

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 590/93
T.A.NO.

DATE OF DECISION 30.06.1998

V.T. Mathai Petitioner

Mr. M.R. Anand Advocate for the Petitioner [s]
Versus

Union of India and another Respondent

Mr. M.R. Bhatt Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? *rw*
- 2, To be referred to the Reporter or not ? *rw*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? *rw*

V.T. Mathai,
residing at A/25/26, Marvel Society,
Behind Abadnagar, Bopal Road,
Ahmedabad - 380 058.

... Applicant

(Advocate: Mr. M.R. Anand)

VERSUS

1. Union of India
(Notice of the petition
to be served through
Secretary, Revenue Department
Secretariat, New Delhi)

2. Chief Commissioner of
Income-Tax, Ayakar Bhavan,
Ashram Road, Ahmedabad - 9.

... Respondents

(Advocate: Mr. M.R. Bhatt)

ORAL ORDER

O.A./590/93

Dated: 30.06.1998

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman

We have heard Mr. Rawal on behalf of Mr. Anand for the applicant and Mrs. Bhatt for the respondents. The applicant who retired as an Income Tax Officer on 31.3.91 is aggrieved by the action of the Department in seeking to recover a sum of Rs.9570/- on account of alleged overpayment. In particular, he says that he is entitled to have his pay stepped up while taking into account the Special Pay of Rs.25/- drawn by him as UDC attached to the Internal Audit Party for the period from 2.4.73 to 28.8.73 and that on promotion as Head Clerk in September 1973 his pay should have been refixed taking into account the Special Pay. He further contends that the Department ought to have refixed his pay on his promotion as Head Clerk on 6.9.73, and paid him the consequential arr-

Contd..3/-

ears and if this were done the same could have been adjusted against the overpayment as claimed by the respondents.

2. We have heard Mr. Rawal and gone through the relevant records.

3. The applicant joined Income Tax Department as LDC in 1956. He was promoted as UDC in 1963. He functioned as UDC in Internal Audit Party for the period from 2.4.73 to 28.8.73 and he was drawing a Special Pay of Rs.25/- p.m. for this period. He was promoted as Head Clerk on 6.9.73 and eventually became an Income Tax Officer and retired as such on 31.3.91.

4. The payscales of the Central Govt. employees were revised as per the recommendations of the Fourth Pay Commission with effect from 1.1.86. On that date, the applicant was serving as Inspector of Income Tax and he was promoted as Income Tax Officer with effect from 22.1.86. While fixing his pay in the revised scale, the Department took into account the revised pay of Rs.810/- fixed in the old scale of Income Tax Officer prior to 1.1.86 and correspondingly, fixed his pay as ITO at Rs.2375/- in the revised scale. The Audit Party noticed that this is not in accordance with the relevant rules, as when he came over to the revised scale, he was an Inspector and his pay would have been fixed in the revised scale in the grade of Inspector and on promotion his pay as ITO should have been fixed at the level of Rs.2300/- and not on Rs.2375/- as has actually been done. On the basis of the observations of the Audit Party, the Department straightaway came to the conclusion that there has been overpayment made to the applicant on account of Pay and Allowances, DCRG,

Commuted value of pension, Leave salary encashment, monthly pension from April, 91 to January, 92 etc. and proceeded to issue an order dated 11.2.92 to the Income Tax Officer (Administration) Ahmedabad to recover the said alleged overpayment (Annexure A-1). Aggrieved by this action, the present OA has been filed.

4. The counsel for the applicant submits that before issue of the impugned order dated 11.2.92, no show-cause notice was given to the applicant and as such the Department had not conformed to the principles of natural justice. He does not press the claim for taking into account the Special Pay drawn as UDC while fixing pay as Head Clerk on promotion to that level in 1973.

5. We find from the impugned order that the applicant was given one extra increment which, the Audit says, was not due to him in the cadre of ITO as his pay in the revised scale ought to have been determined on 1.1.86 only as Inspector and the pay ^{of} ~~of~~ Income Tax Officer should have been fixed in the revised scale ~~of~~ promotion on 22.1.86. The question whether it is possible for the applicant to come over to the revised scale with effect from 1.1.86 after his promotion as ITO does not seem to have been gone into. We also note the contention of Mr. Rawal that before issuing the impugned order as at Annexure A-1 dated 11.2.92 no show-cause notice was given to the applicant. This is borne out by the impugned order itself as it merely directs ITO (Administration) to arrange to recover the alleged excess payment made to the applicant and there is nothing to show that any notice was given to the applicant so that he has an opportunity to state his case. The Depart-

ment has therefore clearly violated the principles of natural justice as it has sought to recover certain amounts from the applicant without giving him a show-cause notice. On this short ground, we quash the letter dt. 11.2.92 as at Annexure A-1.

6. The OA stands disposed of with the above directions.
No costs.

P.C. Kannan

(P.C. Kannan)
Member (J)

V. Ramakrishnan

(V. Ramakrishnan)
Vice Chairman

hki

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No. CA/590/93 of 19

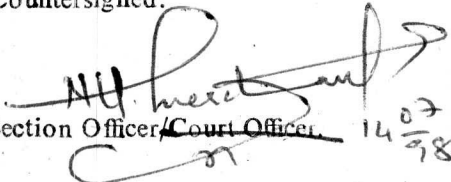
Transfer application No. _____ Old Writ Pet. No.


CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

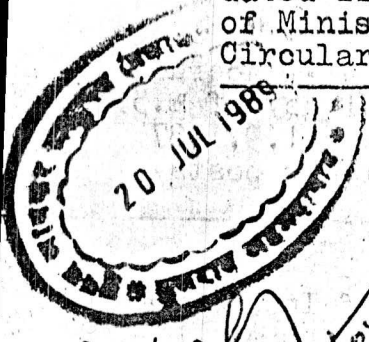
Dated: 09/07/98

Countersigned:


Section Officer/Court Officer. 14/07/98


Signature of the
Dealing Assistant.

Below copy of Department of Expenditure O.M.No.7(29) E.III/89 dated 22.5.1989 received under F.No.21/36/89.Co-o.d.dated 16.6.89 of Ministry of Finance, Department of Revenue, New Delhi. Circular No.134/89.



Sub:- Grant of Special Pay of Rs.35/- per month to the Upper Division Clerks in the non-Secretariat administrative offices - question whether this amount should be taken into account in the fixation of pay on promotion - Decision regarding -

.....

The undersigned is directed to refer to this Ministry's O.M.No.7(35) E-III/87 dated the 1st September, 1987, on the subject mentioned above, which provides that special pay of Rs.35/- p.m. paid to Upper Division Clerks under Ministry of finance (Department of Expenditure) Office Memorandum No.F.7(52)/E.III/78 dated 5.5.1979 shall be taken into account for fixation of pay on promotion subject to the conditions mentioned therein. This decision was based on the Award of the Board of Arbitration and was effective from 1st September, 1985.

