

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO.060/00454/2017

Chandigarh, this the 25th day of January, 2019

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

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Shitala Prasad, aged 44 years, S/o Sh. Ram Chander Yadav, Tax Assistant, O/o Commissioner of Income Tax (Exemptions), C.R. Building, Sector 17, Chandigarh, R/o H.No.406, Type-III, G.H. 83A, Sector 20, Panchkula, Group-C.

....APPLICANT

(Present: Mr. R.K. Sharma, Advocate)

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. Central Board of Direct Taxes, New Delhi, through its Chairman.
3. Chief Commissioner of Income Tax, North West Region, Aayakar Bhawan, Sector 17-E, Chandigarh.
4. Commissioner of Income Tax (Admn and CO), C.R. Building, Sector 17-E, Chandigarh.
5. Principal Chief Controller of Accounts, 4th Floor, Vikas Bhawan, Internal Audit Wing, I.P. Estate, New Delhi-110002.
6. Zonal Accounts Office, CBDT, R.No.417, 3rd Floor, Railway Board Building, The Mall Shimla-171003 (HP).
7. Additional Commissioner of Income Tax, Solan Range, Shimla.
8. Zonal Accounts Officer, Central Board of Direct Taxes, Aayakar Bhawan, Sector 17, Chandigarh.

....RESPONDENTS

**(Present: Mr. Sanjay Goyal, counsel for respondents no.1 to 4 & 7.
Mr. K.K. Thakur, counsel for respondents no.5, 6 & 8.)**

ORDER (Oral)

SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. has been filed by the applicant assailing order dated 19.12.201 (Annexure A-1), whereby respondents have refixed his salary and have ordered recovery of excess payment which has been paid to him. He has also impugned orders dated 29.01.2015 (A-2), 9.2.2015 (A-3), 10.03.2015 (A-4), 30.03.2015 (A-5)12.01.2017 (A-6).
2. Broadly, facts are not in dispute.
3. Applicant initially served Armed Force as an Airman and was subsequently promoted as Sergeant in the pay scale of Rs.5200-20200 with Grade pay of Rs.2800 and worked as such till 31.03.2013. Pursuant to an advertisement issued by SSC in 2011, applicant appeared in the Graduate Level Examination and was selected and offered appointment as Tax Assistant in the Income Tax Department in the pay scale of Rs.5200-20200 with grade pay of Rs.2400/-. Since he was an ex-serviceman, he moved a representation to fix his pay in accordance with the provisions of CCS (Fixation of Pay of re-employed Pensioners), order 1986 (as revised from time to time). His plea was accepted and his pay was fixed in the pay scale of Rs.5200-20200 with Rs.2400 grade pay, vide order dated 3.9.2014 (Annexure A-13). Subsequent to that there was an audit objection with regard to fixation of pay of the applicant and grant of same very pay scale which he was getting in grade pay of Rs.2800/-. Based upon the audit objection, respondents have passed impugned orders Annexure A-1 to A-4

and then Annexure A-5 ordering recovery of the excess payment of Rs.4,38,171/- against which the applicant is before this Court.

4. Learned counsel for the respondents submitted that there is no provision under the rules for fixation of pay of ex-serviceman on the pay scale which he was drawing while discharging from Military service earlier. Sh. K.K. Thakur drew our attention to the averment made in the written statement where respondents have stated that if an ex-serviceman is reemployed then he can be granted initial pay of the post. He also demolished plea of the applicant with regard to discrimination qua similarly placed persons by submitting that to whom this benefit was granted based on objection, the same has also been withdrawn. Averment to this effect has been made in para 5 (iii and v) of the written statement. Therefore, he submitted that O.A. be dismissed.

5. We have given our thoughtful consideration to the entire matter and have gone through the pleadings available on record.

6. We are in agreement with the submissions made at the hands of the respondents that that the impugned orders are liable to upheld on the ground that though plea of the applicant was accepted for re-fixation of his pay and grant of same very pay scale which he was getting before joining respondent department but a categorical note has been given in the order that his pay fixation is subject to audit observations. Since he was made aware of this fact that re-fixation is subject to audit scrutiny and later an audit objection was raised, therefore, the respondents have passed impugned orders refixing his pay and accordingly ordered recovery. Therefore, the impugned order deserve no interference by this Court.

7. Learned counsel for the applicant vehemently opposed action of the respondents qua recovery and placed reliance on judgment in the case of **State of Punjab Vs. Rafiq Masih (White Washer),** (2015 (4) SCC 334). We are afraid that his contention cannot be accepted in view of the later judgment of the Hon'ble Supreme Court in the case of **High Courts of Punjab and Haryana & Ors. vs. Jagdev Singh** (Civil Appeal No.3500 of 2006), decided on 29.07.2013, wherein after considering earlier judgments including the judgment cited by learned counsel for the applicant in the case of Rafiq Masih (supra), lordships have in para no.12 has held as under:-

“12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable installments. We direct that the recovery be made in equated monthly installments spread over a period of two years.”

8. Accordingly, we see no reason to allow this petition. However, since respondents are recovering huge amount of over Rs.4 Lac, they are directed to recover the same in easy monthly installments because they cannot recover the entire amount in one go from a salaried class employee unless, he agrees to. Accordingly, we direct the respondents to recover the indicated amount in monthly easy installments. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 25.01.2019.

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