for the post of Inspector. It is also not disputed that the view of the learned Tribunal has been affirmed by the Hon'ble High Court. Thus the controversy of grant of two advance increments on qualifying the departmental examination for the post of Inspector has been settled by the court of law. Applying the same principle, the applicant is also entitled for the grant of two advance increments on the ground that other similarly situated employees have been given this benefit by the Court. In our opinion, the respondents are bound by the law of equity and they cannot make discrimination between two similarly situated persons. Therefore, in our opinion, the applicant is entitled for the grant of two increments from the date he passed the departmental examination for the post of Inspector. The respondents are directed to take action accordingly.

13. With these observations, the OA is allowed of with no order as to costs.

*Anil Kumar*  
(Anil Kumar)  
Member (A)

*K.S.Rathore*  
(Justice K.S.Rathore)  
Member (J)

*AHQ*