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2. As the above cited orders dated 1st September, 1987 were not applicable to those UDCs who, while drawing special pay of Rs.35/- p.m. were promoted to higher posts prior to 1.9.85, their pay on promotion was fixed without taking into account the Special pay of Rs.35/-. A number of such Upper Division Clerks filed petitions before CAT claiming that with the implementation of the above decision of the Government, they have been put to disadvantage because their juniors promoted to higher posts on or after 1.9.1985 while drawing special pay of Rs.35/- have got their pay fixed at a higher stage as the special pay of Rs.35/- has been taken into account in such pay fixation. The Central Administrative Tribunal have delivered judgements that pay of those Upper Division Clerks drawing special pay of Rs.35/- and promoted to higher posts prior to 1.9.1985 may be re-fixed on notional basis from the date of their promotion by taking into account special pay of Rs.35/- and actual benefit be given from 1.9.1985 without payment of any arrears. This will be subject to fulfilment of the conditions mentioned in Ministry of Finance O.M.No.7(35)/E-III/87 dated the 1st September, 1987. It was decided to implement the judgements of CAT in respect of the petitioners only.

3. The decision of extension of the benefit of the judgements of CAT to the similarly placed Upper Division Clerks has been under consideration of the Government. President is now pleased to decide that pay of those Upper Division Clerks who were drawing special pay of Rs.35/- in terms of this Ministry's O.M.No.7(52)/E-III/78 dated 5.5.79 and promoted to higher posts prior to 1,9.1985 and who fulfils the conditions mentioned in this Ministry's O.M.No.7(35)/E-III/87 dated the 1st September, 1987 may be re-fixed on notional basis from the date of their promotion by taking special pay of Rs.35/- into account and actual benefit may be allowed to them only from 1.9.1985 without payment of ~~any arrears.~~

/2/

4. No benefits of these orders, whatsoever, will accrue to Upper Division Clerks not in receipt of Special pay of Rs.35/- or not fulfilling conditions contained in O.M. dated 1.9.1987 irrespective of the date of their promotion to higher posts.

No. Est.206-1/64/77

Office of the
Chief Commissioner of Income tax
(Administration) Ahmedabad.

Date: 7.7.1989.

Copy forwarded for information, guidance and necessary action to:-

1. All Cs.I.T.Gujarat/D.IT (Inv.) & (Exemption)A'bad/
Appropriate Authority,A'bad.
2. All Dy.Cs.I.T./Dy.Ds.I.T.Gujarat.
3. The Sr.AR.ITAT/DVO/AD (CA) Ahmedabad.
4. All Field Pay Units of Gujarat Charges.
5. The Zonal Accounts Officer,CBDT Ahmedabad.
6. All sections of this office.
7. All A.Cs & I.T.Os (Adm/GS) Gujarat.

V.J. BHATT
(V.J. BHATT) A.C. OF I.T.(ADM)-I,
for Chief Commissioner of Income tax,
(Administration) Ahmedabad.

RK
7.7.

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted:

C.A.T./JUDICIAL SECTION.

Original Petition No:

590

of

1993

Miscellaneous Petition No:

of

Shri

V.T. Mathai

Petitioner(s)

Versus.

UOI / I amr

Respondent(s).

This application has been submitted to the Tribunal by

Shri

MR Anand

Under Section 19 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant Advocate may be advised to rectify the same within 14 days/draft letter is placed below for signature.

ASSTT:

Call 08/10/93

S.O. (J):

D.R. (J):

Chhagan 08-10-93
Pulh 8-10-93

KNP24492.

OP No 559/93

Filed by Mr. R. Anand
Learned Advocate for Petitioners
with second set & Two spares
copies copy ~~served~~/not served to
other side

Court-I

Dt: 9/10/93 Dy. Registrar C.A.T.(I)
A'bad Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL AHMEDABAD BENCH

ORIGINAL APPLICATION NO. 590 OF 1993

V. T. Mathai .. Applicant

V/s

Union of India & anr. .. Respondents

I N D E X

Sr. No.	Annex.	Particulars	No. of pages
1	-	Memo of this application	1 to 9
2	"A1"	Copy of letter dated 11.2.1992 addressed to Mrs. D. B. Khalsa	10 to 11
3	"A2"	Copy of petitioner's representation dated 10.4.92	12 to 21
4	"A3"	Copy of judgement of Hon'ble Tribunal	22 to 29
5	"A4"	Copy of letter/order dated 3.8.1993 for recovery	30
6	"A5"	Copy of letter dated 20.9.1988	31

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL AHMEDABAD BENCH

ORIGINAL APPLICATION NO.

OF 1993

V.T.Mathai

residing at A/25/26 Marvel Society

Behind Abadnagar, Bopal Road

Ahmedabad 380 058

..Applicant

Versus

1. Union of India

(Notice of the petition

to be served through

Secretary, Revenue Department

Secretariat, New Delhi)

2. Chief Commissioner of

Income-tax, Ayakar Bhavan.

Ashram Road, Ahmedabad-9

..Respondents

DETAILS OF APPLICATION :

1. Particulars of the order against which
the application is made:

The order No.F.No:A-26017/31/92-Ad.IX(pt)
dated 3.8.93 by the respondent No.1

authority denying the pay fixation to the petitioner which is already given to other identically placed employees pursuant to the final judgement of this Hon'ble Tribunal.

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the reply against which he wants redressal is within the jurisdiction of the Hon'ble Tribunal

3. Limitation:

The applicant further declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunals Act, 1985.

4. Facts of the case:

- 4.1 The applicant is a citizen of India. The applicant was an Officer of the respondent No.1 Union of India. The petitioner retired as an Income-tax Officer Group-B in the year 1991. The petitioner was originally working in the clerical cadre. The petitioner started his service as a Lower Division Clerk in the year 1956. He was promoted to the post of Upper Division Clerk in the year 1963.

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: 3 :

The petitioner was UDC in the Internal Audit Party which was ultimately under the control of Inspecting Asst. Commissioner of Income-tax (Audit), Ahmedabad with effect from 2.4.1973. The petitioner was satisfying all the conditions for posting in the Internal Audit Party. So he was entitled to a special pay of Rs.25/- per month with effect from 2.4.1973 which was granted to him by order dated 5.6.1973 issued by the Commissioner of Income-tax, Gujarat-III Ahmedabad. The petitioner had drawn this special pay of Rs.25/- per month for about 5 months only beginning from 2.4.1973 to 28.8.1973. Thereafter he was promoted to the post of Head Clerk. His pay in the higher post of Head Clerk was obviously fixed on the basis of his pay in the lower post of UDC. Thereafter the petitioner became Income-tax Inspector and ultimately Income-tax Officer.

The petitioner says that after he retired from service on 31.3.1991 he received a copy of the letter dated 11.2.1992 ordering the recovery of Rs.9570/-, the copy of this letter of 11.2.92 addressed to one Mrs.D.B.Khalsa, copy of which was given to the petitioner is annexed herewith and marked as Annexure-A1. The petitioner by his representation dated 10.4.92 addressed to the C.I.T, Gujarat-III

Annexure-A1

....4/-

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pointed out that the recovery ordered from the petitioner is not justified. The petitioner pointed out that he was fully entitled to the special pay of Rs.25/- per month as a confirmed U.D.C. The petitioner did not dispute the error in fixation of his salary as an I.T.O but his submission was that while rectifying that error the petitioner should not be denied the benefit of pay fixation in the post of Head Clerk and subsequent pay fixation on the basis of

his pay as a U.D.C. A copy of the petitioner's representation dated 10.4.92 is annexed herewith and marked as Annexure-A2. In his representation at

Annexure-A2

Annexure-A2 the petitioner also pointed out that this matter is fully concluded by the judgment of this Hon'ble Tribunal in T.A No.184/86 (Originally SCA No.459/82) delivered on 28.1.1988 where as many as 14 identically placed employees were held to be entitled to the very benefit. The petitioner was sought to be denied. A copy of this judgement of the Hon'ble Tribunal is annexed herewith and marked

as Annexure-A3. It is strange that petitioner No.10

Annexure-A3

in the judgment at Annexure-A3 was working with the same office with petitioner in the same post. He is given all the benefit flowing from this special pay of Rs.25/- per month in the cadre of U.D.C which is sought to be denied to the petitioner. The petitioner received a reply dated 3.8.1993 from the respondent No.1 authority rejecting the representation of the

....5/-

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: 5 :

petitioner saying that the judgment of the Hon'ble Tribunal at Annexure-A3 is not automatically applicable to the petitioner. The reply is surprising because it is not known that if the petitioner is in fact identically placed then how he can be treated differently and what more is needed to apply the judgement in case of the petitioner. A copy of the order of 3.8.1993 is annexed herewith and marked as Annexure-A4.

