

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

19.07.2013

OA No.835/2012

Mr. Amit Mathur, Counsel for applicant.
Mr. Gaurav Jain, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 835/2012

DATE OF ORDER: 19.07.2013

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Denesh Kumar Meena S/o Shri L.K. Meena, aged around 32 years, presently working as Senior Tax Assistant, in the office of Director, Income Tax (Investigation), Jaipur, R/o Jaipur (Rajasthan).

...Applicant

Mr. Amit Mathur, counsel for applicant.

VERSUS

1. The Union of India through its Secretary, Ministry of Finance Department, North Block, New Delhi.
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi.
3. The Director of Income Tax (INV.), NCR Building, Statue Circle, Jaipur.

...Respondents

Mr. Gaurav Jain, counsel for respondents.

ORDER (ORAL)

Brief facts of the case, as stated by the applicant, are that the applicant is presently working on the post of Senior Tax Assistant. He qualified the departmental examination for promotion to the post of Inspector.

2. Learned counsel for the applicant submitted that after qualifying the examination for promotion / appointment to the post of Inspector, the applicant submitted a representation to

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the respondents for granting him two advance increments (Annexure A/3).

3. Learned counsel for the applicant further submitted that the respondents vide order dated 27/30.07.2012 (Annexure A/1) have rejected the claim of the applicant by saying that the applicant is not entitled for two advance increments in view of the CBDT letter dated 17.11.2000.

4. Learned counsel for the applicant also submitted that the similar controversy has been settled by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur vide order dated 21.08.2002 in OA No. 127/2001 and 128/2001 by which the Tribunal allowed two advance increments to similarly situated persons. He further submitted that this order of C.A.T., Jodhpur Bench dated 21.08.2002 has been upheld by the Hon'ble High Court vide order dated 11.12.2006.

5. Learned counsel for the applicant further submitted that similar controversy has also been settled by this Bench of the Tribunal in OA No. 513/2009 (Pooran Lal Verma vs. UOI & Ors) decided on 05.09.2011 and OA No. 96/2012 (K.L. Meena vs. UOI & Ors.) decided on 15.01.2013.

6. Learned counsel for the applicant argued 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. Thus, the impugned order dated 27/30.07.2012

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(Annexure A/1) passed by the respondents should be quashed and set aside and the applicant be allowed to draw two advance increments as was done by this Tribunal in the case of other similarly situated persons.

7. On the other hand, learned counsel for the respondents submitted that Administrative Officer / DDO Office of DIT (Inv.) Jaipur rejected the claim of the applicant in reference to CBDT letter No. A-26017/28/75-Ad-IX dated 17.11.2000. As per this OM dated 17.11.2000, the Head Clerks now Senior Tax Assistant is not allowed to grant of advance increment for passing the Inspector Departmental Examination. It is further submitted that the instruction of the Board letter dated 09.08.1983 was further clarified by the Board vide letter F. No. A-36017/44/94-Ad. IV dated 20.10.1994 (Annexure R/1) wherein it was stated that 'the question of grant of advance increment to Head Clerk or Stenographer Grade II for passing the Inspector Departmental Examination does not arise at this stage. Moreover, 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 needs 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 may be

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continued on historical grounds. No fresh categories of staff can be added to this scheme.

8. Learned counsel for the respondents further submitted that the claim of the applicant was rejected as per OM dated 20.10.1994 and objection raised by the Zonal Accounts Officer, CBDT, Jaipur dated 18.07.2012 (Annexure R/2).

9. Learned counsel for the respondents argued that since the applicant was occupying the post of Tax Assistant (earlier it was known as Head Clerk) on the date of passing of the qualifying examination, therefore, he is not entitled for the same in view of the clarification letter dated 20.10.1994 (Annexure R/1).

10. Learned counsel for the respondents submitted that in view of the law laid down by the Hon'ble Supreme Court of India in the case of Chandi Prasad Uniyal and Others vs. State of Uttarakhand and others, reported in 2012 (7) SC 460 wherein the Hon'ble Supreme Court in para 16 of the judgment has held that we are concerned with the excess payment of public money which is often described as 'tax payers money', which belongs neither to the officers who have effected over-payment nor that of the recipients. The Hon'ble Supreme Court has further held that any amount paid / received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situation law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

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11. Learned counsel for the respondents argued that the applicant is not entitled for two advance increments and hence, the Original Application should be dismissed with costs.

12. Heard the learned counsel for the parties, perused the documents available on record and the case law referred to by the learned counsel for the parties.

13. Upon perusal of the order dated 05th of September, 2011 passed by this Bench of the Tribunal in OA No. 513/2009 - Pooran Lal Verma vs. UOI & Ors. - (supra) and order dated 15th of January, 2013 in OA No. 96/2012 - K.L. Meena vs. UOI & Ors. (supra), it reveals that a similar controversy involves in the present Original Application also.

14. In OA No. 513/2009 - Pooran Lal Verma vs. UOI & Ors. - (supra), this Bench of Tribunal after considering the matter at length, in para 13 of the order 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 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."

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15. It is not disputed between the parties that similar controversy was decided by the Central Administrative Tribunal, Jodhpur Bench in OA No. 127/2001 & OA No. 128/2001 vide order dated 21.08.2002. This order dated 21.08.2002 passed by Jodhpur Bench of the Tribunal has been affirmed by the Division Bench of the Hon'ble High Court vide order dated 11.12.2006 passed in D.B. Civil Writ Petition No. 800/2004.

16. It is not disputed between the parties that nomenclature of the post of Tax Assistant was earlier Head Clerk. The employee who was posted as Head Clerk was given two advance increments on passing examination for promotion / appointment to the post of Inspector. Therefore, the applicant, being similarly situated person, is also 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.

17. With regard to the submission of the learned counsel for the respondents that Hon'ble Supreme Court of India in the case of Chandi Prasad Uniyal and Others vs. State of Uttarakhand and Others (supra) has laid down the law with regard to the recovery of overpayment made to the employees, I am of the view that the ratio decided by the Hon'ble Supreme Court in that case, is not applicable in the facts and circumstances of the present case. In the present Original Application, no recovery of excess payment is to be made from the applicant. On the contrary, the applicant is entitled for two advance increments on qualifying the

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departmental examination for promotion to the post of Inspector.

18. In view of the above discussion, the applicant is entitled for the benefits of two advance increments and accordingly the impugned order dated 27/30.07.2012 (Annexure A/1) is quashed and set aside.

19. Consequently, the Original Application is allowed in the above terms with no order as to costs.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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