

15/01/2013

OA No. 96/2012

Mr. Amit Marthi, Counsel for applicant.

Mr. Gaurav Jain, Counsel for respondents.

Heard.

OA is disposed of by a separate order on the separate sheets for the reasons recorded therein.

K. S. Rathore

[Justice K. S. Rathore]

Member (J)

1

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Tuesday, this the 15th day of January, 2013

ORIGINAL APPLICATION No.96/2012

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)

K.L.Meena
s/o Shri Sheo Chand Meena,
aged around 58 years,
r/o Q.No.3, CAD Campus,
Dadabadi, Kota, District Kota,
presently working as Income Tax Officer,
Kota (Rajasthan).

.. Applicant

(By Advocate : Shri Amit Mathur)

Versus

1. Union of India through its Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. The Chief Commissioner, Income Tax,
NCR Building,
Jaipur
3. The Commissioner, Income Tax,
Kota, District,
Kota (Rajasthan)

.....Respondents

(By Advocate : Shri Gaurav Jain)

ORDER (ORAL)

By way of the present OA the applicant has prayed for quashing and setting-aside the orders dated 20.4.2011 (Ann.A/1), 14.6.2011 (Ann.A/2) and 21.8.2009 (Ann.A/3) with direction to the respondents to allow two advance increment as per order dated 8.3.1994 and the recoveries made by the respondents may kindly be refunded. Further prayed that future recoveries may be stayed and pay of the applicant be fixed after allowing him two advance increments for qualifying the examination to the post of Inspector.

2. The applicant is aggrieved by the order dated 21.8.2009 passed by the respondents whereby it is mentioned that applicant is not entitled to two advance increment for passing the Inspector Examination, therefore, the amount paid to him is liable to be recovered and the advance increments allowed to him needs to be withdrawn.

3. Further, the respondents on 20.4.2011 passed order wherein they have decided to revise pay of the applicant and to make recoveries from the salary of the applicant. This recovery order and withdrawal of benefit extended to the applicant is under challenge in this OA on the ground that the controversy involved

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herein has already been decided and allowed by different Benches of the Tribunal and Hon'ble High Courts, and in the light of the above, the OA may also be disposed of. The learned counsel appearing for the applicant placed reliance of the judgment of this Bench of the Tribunal dated 5.9.2011 passed in OA No.513/2009 in the case of Pooran Lal Verma vs. Union of India and ors. and judgment dated 21.8.2002 passed in OA No.127/2001 and 128/2001 by the CAT-Jodhpur Bench in the cases of Mrs. Aliamma Mathew and ors. vs. UOI and ors. which order has been upheld by the Division Bench of the Hon'ble High Court vide judgment dated 11.12.2006.

4. Per contra, the learned counsel appearing for the respondents submitted that passing of departmental examination itself is an incentive to employees to become eligible for appointment to a higher post on passing of such 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 this existing scheme of grant of advance increments for income tax side

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may be continued on historical grounds. No fresh categories of staff can be added to this scheme. It is further submitted that since the applicant was occupying the post of Head Clerk on the date of two advance increments, the same were withdrawn in view of the clarification letter dated 20.10.1994. The learned counsel appearing on behalf of the respondents referred to the judgment of the Hon'ble Supreme Court in the case of V.Gangaram vs. Regional Joint Director and Others reported in (1997) 6 SCC 139.

5. I have heard the rival submissions of the respective parties and carefully perused the material available on record as well as the judgments relied upon by the respective parties. Upon perusal of the order dated 5.9.2011 passed by this Bench of the Tribunal in OA No.513/2009, it reveals that a similar controversy involves in the present OA. In the aforesaid OA, this Tribunal after considering the matter at length in operative portion observed as under:-

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

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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."

6. Upon perusal of the observations made by this Tribunal and the ratio decided by the CAT-Jodhpur Bench vide order dated 21.8.2002 which has been affirmed by the Division Bench vide order dated 11.12.2006 passed in D.B.Civil Writ Petition No.800/2004, it reveals that the applicant is also entitled to grant of two advance increments on qualifying the departmental examination for the post of Inspector, which benefits has been extended to the similarly situated employees.

7. Therefore, I am of the view that the applicant is entitled for grant of two advance increments from the date he passed the departmental examination for the post of Inspector and the respondents are directed to take action accordingly. The money which has already been recovered be refunded to the

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applicant and the applicant is entitled to have the future benefits of two advance increments and the impugned orders Ann.A/1, A/2 and A/3 are hereby quashed and set-aside.

8. The judgment relied upon by the respondents is not applicable to the facts and circumstances of the present case.

9. The OA stands allowed in the above terms with no order as to costs.



(JUSTICE K.S.RATHORE)
Judl. Member

R/