Annexure-A4

5. Grounds for relief with legal provisions:

Aggrieved and dissatisfied by the order at Annexure-A4 and having no other adequate alternate efficacious remedy, the applicant approaches this Hon'ble Tribunal on the following main grounds amongst others:-

- 5.1 The applicant submits that the impugned order at Annexure-A4 is illegal, unconstitutional and liable to be quashed and set aside.
- 5.2 The applicant submits that this Hon'ble Tribunal has declared the law on the point as is reflected by the judgment at Annexure-A3. The respondent as a government authority cannot say that judgement will be applicable only to the applicant in that case and identically placed other employees will be denied the benefit of the law declared by this Hon'ble tribunal. The order at Annexure-A4 is

...6/-

therefore clearly illegal and arbitrary and violative of the petitioner's fundamental rights under articles 14 & 16 of the Constitution of India.

5.3 The applicant submits that the discriminatory and arbitrary treatment given to the petitioner is further clear from the fact that another employee, Shri R.R.Bangadiwala who is identically placed as the petitioner is had applied to respondent No.1 authority for the benefit of the judgment at Annexure-A3. He is given this benefit as will be clear from the communication dated 20.9.1988 from the respondent No.1 to the respondent No.2, a copy of which is annexed herewith and marked as Annexure-A5. Shri Bangadiwala is not told that Annexure-A5 the benefit of the judgment cannot be given to him automatically. He is given the automatic benefit and petitioner is denied this very benefit without there being any distinguishing feature between his case and that all the applicants in the judgment at Annexure-A3 and in the case of Shri R.R.Bangadiwala referred to in the letter at Annexure-A5. This is clearly discriminatory and violative of articles 14 & 16 of the Constitution of India rendering the impugned order at Annexure-A4 as bad in law. The petitioner submits that if his special pay drawn as a UDC is taken into consideration then his last drawn pay at the time of retirement comes to Rs.2825/- per month. But if the special pay is avoided then his pay is reduced to Rs.2675/- per month. However his retirement dues were fixed as if his last drawn salary was Rs.2750/- per month (vide Annex.A2). The recovery

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is ordered against the petitioner on the basis of difference in salary of Rs.2750/- per month and Rs.2675/- per month when in fact he was entitled to Rs.2825/- per month. The recovery ordered by the order at A4 is therefore erroneous because it is without adjusting the claim of the petitioner in unlawful and arbitrary manner.

6. Details of the remedies exhausted:

The applicant declares that he has availed of all the remedies available to him under the relevant service rules.

7. Matters not previously filed or pending with any other Court:

The applicant further declares that he had not previously filed any application, writ petition or suit regarding the matter in respect of which this petition has been made before any Court or authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Relief sought:

In view of the facts mentioned in paragraphs-4 & 5 onwards the petitioner prays that the Hon'ble Tribunal may be pleased to:-

...8/-

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: 8 :

- A) Quash and set aside the impugned order at Annexure-A4 whereby a recovery of Rs.9570/- is ordered against the petitioner without adjusting his claim based on the special pay of Rs.25/- per month as U.D.C and consequential subsequent pay fixation
- B) Direct the respondent authorities to work out the claim of the petitioner and the claim against the petitioner after giving him the benefit of the judgement at Annexure-A3 as is done in cases of all other identically placed employees.
- C) Be pleased to grant any other relief or remedy as deemed just and proper by ~~your Lordships~~ Hon'ble Tribunal.

9. Interim order, if any prayed for:

Pending admission, final disposal of this application the Hon'ble Tribunal may be pleased to grant interim relief staying operation of the order at Annexure-A4 and the order of recovery from the petitioner pursuant to the order at Annexure-A4

10. Particulars of Bank Draft/Postal Order filed in respect of the application fee:

Postal Order No. 01, 247639

RS.50/-

NAVANGPUR Post Office ...9/-

9

: 9 :

11. List of Enclosures:

1. Copy of letter dated 11.2.1992 addressed to Mrs.D.B.Khalsa
2. Copy of petitioner's representation dated 10.4.1992
3. Copy of judgement of Hon'ble Tribunal
4. Copy of order dated 3.8.1993 for recovery
5. Copy of letter dated 20.9.1988 from respondent No.1 to respondent No.2

M. R. Anand

(M. R. Anand)

Advocate

VERIFICATION

I, V.T.Mathai, retired as Income-tax Officer under respondent No. 2 in the Office of the Commissioner of Income-tax, Gujarat-Ahmedabad do hereby verify that the contents of paras 1 to 11 are believed to be true on legal advice and that I have not suppressed any material facts.

Date:

Place: Ahmedabad

V.T. Mathai
(V.T.Mathai)

A

Annex-A-1

A-1

10

लेखा
 नं. 176

क. - 340

म. : KSHETRIYALEKHA

न. Code : 380 014

भारत सरकार

कार्यालय क्षेत्रीय लेखाधिकारी

केन्द्रीय प्रत्यक्ष कर बोर्ड

बी, बिल्डिंग, दूसरी मंजील,

वासुपूज्य चैम्बर्स, आश्रम रोड, अहमदाबाद-३८००१४

GOVERNMENT OF INDIA

ZONAL ACCOUNTS OFFICE

CENTRAL BOARD OF DIRECT TAXES

'B' BUILDING, 2ND FLOOR, VASUPOJYA CHAMBERS,

ASHRAM ROAD, AHMEDABAD-380 014

दिनांक :

DATE : 11/2/92

1. ZAO/GUJ/VTM/ 3106

To

Mrs. D.B. Khalsa,
 Income-tax Officer, Adm.
 O/o. CCIT,
 AHMEDABAD.

Sub; Overpayment of Rs. 9570/- made to Shri.
 V.T. Mathai, Retired ITO.

I am to state that during the Internal Inspection of this Office Internal Audit Party has pointed out that amount of Rs. 9570/- has been paid in excess towards Pay & Allowances, DCRG, Committed Value of Pension, Leave Salary Encashment, Monthly Pension from 4/91 to 1/92 to Shri V.T. Mathai, Retired -ITO, on account of wrong pay fixation while revising his pay on the recommendations of ~~IX~~ IVth Pay Commission.

