

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

O.A. No. 32 of 1991  
~~TAX NOX~~

DATE OF DECISION 1.4.1992

Mrs. Leelamma Varghese Petitioner

Petitioner in Person Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri R.P. Bhatt Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C. Bhatt : Member (J)

The Hon'ble Mr. R. Venkatesan : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Mrs. Leelamma Varghese,  
63, Mangal Murty Society,  
Gotri Road,  
Baroda- 390 015.

: Applicant

VS.

Union of India, through  
The Chief Commissioner of  
Income-Tax (Admn.),  
Aayakar Bhavan,  
Navrangpura,  
Ahmedabad- 380 009

: Respondents

(Advocate : Shri R.P.Bhatt)

O R A L - O R D E R  
O.A. No. 32 of 1992

Date : 1.4.1992

Per : Hon'ble Shri R. Venkatesan

: Member (A)

The applicant in this case was promoted from U.D.C.  
to Head Clerk on 10.4.1978. By certain orders of the  
Government of India, Ministry of Finance, dated 31.3.1978,  
it was decided to create a number of posts of Tax Assistant  
carrying higher scale of pay than U.D.C., but lower than  
that of Head Clerk, in lieu of an equal number of posts of  
U.D.C. which would stand abolished as and when the posts  
of Tax Assistant were filled up in the respective charges.  
The further conditions in the order were that the posts  
would be filled up entirely by promotion from the cadre  
of U.D.C. on selection basis on the recommendation of

a D.P.C. from among those U.D.Cs who had rendered a minimum service of three years in the grade and who had secured atleast 40% marks in certain specified subject in the Income tax Inspectors Departmental Examination.

2. The applicant contends that though she fulfilled the above conditions, she was not given promotion as Tax Assistant before her promotion to the post of Head Clerk. As a result, she contends, that her pay in the post of Head Clerk is lower than that of certain junior Shri N.R.Manger in the cadre of U.D.C., who was promoted as Tax Assistant on 29.6.1978 and further as Head Clerk on 5.7.1979. She prays for stepping up of her pay to that of the junior and for payment of arrears.

3. The learned advocate for the respondents has made available the order dated 31.3.1978 and drawn attention to the fact that promotions were to be made only on selection/basis of the D.P.C. and the applicant could not have any automatic right for promotion as Tax Assistant. She also drew attention to the provisions contained in the Government of India, Ministry of Finance

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O.M. No. F.2(78)-E-III (A)/66, dated 4th February, 1966 reproduced as decision in F.R. 22 C in Swamis Compilation, dealing with removal of anomaly by stepping up of pay of a senior on promotion drawing less pay than his junior. She contended that one of the conditions for stepping up was that both the junior and the senior officer should belong to the same cadre. The further condition was that the scale of pay in the lower and higher posts should be identical. She contended that the junior, Shri N.R. Manger, with reference to whose pay the applicant wants stepping up, was in the different cadre of Tax Assistant before he was promoted as Head Clerk and was not in the same cadre as the applicant. Therefore the above two conditions were not satisfied.

4. Counsel for the respondents also raised the objection of limitation. The applicant has been diligently representing the case before the authorities and has received a reply rejecting the representations with reasons, on 14.6.1990, and in the facts and circumstances of the case, we condone the delay in coming before this Tribunal. We are however awarding relief

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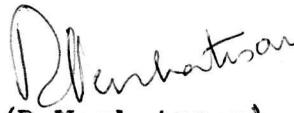
only on a notional basis.

5. We find that by virtue of the order of Ministry of Finance, dated 31.3.1978, a new grade of Tax Assistant, had been created. The duly constituted D.P.C. had to consider the case of all U.D.C's who fulfilled the prescribed conditions laid down in para 4 of the said order as on 31.3.1978. As the applicant was a U.D.C. on 31.3.1978 and continued as U.D.C. until her promotion on 10.4.1978, we hold that she had the right to be considered for promotion as Tax Assistant under the order dated 31.3.1978 in case she fulfilled the other prescribed conditions of the order. The fact that she was promoted as Head Clerk on 10.4.1978 would not deprive her of her right for notional promotion so long as she was not confirmed against a substantive post continued in Head Clerk's cadre. We therefore direct the respondents to have a review D.P.C. to examine whether the applicant fulfilled the conditions of the said order of the Ministry of Finance dated 31.3.1978, and if she fulfilled the conditions as on the date her juniors were considered, she shall be given notional

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promotion from the date on which her immediate junior in the cadre of U.D.C. was promoted. She is also entitled to refixation in her pay in the cadre of Head Clerk and of Inspector with reference to her notional promotion in the cadre of Tax Assistant. No arrears of pay will however be payable. The application is allowed accordingly.

There shall be no order as to costs.

  
(R. Venkatesan)  
Member (A)

  
(R.C. Bhatt)  
Member (J)

\*Ani.