

Central Administrative Tribunal, Principal Bench

OA No. 1652 of 1998

New Delhi this the 18th day of ^{November} October, 1999

Hon'ble Mr. S.R. Adige, Vice Chairman(A)
Hon'ble Mr. Kuldip Singh, Member (J)

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Shri P.N. Koul
JE-2, Gupta Colony, Khirkee Extension,
Malviya Nagar, New Delhi.

.. Applicant

Applicant in person.

Versus

1. Union of India through
The Secretary, Ministry of Law and Justice,
Shastri Bhawan, New Delhi.
2. The President, Income Tax Appellate Tribunal,
4th Floor, Old C.G.O. Building,
101, Maharshi Karve Road, Mumbai.
3. The Registrar, Income-Tax Appellate Tribunal,
4th Floor, Old CGO Building,
101, Maharshi Karve Road, Mumbai.
4. The Controller of Accounts,
Ministry of Law and Justice,
3rd Floor, 'C' Wing,
Lok Nayak Bhawan, Khan Market, New Delhi.
5. The Assistant Registrar, Income-Tax Appellate Tribunal,
(Drawing and Disbursing Officer),
10th/11th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi.

.. Respondents

By Advocate Shri V.S.R. Krishna.

ORDER

By Hon'ble Shri Kuldip Singh, Member (J)

The applicant in this case has challenged an order issued by the Register, Income-Tax Appellate Tribunal, Mumbai regarding fixation of pay of Senior Personal Assistant in the Income-Tax Appellate Tribunal which is at page 1 of the paper book of the OA. He has also challenged another letter issued by Registrar, Income-Tax Appellate Tribunal, Delhi regarding fixation of pay of Senior Personal Assistant, which is at page 2

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of the paper book. Similarly the third letter dated 29.4.98 which is at page 3 of the paper book issued by the Controller of Accounts, Ministry of Law and Justice whereby directions were issued to withhold the second instalment of arrears to all such Senior Personal Assistants unless their cases are finalised. Similarly, he has also challenged another letter which is on page 4 of the paper book written by the Pay and Accounts Officer, Department of Legal Affairs, Ministry of Law and Justice to the Assistant Registrar, ITAT, New Delhi regarding forwarding of revised pension papers of the applicant, who had retired on 3.6.97. While assailing all these letters, which are at pages 1 to 4 of the paper book, the applicant has prayed as under:-

"(i) Direction for grant of FR 22-C benefit w.e.f. 1.1.1986, i.e., the date of promotion.

(ii) Interest at the rate of 12% for the entire period of withholding the payments.

(iii) Compensation for the unwarranted agony caused and the expenses incurred at various stages of persuading the authorities and the litigations etc.".

2. Facts in brief are that the applicant was working as Senior Personal Assistant in the Income-Tax Appellate Tribunal and had retired on 30.6.97. He had submitted various claims regarding retiral benefits but the same was returned unpassed by the Controller of Accounts as according to the applicant, the Controller of Accounts was not reconciled to the fact that the Senior PAs working in the ITAT were entitled to the benefits given under FR 22-C consequent upon the promotions made by the President, ITAT as he was of the view that fixation of pay was wrong. The entire controversy had arisen after the 4th Pay

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Commission's Report had been accepted and came into operation w.e.f. 1.1.1986. The 4th Pay Commission had recommended the following scales for Stenographers Grade-I:-

(13)

Stenographer Grade-I 550-25-750-EB-30-900 1640-60-2600-EB-75-
2900

2000-60-2300-EB-75-
3200 for posts of
Stenographers
attached to officers
of Senior
Administrative Grade
and equivalent posts
by suitably
upgrading the
required number of
posts
of
Stenographers from
the lower grades.
These posts in the
new higher scale
should be filled by
promotion as per
normal procedure.

3. Since the applicant was earlier working in the scale of Rs.550-900 and was attached to one of the officers of Senior Administrative Grade in the ITAT, he alleges that the Ministry of Law without awaiting for the formal orders of the Government of India issued instructions to ITAT vide letter dated 9.6.87 to raise the pay scales of the PAs in the Tribunal to that of Rs.2000-3200 w.e.f. 1.1.1986. Later on, Government of India (DOPT) issued proper instructions in this regard vide OM dated 1.3.88 (Annexure B) to the Ministries/heads of the Departments, which, among other things mentioned as follows, which is relevant as far as this case is concerned:-

(i) These posts will be filled by promotion.

(ii) The higher scale will be given only to such personnel who qualified and fulfilled the criterion fixed by the DOPT.

(iii) DPC will be convened.