The brief facts of the case are as under :-

On 22.1.86 Shri V.T. Mathai was promoted as ITO, while working as Inspector. As Inspector he was drawing pay of Rs. 750/- from 1.10.85. His pay was fixed correspondingly at Rs. 810/- in the old scale of ITO cadre on 22.1.86. Subsequently, the recommendations of IVth Pay Commission was made applicable from 1.1.86. According to Govt. of India's Decision No. 25 pay of such Govt. Servants who were promoted after 1.1.86 was fixed ^{in the} in the promoted post with reference to pay fixed at the time of promotion. ^{in the} Thus the notional pay in the lower post in the revised scale was to be fixed as on 1.1.86 and thereafter ~~ip~~ pay in the promoted post was to be fixed with reference to pay in the lower post as on 1.1.86. Accordingly the pay of Shri. V.T. Mathai in the cadre of Inspector drawing pay of Rs. 750/- was to be fixed at the stage of 2180 in the revised scale of Inspector i.e. 1640-60-2600-EB-75-2900 and thereafter in the promoted post of ITO his pay was to be fixed at Rs. 2300/- on 22.1.86 in the scale of Rs. 2000-60-2300-EB-75-3200-100-3500 under FR 22-C, ~~But~~ instead of following the correct procedure, the department revised his pay in the revised pay scale taking pay of Rs. 810/- fixed in the old scale of ITO prior to 1.1.86. This has resulted into drawal of one increment more from 22.1.86 till the date of his retirement.

PTO

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Consequently his pension, gratuity, DCRG etc were also fixed wrong taking the incorrect pay fixation while determining the pensionary benefits. You are, therefore, requested to please arrange to recover the ~~xxxx~~ excess payment made to Shri V.T. Mathai early in order to settle the audit objection.

S.K.
(S. K. KHANNA)
Accounts Officer

By Registered Post →

Copy to :

Shri V.T. Mathai, M/43 K.K. Nagar, B/4 Ranna Park
Ahmedabad-61.

He is requested to please refund the excess amount of Rs. 9570/- immediately. The Revised Pension Payment Order is being issued separately under intimation to him.

S. K. KHANNA
(Accounts Officer)

11/2

*True copy by
Mr R Anand
Advocate*

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- 2 -

Consequently his pension, gratuity, DCRG etc were also fixed wrong taking the incorrect pay fixation while determining the pensionary benefits. You are, therefore, requested to please arrange to recover the ~~xxxx~~ excess payment made to Shri V.T. Mathai early in order to settle the audit objection.

S.K.
(S. K. KHANNA)
Accounts Officer

By Registered Post →

Copy to :

Shri V.T. Mathai, M/43 K.K. Nagar, B/4 Ranna Park
Ahmedabad-61.

He is requested to please refund the excess amount of Rs. 9570/- immediately. The Revised Pension Payment Order is being issued separately under intimation to him.

True copy by
Mr R Anand
Advocate

(S. K. KHANNA)
(Accounts Officer)

11/2

A 2
12

Annex-A-2

From:

A h m e d a b a d.
Dt: 10.4.1992.

V.T.Mathai,
(Retired Income-tax Officer)
M-43, K.K.Nagar,
Near Ranna Park Society,
Ghatlodia,
A h m e d a b a d. 380061

To:

The Commissioner of Income-tax
Gujarat.III,
A h m e d a b a d.

Respected Sir,

Sub:- (1) Request to stay the recovery
of excess pay drawn through wrong
fixation of pay on promotion as
I.T.O.Group 'B'

(ii) Request to treat the special pay for
the purpose of fixation of pay on
promotion from UDC with special pay
post to other Higher post as per
the Judgement of the Central Administrative
Tribunals Judgements in the case of
similarly placed persons.

*Lead on 15
A. B. J. on 2/4/92*

The petitioner named above retired from service with
effect from 31.3.1991, respectfully make the following
submissions for your kind, sympathetic and a favourable
consideration.

2. The undersigned is in receipt of pension with
effect from April, 1991 regularly. The Zonal Officer, who
is the authority for pension after authorising the pension
and other pensionary benefits, had raised an Audit objection
in the petitioner's case, that there is an over-payment
in the petitioner's case and thereby the undersigned is asked
to repay an amount of Rs. 9570/- (Copy of the Zonal accounts
Officer's letter in question is enclosed herewith (Annex. 'A')
for ready reference). This because of the fact that before
the C.C.S.(R.P)Rules, 1986, which came into force from 1.1.86,

.....2/-

but the circulars regarding revised pay were issued very late, the petitioner was promoted as Income-tax Officer Group 'B' on 22.1.1986, and as per the then existing provisions of revised pay scales, 1973, the pay of the petitioner was fixed in the manner indicated below:-

Pay as Inspector on 22.1.1986 Rs. 750

Add: One increment in lower cadre
Rs. 25
Rs. 775

Adopt next higher grade in the scale of Rs. 650-30.740-EB-35-810-EB-35-880-40-1000-EB-50-1200 Rs. 810.

3. The petitioner's pay was fixed at Rs. 810/- (in C.C.S.(RP) Rules, 1973) as Income-tax Officer Group 'B' on promotion i.e. on 22.1.1986. Afterwards as per the C.C.C.(RP) Rules, 1986 (which came into implementation in the first half of the Calendar year 1986) the pay of the petitioner was again re-fixed under CCS (RP) Rule, 1986 taking into account the pay of Rs. 810/- which was fixed earlier without fixing the pay first as on 1.1.1986 in the cadre of Inspector and then on 22.1.1986 in the I.T.O's cadre. This wrong fixation resulted into excess drawals of the pay. The petitioner was not aware of this fact. This fact came to the knowledge of the petitioner only when it was intimated by the Zonal Accounts Officer, C.B.D.T, Ahmedabad by his letter No. ZAO/GUJ/VTM/3106 dated 11.2.1992. The Zonal accounts Officer, C.B. T, Ahmedabad vide his letter No. ZAO/GUJ/CBDT/56017/PI 00900/AI 86 dated 6.4.1992 further requested the Pay and Accounts Officer, Central Pension Accounting Officer, New Delhi to make arrangement for carrying out the modification of pension payable to the petitioner and also requested the Branch Manager, State Bank of India, Pragatinagar Branch, Ahmedabad to recover

sum of Rs. 9688/- from the Dearness Relief payable monthly and also to pay reduced pension after commutation at Rs. 875/- instead of Rs.900/- as sanctioned earlier. In this connection, the petitioner begs to submit that there is no excess payment of pay and allowances in the petitioner's case in view of the following facts:-

4. That the petitioner was working as an Upper Division Division Clerk in the Internal Audit Party, Bhavnagar under the kind control of the then Inspecting Assistant Commissioner of Income-tax(Audit)(Now redesignated as Deputy Commissioner of Income-tax(Audit)) ^{from 2.4-73 to 28.8-73}. As the petitioner was satisfying all the conditions of posting in the Internal Audit Party, a special pay of Rs. 25/- with effect from 2.4.1973 per month was granted to the petitioner as per the order No.Est. 104-1/70 dated 5.6.1973 of the C. I.T.Gujarat. III, Ahmedabad.

5. That the petitioner was in receipt of this special pay till the petitioner was promoted to the post of Head Clerk. When the special pay of Rs. 25/- was granted to the petitioner, the petitioner was a confirmed U.D.C.(Confirmed with effect from 1.11.1966 as per I.A.C.B.R. Bhavnagar's order No. BR/Est.26(6)/66.67 dated 21.2.1967.

6. At the initial stage, this special pay having been granted in lieu of higher scale of pay and this stand has then been revised with effect from 31.12.1979 by OM NO. dated 31.12.1979 having been granted in lieu of arduous nature of work(Copy of OM enclosed Annexure 'B') But unfortunately, while fixing the pay on promotion as Head Clerk(promoted on 6.9.1973), the special pay of Rs. 25/- per month granted was not reckoned as part of pay on promotion. An extract of the pay fixation on promotion done in the case of the petitioner's case is as under for ready reference

.....4/-

15

: 4 :-

Pay as UDC as on 6.9.1973

Rs. 440 +25 SP.

Add: One increment in lower Post

Rs. 12
Rs. 452

Pay fixed on next higher state
in the scale of Rs. 425-10-500-
EB-15-560-20-700

Rs. 455 Plus Rs. 10 PP.

(P.P. of Rs. 10/- will be absorbed in future increment)

7. The U.D.C.S. posted in Internal Audit were based on Seniority cum-Fitness, that is to say U.D.C.S. who can make deep study the files and put up the same to the Higher Authorities. Similarly in May, 1979, the Government of India, Ministry of Revenue had issued an O M No. F.7(52)-E.III/78 dated 5th May, 1979 placing some Senior U.D.C.S to the special pay of Rs. 35/- per month. The Duties assigned to these UDCs as per C.B.D.T.'s letter F.No. 11019/68/79 AD.VII dated 11.2.80 include the U.D.C.S. dealing with Draft Paras and P.A.C. matters at the Head Quarters office of the I.A.C.(Audit), Chief Auditor (Audit Wing) (Clause(f) of the said letter)(Copy of the Board's letter enclosed for read reference(Annexure 'C')).

8. That the petitioner most respectfully invites your kind attention to the Judgement of the Central Administrative Tribunal in the case of Sadiqali Azamali Saiyed and 13 others Versus ' The Union of India (S.C No. 495 of 1962) wherein their lordship held after having been given serious thought to the provisions contained in Rule FR.22-C and implication of the circulars in the subject ~~ax~~ that the sanction of special pay to the Upper Division Clerks working ⁱⁿ the Internal Audit Party to be treated as part of pay on promotion to Higher post. This Judgement of the Central Administrative Tribunal was based on the Judgement dated 10.7.1979 delivered by the High Court Kerala Vs the Secretary Central Board of Direct Taxes, New Delhi (Copy enclosed(Annexure 'D')). Shri Sadiqali A.Saiyed and 13 others were also similarly placed person like the petitioner.)

...5/-

9. That in the cases of U.D.C.s who were granted special pay of Rs. 35/- per month in terms of O.M No. 7(52) E.II/79, dated 5.5.1979, the Department of Expenditure had issued an O M No. 7(35)/E.III/87 dated 1.9.1987 that the special pay granted to the U.D.Cs can be taken into account for the purpose of ^{fix} fixation of pay on promotion to the post of another higher scales, and this was based on the Award of the Board of Arbitration provided that:-

(a) * that the incumbent is a substantive holder of the post to which the special pay is attached

OR

(b) that the incumbent, on the date of his appointment to higher post, is officiating in the lower post to which the special pay is attached, continuously for a period of not less than three years.

(this orders takes effect from 1.9.1985
(Copy enclosed(Annexure 'E')

10. In continuation of the above circular, the Department of Expenditure had issued another O M Bearing No. 7(29)/E.III/89 dated 22.5.1989(Copy enclosed herewith for ready reference (Annexure 'F)). In this very circular the benefit of merging the special pay granted to U.D.Cs was extended to the U-D.Cs promoted prior to 1.9.1985. On knowing the facts that Shri S.A.Saiyed and 13 others have got their pay refixed after taking into account, the special pay which they were in receipt on account of their posting in Internal Audit Party, and also on plain reading of the circulars mentioned above, several employees, who were in receipt of special pay on account of their posting in Internal Audit Party have approached Central Administrative Tribunal for getting their pay refixed. The names of the officials are as under:-

- (1) Shri N.K.Raval
- (2) Shri V.B.Shah

CAT's Judgement is similar copy of Judgement in the case of V.B.Shah is enclosed 'Anne.'G'

17

11. In the cases of the above officials, their pay has been refixed taking into account the special pay as part of pay and they are allowed the arrears from 1.9.1985 onwards. Your honour thoroughly convince on plain reading of the Judgement of the CAT and also the wording given in the Judgement allowing the benefit to Shri V.B.Shah, more particularly the underlined portion "learned Advocate for the Respondent Mr. Bhatt states that the Government has passed necessary order O.M.No. 7(35)/E.III/87 dated 22.5.1989, which are allowed to be brought on file, by which the claim of the petitioner has been allowed" that the ~~xxx~~ petitioner's case is fit case for granting special pay as part of Pay on promotion. A copy of the said circular is enclosed herewith for your honour's persual and record(Annexure'H)

12. Further Shri P.D.Panjwani, (Retired I.T.O) had also gone to the C.A.T. for getting his pay refixed after considering the special pay of Rs. 25/- which he was in receipt of while working in Internal Audit Party. In his case also the C.A.T. had given the Judgement in favour of Shri P.D.Panjwani (Copy of the Judgement enclosed(Anne.'I')

13. Even Shri R.R.Bangdiwala had also made a representation to the CBDT, New Delhi for getting his pay revised taking into account, the decision of the C.A.T. and CBDT had taken a decision in favour of Shri Bangdiwala, a copy of Board's letter is enclosed(Annexure (J)

14. From all these C.A.T's judgement as well as the decision taken by the Board in the case of Shri R.R.Bangdiwala, Inspector, it is a crystal clear case that the Petitioner is entitled to get pay ~~revised~~ after taking into account, the special pay which petitioner ^{was} is in receipt at the time the petitioner's posting in Internal Audit Party.

15. The petitioner therefore, most respectfully submits that if the special pay is considered and pay is refixed in accordance with C.A.T's Judgement cited above, the position in the case of the petitioner will be as under:-

Pay fixation with- consideration of special pay.	Pay fixation without con- sideration of special pay.	Pay wrongly fixed on which ZAO had raised objection.
--	---	--

.....
1	2	3
-----	-----	-----

Pay as UDC.	Rs. 440	Pay	Rs. 440
Add: Sp. Pay.	Rs. 25	Add:	
	Rs. 465	One	
Add: One		Incr.	Rs. 12
increment in			Rs. 452
lower post.	Rs. 12		
	Rs. 477	Next	
Adopt next		higher	
higher stage		stage	Rs. 455 + Rs. 10 PP
in the scale of			(on promotion
Rs. 425-15-500-			as HC.
EB-15-560-20-			
700 (on promotion			
as HC on 6.9.73	Rs.585		
On 1.9.1974	Rs.500		Rs. 470
on 1.9.1975	Rs.515		Rs. 485
On promotion as			
Inspector in the			
scale of Rs. 425-			
800 on 27.10.75			
Pay.	Rs.515		Rs. 485
Add: One			
increment.	Rs. 15		Rs. 15
	Rs.530		Rs. 500
Adopt next			
higher state.	Rs.545		Rs. 515
on 1.10.1976	Rs.560		Rs. 530
(increment in			
Inspector's cadre)			
on 12.7.1977			
(Two advance-			
increments for			
passing the ITO.			
Group 'B' Exam.	Rs.600		Rs. 560
1.10.1977	Rs.620		Rs. 580
1.10.1978	Rs.640		Rs. 600
on 10.1979	Rs.660		Rs. 620

1	2	3
---	---	---

1-10-1980	Rs. 680	Rs. 640
1.10.1981	Rs. 700	Rs. 660
1.10.1982	Rs. 725	Rs. 680
1.10.1983	Rs. 750	Rs. 700
1.10.1984	Rs. 775	Rs. 725
1.10.1985	Rs. 800	Rs. 750

on 1.1.86

Pay.	Rs. 800	Rs. 750
DP.	Rs. 340	Rs. 318.40
DA.	Rs. 864	Rs. 810.00
IR.	Rs. 150	Rs. 145.00
	<hr/>	<hr/>
	Rs. 2154	Rs. 2023.80
Add: 20%	Rs. 160	Rs. 150.00
	<hr/>	<hr/>

Pay required to be fixed in the scale of Rs. 1640-60-2600-EB-75-2900.