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4. On the strength of this letter, the applicant made a representation to the President, ITAT and requested him to consider for the grant of benefit of FR22-C, who after considering the same discovered that certain persons were not eligible as per the DOPT instructions fully, modified his earlier order with the intention of giving benefit of FR 22-C and thus the scale of Rs.2000-3200 was given w.e.f. 1.1.1986 but the benefit of FR 22-C was given w.e.f. 1.9.1990 and then the bills for payment of arrears were submitted.

5. The Controller of Accounts referred the matter to the Ministry of Law and Ministry after examining the matter in depth, directed that it was a clear case of promotion and not merely revision of scale and FR 22-C was clearly applicable and payments were made. However, the Controller of Accounts chose to write a letter to the DOPT and DOPT felt that the action of the ITAT was in defiance of the orders of the Ministry of Law and Justice to the effect that FR 22-C was not applicable.

6. Thereafter, the Controller of Accounts started mounting pressure on the ITAT for recovery of the excess amount. So the applicant has requested this Tribunal to examine whether the Controller of Accounts was right for not extending the benefit of FR 22-C to the applicant and persons similarly situated or the benefit of FR 22-C should be given.

7. The applicant has accordingly prayed that the benefit of FR 22-C should be given to him w.e.f. 1.1.1986, i.e., the date of promotion.

8. Respondents contested the OA and have stated that consequent upon the acceptance of recommendations of the 4th Central Pay Commission by the Government of India, the Ministry of Law and Justice conveyed the sanction with due concurrence of the Ministry of Finance to the adoption of scale of Rs.2000-3200 for Personal Assistants of ITAT instead of Rs.1640-2900 vide their letter dated 9.6.87 and subsequently it was also decided that the post of Personal Assistant be redesignated as Senior Personal Assistant.

9. It is further stated that thereafter, ITAT issued orders redesignating the post of Personal Assistant as Senior Personal Assistant (General Central Service Group 'B' Gazetted) in terms of the Department of Legal Affairs order dated 23.8.88 and this was not to be treated as the post has been filled by promotion as per normal procedure as contained in DOPT's OM dated 1.3.88 and while implementing the orders of pay fixation of Senior PAs, they were given benefit under FR 22-C. However, as a result of internal audit a point had arisen for consideration whether in fixing the pay, benefit of FR 22-C was applicable or not or the pay was to be fixed as CCS (R.P) Rules, 1986 in the normal course. The matter was referred to the DOPT and after detailed discussion, DOPT opined that the incumbents were not entitled to fixation of pay under FR 22-C(old) now FR 22(1)(a)(i) so pay fixation was to be done under FR 22(1)(a)(2) read with FR 23. Ministry of Finance also agreed with the views of the DOPT. Accordingly, it is stated that the pay is to be fixed in accordance with FR 22(1)(a)(2) read with FR 23 as it is not a case of promotion but it is a case of replacement of pay scales.

10. We have heard the learned counsel for the parties and have perused the records.

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11. To our mind the only controversy in this case is whether it is a case of promotion or it is a case of replacement of pay scale/upgradation. It is an admitted case of the applicant that 4th Pay Commission had made the recommendation as quoted above for replacement of scales of Stenographers Grade-I who were drawing earlier Rs.550-900 by replacing the scale to Rs.1640-2900 and Rs.2000-3200. The applicant is emphasising the words "promotion" as used in the recommendations referred to above by the 4th Pay Commission. In the last line the Pay Commission had recommended that posts in the scale of Rs.2000-3200 should be filled by promotion as per normal procedure. The applicant is trying to take the advantage of this last line and wants to emphasise that the scale of Rs.2000-3200 was granted to the persons who were promoted to this scale whereas the replacement scale was only for Rs.1640-2900 from Rs.550-900.

12. Now we have to examine whether the applicant had been promoted to the scale of Rs.2000-3200 or it is merely a case of replacement of scales as recommended by the 4th Pay Commission.

13. It is a well settled law that promotion can take place only in a case where an incumbent of a post steps to another higher post leaving behind his post originally held by him as vacant and steps up to another higher post. In a case of promotion an incumbent of a post always leaves behind a vacant pedestal on which one was earlier standing, makes room for another to occupy that pedestal and he himself goes to a higher pedestal by stepping up the latter.

14. As far as the upgradation or getting a higher pay while staying on the same pedestal is concerned, one may be getting pecuniary benefits but does not get change in status and

responsibilities. If one acquires higher status and responsibilities then only its a case of promotion. Otherwise it remains the case of either upgradation or revision of pay scales because the incumbent is given only the economic benefits. The purpose of the Pay Commissions in general is always to examine the existing structure of similar set of employees with reference to the conditions of service taking into consideration the total benefits including death-cum-retirement gratuity and to make recommendations in accordance with the changed fiscal environment.