Rs. 2360

Rs. 2180 -

On promotion as ITO on 22.8.86 in the scale of Rs. 2000 60-2300-EB-75-3200-100-3500

Pay Rs. 2360

Rs. 2180

Add: One increment in Lower Post.

Rs. 60

Rs. 2420

Rs. 60

Rs. 2240

Adopt next higher stage

Rs. 2450

Rs. 2300

on 1.2.87

Rs. 2525

Rs. 2379

on 1.1.1988

Rs. 2600

Rs. 2450

on 1.1.1989

Rs. 2675

Rs. 2525

on 1.1.1990

Rs. 2750

Rs. 2600

on 1.1.1991

Rs. 2825

Rs. 2675

(Retired on superannuation with effect from 31.3.1991)

Rs. 810 (old pay on which pay fixed as on 22.1.1986 as I.T.O. wrongly without fixing the pay initially in spectator's cadre on 1.1.1986

(pay drawn wrongly after ward)

Rs. 2375

Rs. 2450

Rs. 2525

Rs. 2600

Rs. 2675

Rs. 2750

16. The above position of pay indicates that the petitioner will get one increment more than what was actually drawn at the time of retirement, which is now subject matter of Audit objection.

17. The petitioner therefore, earnestly requested that the Honourable C.I.T. Gujarat. III, Ahmedabad to give his valuable direction to the Deputy Commissioner of Income-tax, Ahmedabad Range 8, Ahmedabad to re-fix the pay of the petitioner considering the special pay as part of pay as per the discretionary powers vested with the Honourable Commissioner of Income-tax and in the alternative a reference may kindly be made to the Board to redress the grievance of the petitioner if the issue involved in the matter cannot be decided by following the decision to the Central Administrative Tribunal, then there will be no recovery in the petitioner's case and on the contrary, the petitioner is entitled to some arrears of pay arising out of the pay fixation with effect from 1.9.1985 and other pensionary benefits also. An early decision in the matter is requested as the Disbursing Bank will be recovering the excess payment as intimated by the Zonal Accounts Officer, from the Dearness relief payable to the petitioner. The petitioner is retired on superannuation with effect from 31.3.1991 and now pulling on life with the limited pension. The curtailment of pension and recovery of the excess payment of pay and allowances will adversely affect the livelihood of the petitioner. It is therefore, requested that an early decision in the matter may kindly be taken, for this act of kindness the petitioner ever remains grateful to your honour

Thanking you in anticipation,

Yours faithfully,


(V.T. MATHAI)

Encl: Annexures
A to J

Submitted through:

....10/-

- (1) The Assistant Commissioner of Income-tax, (Adm), Circle 8(1), DDO, Ahmedabad.
- (2) The Deputy Commissioner of Income-tax, Ahmedabad Range 8, Ahmedabad.

Copy to:

- (1) The Zonal Accounts Officer, CBDT, 2nd floor, Vasupujya Chambers, Ashram Road, Ahmedabad with reference to his letter No. ZAO/G Uj/VTM/3106 dated 11.12.1991.
- (2) The pay and Accounts Officer, Central Pension Accounting Office, 274 Shaheed Captain Gaur Marg, Shrinivaspuri, New Delhi 110065 with reference to P.P.O. No. 560179100900/24638
- (3) The Income-tax Officer, Adm. III, Ahmedabad (in charge of pension and staff Grievance) for information.

.....

True copy by
Mr Anand
Advocate

Annex-A-3

A-3
22

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(62)

~~XXXXXX~~ 188
T.A. No. 184 OF 1986
(S.C.A. No. 459 OF 1982)

DATE OF DECISION 28.1.1988

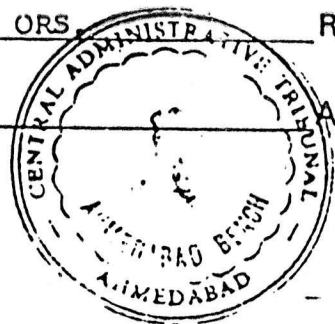
SADIQALI AZAMALI SAIYAD & 13 ORS, Petitioners

J.R. NANAVATI Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS Respondents

R.F. BHATT Advocate for the Respondent(s)



CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

C.A.T. 2047
Ahmedabad Bench
(a) Serial No. of Application: TA/184/86
(b) Name of Applicant: Shri J.R. Nanavati
(c) Date of Application for copy: 28/1/88
(d) Name of Advocate: R.F. Bhatt (s)
(e) Fee paid:] Advocate for the Petitioner
(f) Name of Applicant's Advocate:] for the Petitioner
(g) Name of Respondent's Advocate:] Petitioner
(h) Name of Applicant's Advocate:]
(i) Name of Respondent's Advocate:]
(j) Name of Applicant's Advocate:]
(k) Date of Application for copy: 1/2/88
Date of Application for copy of the applicant: 1/2/88

1. Sadiquali, Azamali Saiyad
2. Shantilal Maneklal Patel
3. Yaswant Manilal Pandya
4. K. Shankaran Nair
5. Arun Parshottam Kulkarni
6. Madhusudan Kantilal Parikh
7. Pravin Chandrashekhar Trivedi
8. Ashwin Bhikhalal Bhatt
9. T.K. Shankaran Nair-
10. K. Abraham Thomas
11. Arvindbhai Fulchand Shah
12. Siraj Adambhai Mansuri
13. Arvindkumar Somchand Shah
14. Prahladbhai Devshankar Raval

All presently serving in the office and sub-office of the Commissioner of Income-tax, Navrangpura, Ahmedabad-9.

.... Petitioners.

(Advocate : J.R. Nanavati)

Versus.

1. Union of India,
To be served through Secretary,
Ministry of Finance, (Department
of Revenue and Insurance),
New Delhi.
2. Secretary, Central Board of
Direct Taxes, New Delhi.
3. Commissioner of Income-tax,
Gujarat-1, Ahmedabad, Aayakar Bhavan,
Navrangpura, Ahmedabad-9.

..... Respondents.

(Advocate : R.F. Bhatt)

J U D G M E N T

T.A.NO. 184 OF 1988

(S.C.A.No. 459 OF 1982)

Date : 28.1.1988

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

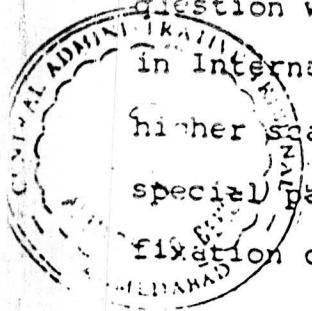
The petitioners (14 in all), out of which 1 to 6 and 9 to 14, working as Inspector and Petitioners No. 7 & 8 working as Head Clerks in the Sub Office under the Commissioner of Income Tax, Gujarat-1, Ahmedabad, were previously working as Upper Division Clerks (U.D.C.), in the Internal Audit Party under the control of the Inspecting Assistant Commissioner (Audit), Ahmedabad.



A special pay of Rs. 25/- per month was granted to all U.D.C. clerks posted in Internal Audit Party of the Income Tax Department, as per letter F.No.6/84/69 Ad.IX dated 10.12.70 of the Government of India, Ministry of Finance. By Board's letter F.No. 66/88/72 AD.VII dated 6.12.72 addressed to the Commissioner of Income Tax (Annexure 'C'), the nature of the special pay was clarified in paragraph 7 thereof, which reads as follows :-

"The President is pleased to decide that the 7 new Posts of Addl. Commissioners and the 90 new Posts of UDCs for Internal Audit Parties should carry Special Pay of Rs. 150 p.m. and Rs. 20(25) PM. respectively. The Special Pay of Rs. 150 PM. is being attached to these Posts of DDI/IAC(Audit) in view of the specially arduous nature of the duties assigned to them. The Special Pay of Rs.20(25)pm. attached to the above noted Posts of UDCs in the LAPs should be treated as having been sanctioned in lieu of higher scales of Pay."

2. According to the petitioners, when they were promoted to the higher post i.e. Inspectors or Head Clerks much prior to 1979 they were entitled to fixation of their pay scale on promotion taking into consideration the special pay drawn by them, in terms of the provisions contained in F.No. (C). Consequently, when their pay was not fixed in accordance with the said provision they made representations (Annexure 'D' to 'R'). The Commissioner of Income Tax, Gujarat-I, by letter dated 3.10.81 (Ann. 'S') informed the petitioner No. 1 to 8, the decision of the Central Board of Direct Taxes, in its letter dated 16.9.81 to the effect that the special pay to the officials in question was being given by arduousness of job for working in Internal Audit Parties and "not in lieu of separate higher scale of pay," their request for treatment of special pay as part of basic pay for the purpose of fixation of pay on their promotion can not be acceded to.



3. Being aggrieved by the aforesaid decision the petitioners initially, moved the High Court of Gujarat by filing a

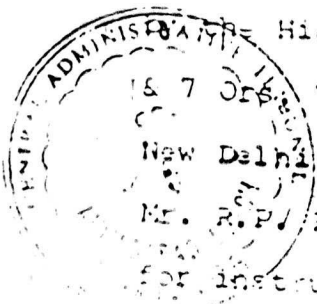
(59)

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Special Civil Application No. 459 of 1982 on 25.1.1982 under Article 226, 14 & 16 of the Constitution of India. They prayed for appropriate writ or order directing the Respondents to fix the pay scale of the petitioners on promotion taking into consideration the special pay drawn by them on the date of their promotion as shown in their representations Annexure 'E' to 'R' and to pay them difference between the amount so fixed and the amounts paid to the petitioner. They also prayed that the orders of pay fixation on their promotion as mentioned earlier be quashed.

4. After the Rule was issued, notice were issued to the Respondents, however, no reply was filed by the Respondents. In the meantime, the aforesaid application now stands transferred to this Tribunal, by operation of the provision contained under section 29 of the Administrative Tribunals Act, 1985. Again fresh notices were issued to the Respondents. In response whereof, Mr. R.P. Shatt appeared for the Respondents, however, no reply has been filed by them despite several opportunities were offered to them.

5. When the matter came up for final hearing, Mr. J.R. Nanavati, the learned counsel appearing for the applicant submitted that the case of the petitioners is squarely covered by the judgment dated 19.7.79 delivered by the High Court of Kerala in O.P.No. 4014/77 (M.I. Skaria & 7 Ors. V/s. Secretary, Central Board of Direct Taxes, New Delhi and the Commissioner of Income Tax, Kerala.). Mr. R.P. Shatt sought two months time to forward the same for instructions of Respondents authorities. His request was granted. But as Mr. R.P. Shatt could not report the instructions received by him, the matter was again posted for final hearing. We have heard Mr. J.R. Nanavati & Mr. R.P. Shatt, the learned counsel for the applicants



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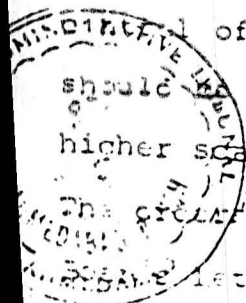
and the Respondents respectively.

6. It is significant to note that the plea and the claim which was raised by the petitioners in O.P.No.4014/77, is quite identical to the petitioners in the instant case. The stand of the Respondents in O.P.No. 4014/77 was that the statement made in paragraph 7 of letter dated 6.12.72 was clearly a mistake and subsequently when the clarification is issued by the President, the petitioners claim merits no consideration.

7. Annexure 'D' is a copy of the Government of India's letter dated 31st December, 1979 addressed to all Commissioners of Income Tax; wherein it has been conveyed that in para 7 of the letter dated 6.12.72 it has been inadvertently stated that special pay for the post of Upper Division Clerks in Internal Audit Parties should be treated as having been sanctioned in lieu of higher scales of pay. It was further informed that the President was pleased to make the following corrections in para 7 of the said letter dated 6.12.72:-

"For "in lieu of higher scales of pay"
read "for arduousness of work".

8. It is pertinent to note that once the President decided that the special pay of Rs. 25/- and subsequently increased to Rs. 35/- per month attached to the post of U.D.C. inducted in the Internal Audit Party under the of the Inspecting Assistant Commissioner (Audit) should be treated as having been sanctioned in lieu of higher scales of pay, constitutes a condition of service. The of the Inspecting Assistant Commissioner (Audit) contained in letter dated 10.12.70 and in of the Inspecting Assistant Commissioner (Audit) letter dated 6.12.72 remain unchanged till 1979. It was declared by the Board's letter dated 6.12.72 that extra payment given to the personnel of Internal Audit Parties was in lieu of higher scale of pay, if that





be so it would be reckonable for the purpose of fixation of pay under Rule 22-C of the Fundamental Rules. In *Lx-Major N.C. Singhal V/s. Director General, Armed Forces Medical Services, New Delhi & Anrs.* (A.I.R. 1972 S.C. 628) the Supreme Court held that the Government has no power to alter or modify the conditions of the service of a Government servant with retrospective effect to the prejudice of the Government Servant. In the instant case, therefore, when the President made correction in para 7 of the letter dated 6.12.72 in the year 1979 it can not operate retrospectively. Admittedly all the petitioners were promoted either as Inspectors or Head Clerks from the post of Upper Division Clerks prior to 31st December, 1979. Evidently therefore the correction introduced thereafter can not act to the dis-advantage of the petitioners who were granted Rs. 25/- (subsequently increased to Rs. 35/-) as special pay which was sanctioned in lieu of higher scales of pay (emphasis supplied).