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15. In case of 4th Pay Commission the terms of reference of the Commission beside others was to the following effect:-

"(1) To examine the present structure of emoluments and conditions of service, taking into account the total packet of benefits, including death-cum-retirement benefits, available to the following categories of Government employees and to suggest changes which may be desirable and feasible.....

16. In the case of Stenographers working in organisation outside the Secretariat, the 4th Pay Commission had made the recommendation as stated in para 2 above. It appears that while recommending the replacement of scales of Stenographers Grade-I who were earlier drawing Rs. 550-900 (un-revised), the 4th Pay Commission had divided those Stenographers into two categories. Some of them were given the scale of Rs.1640-2900 and some of the Stenographers who were attached to the officers of Senior Administrative Grade and equivalent post, were given the scale of Rs.2000-3200. Thus in a way the 4th Pay Commission had created another class in the Stenographers Grade-I itself and had bifurcated the same into two classes. Thus, Stenographers who

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were attached to the officers of Senior Administrative Grade were replaced by the scale of Rs.2000-3200. As such it cannot be said that they were given promotion from the scale of Rs.1640-2900. (8)

17. The applicant had tried to read the OM 1.3.88 as if vide this OM promotions were granted to Stenographers in the scale of Rs.2000-3200 but it is clearly a misreading because the OM says that the Stenographers attached with the officers of the Senior Administrative Grade will be in the scale of Rs.2000-3200 and these posts were created by upgrading the required number of posts of Stenographers. Though this OM also talks of DPC if the vacancies are available but it still says that the upgraded posts will be filled up by promotion on the basis of non-selection. From amongst the officers possessing certain qualifying services, it does not lay down any guideline for giving promotion rather it simply says that the posts are to be upgraded and the vacancies are to be filled up by non-selection process. So by no stretch of imagination, it can be said that the applicant or persons similarly situated in the ITAT were given promotion from the post of Grade-I Stenographers to the post of Senior PA. It was simply redesignation of the post as per Notification Annexure-D which is reproduced herein:-

"Consequent upon redesignation of the posts of Personal Assistants of the Income-Tax Appellate Tribunal as Senior Personal Assistant (General Central Service Group 'B' Gazetted) vide Department of Legal Affairs Order No.A-12018(5)/84-Adm.III(LA) dated the 23rd August, 1988 the following present incumbents to the posts of Personal Assistant in the Income-Tax Appellate Tribunal are redesignated as Senior Personal Assistant (General Central Service Group 'B' Gazetted)with immediate effect". (emphasis added)

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18. Thus the entire documents on the record show that it was a case of revision of pay scales as recommended by the 4th Pay Commission and redesignation of the nomenclature from PA to Sr. PA of the ITAT. So in these circumstances we have to see whether FR 22-C is attracted or not. According to FR 221(a)(1) the benefit is to be given when appointment to the new posts involves assumption of duties or responsibilities of greater importance than those attached to such permanent posts. In this case this provision cannot be attracted because the Stenographer Grade-I who was earlier working as PA with the Senior Grade Officers of the ITAT has been now designated as Sr. PA. However, duties and responsibilities remain the same. In this case FR 22(a)(2) will be applicable and not FR 22(a)(1). So we are of the considered opinion that benefit of FR 22-c(old) now FR-22(1)(a)(1) cannot be extended to the applicant since it is not a case of promotion. We may also mention that since the applicant was appearing in person and had filed this OA and had mentioned in sub-para 4 of para 5 of the Additional Facts as follows which is reproduced herein below:-

"(4) Assuming, while not accepting, that the FR-22-C is not considered applicable by the Hon'ble CAT in this case, whether the Tribunal would be justified to make recoveries after such a long time or correct the fixations as has been the consistent view of the CAT in various cases decided by it".

19. Though the applicant had made an argumentative pleadings in his OA yet also appears to be reconciled to the fact that FR 22-C may not be applicable to his case as is stated above. *k*

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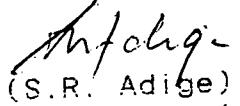
20. As far as the point of recovery is concerned, it is pertinent to mention over here that applicant has not made any prayer for stay of recoveries if any levied by the department on account of wrong fixation of pay. Moreover, the Bombay Bench of the Central Administrative Tribunal has already passed an order vide O.A. No. 543/98 dated 27.7.98 (N. Gopalakrishnan Vs. U.O.I. & Others), wherein the department had confirmed and conceded that the department will take steps for recoveries only therein after issue of show cause notice to the applicants. So we presume that department would not levy any recoveries without issue of show cause notice, so no order is required to be passed.

21. In view of the above discussion, we are of the opinion that the applicant is not entitled to the benefits of FR 22-C and the OA is dismissed. No costs.


(Kuldip Singh)

Member (J)

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(S.R. Adige)
Vice Chairman(A)