9. In O.F.No.4014/77, Mr. Justice K. Bhaskaran (as he then was) has elucidated the impact of clarification issued by the President and observed as under :-

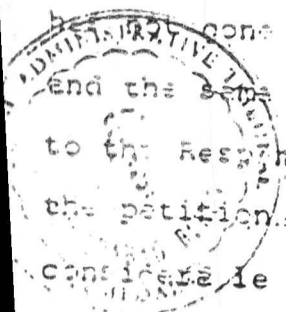
While I am in agreement with the contention of Shri Chacko that it is open to the President to clarify the position as to what would and would not constitute part of fixation of initial pay in the higher post on promotion, as in the nature of Ext. P.1 I find it difficult to hold that the petitioner is entitled to the benefit which accrued to them on the basis of Exts. P1 and P.2 in as much as Exts. P1 and P2 remain without being amended or modified till now. In this context, there is no clarification by the President that the payment ordered in lieu of higher scale of pay to UD Clerks working in the Internal Audit Parties did not amount to Special Pay in lieu of Higher scale of Pay. It also be remembered that in this context the various averments in paragraph 2 of the original petition become relevant, as it may be on account of the cumulative effect of all these facts and circumstances that the additional emolument was ordered to be paid and treated as Payment in lieu of higher scale of Pay. It has also to be noticed that in the very same paragraph (paragraph 7) in Ext.P2 a distinction is sought to be made between the sum of Rs. 150 per month ordered to be paid or



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granted to the Assistant Commissioners on the one hand, and the sum of Rs. 25 granted to the U.D. Clerks working in the Internal Audit Parties. The distinction being real and substantial, it must have been made after applying the mind with respect to the relevant facts as to whether in the one case it is for the arduous nature of work and in the other for other reasons.

10. After having discussed the provisions contained in Rule 22-C of the Fundamental Rules and Sub-Rules 21 & 25 of Rule 9 of the Rules pertaining to pay, emoluments and special pay etc., held that the correct thing for the respondents to do, according to law, was to fix initial pay scale in the higher grade in respect of the petitioners reckoning the special pay of Rs. 25/- drawn by them until their promotion to the higher grade as part of their pay. Accordingly, the respondents were directed to modify initial pay fixation statement in respect of the petitioners taking into account the special pay of Rs.25/- per month granted to them as part of the pay drawn by them at the time of their promotion to the higher cadre. In the instant case, nothing has been shown either by the Respondents or by their counsel Mr. R.F. Bhatt, as to how a different view can be taken. The petitioners in C.F.No. 4014/77 and the petitioners in the present case are similarly situated, the issues raised before Kerala High Court in the said case are quite identical. It is stated by Mr. J.R. Nanavati, the learned counsel for the petitioners, that the department has gone in appeal against the judgment in C.F.No. 4014/77 and the same now being final and conclusive it is binding to the Respondents and they can not deny the benefits to the petitioners, who are similarly situated. We find considerable force in the submission made by Mr. Nanavati in this regard. The petitioners have been successful in establishing that the special pay granted to them in lieu of separate higher scale and the same must be treated as part of basic pay for the purpose of fixation of pay on their promotion as Inspectors/Head Clerks. The decision



therefore conveyed to them vide letter dated 16.9.81
Annexure 'S' can not be sustained.

11. In this view of the matter, we allow the application and quash and set aside the orders of pay fixation of the petitioners on their promotion as Inspectors/Head Clerks made earlier by the Respondents and direct the Respondents to fix the pay scale of the petitioners on promotion taking into consideration the special pay drawn by them on the date of their promotion as shown in the representations Annexure 'E' to 'R'. We further direct the Respondents to work out the difference between the amounts so fixed and the amounts paid to the petitioners and pay the same within three months from the date of this judgment.

In view of the special circumstances of this case that the claim of the petitioners has been unreasonably ~~denied~~ ^{denied}, even after a verdict was given by the Kerala High Court in 1979 (in C.P.No. 4014/77 (supra)), we direct that the Respondents shall pay to the petitioners collectively the cost of this petition, which we quantify at Rs.750/-.



Sd/-
(P. M. JOSHI)
JUDICIAL MEMBER

Sd/-
(P. H. TRIVEDI)
VICE CHAIRMAN

TRUE COPY

True copy by
M R Anand
Advocate

G. Srinivas
Section Officer
Central Administrative Tribunal,
Bangalore Bench.

Annex-A-4

F.No: A-26017/31/92-Ad: IX (pt:.)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

सावधर मायुक्त कार्यालय
महाराष्ट्र
1993
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New Delhi the 3rd August, 1993:

The Chief Commissioner of Income Tax,
Ahmedabad:

Sir,

Sub: Treatment of Special Pay for the purpose
of fixation of pay on promotion to higher
post - Shri V.T. Mathai, ITO (Retd.).

I am directed to refer to the representation
dated 29.6.92 received from Shri V.T. Mathai, ITO (Retd.)
of your Charge and your letter dated 2.11.1992 on the
above subject and to state that the contention of the
Z.A.O. that special pay of Rs. 25/- drawn by Shri Mathai
while working as UDC in IPA was not counted for the
purposes of fixation of pay on promotion to the next
higher post, is correct. The re-fixation pay and
consequent recovery of Rs. 2,9570/- worked out by the
Z.A.O. is in order and should be recovered from the
dues of the retired officer concerned.

2. The CAT's decision in the case of Sh. S.A. Sayed
& 13 Others is not automatically applicable in the case
of Sh. Mathai and accordingly he cannot claim benefit
of the judgement of the CAT in other cases. Sh. Mathai
retired ITO may be informed suitably.

Yours faithfully,

[Signature]

(D.M.L. MALHOTRA)

Deputy Secretary to the Govt. of India.

No. Adm. IX/62-2/93.94

Office of the
Chief Commissioner of Income-tax,
Ahmedabad. Dt. 2.9.1993.

Copy forwarded to the Income-tax Officer, (Adm) I, Ahmedabad
for necessary action in the matter.

2/9/93

(M.S. GOPALAN)
ITO. Adm. IX, Ahmedabad.

True copy by
MR Anand
Advocate

HK
A. S. M. - I

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Sl. No. 2-26017/35/33-M. 1X
Government of India
Ministry of Finance
Central Board of Direct Taxes.

(W)

New Delhi, the 20th September, 1938.

To

The Chief Commissioner of Income-tax (Admn),
Almednind.

Subject:- Treatment of special pay for the purpose of
fixation of pay on promotion to higher post -
Shri R.R. Bangadiwala - reg.

.....

Sir,

I am directed to refer to your letter No. Est. 62-2/38
dated 28.6.1938 on the above subject and to say that the
matter has been examined in detail. It has been decided
that the benefit of the C.A.T. judgement in the case of
S.A. Saiyad Vs Union of India may be given to Shri R.R.
Bangadiwala also.

Yours faithfully,

H Singh
20/9/38
(HAREANS SINGH)
UNDER SECRETARY

True copy by

Mr R Anand
Advocate

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

O.A.No.590 of 1993

Shri V.T.Mathai

...Applicant

V/s.

Union of India and another

...Respondent

Written reply on behalf of the respondents

I, G.K.Mishra Chief Commissioner of Income Tax do hereby state as follows:-

1. I am conversant with the facts of the case and am able to dispose of the statement made hereinafter.
2. At the outset it is submitted that the assertion of the applicant that he is identically placed with other employees who have been granted pay fixation, is devoid of any merits and is denied. The applicant has submitted that the benefit of merger of special pay in the cadre of U.D.C. working in internal audit office has been allowed to Shri Saiyed and others by the Hon'ble Tribunal and that the same benefit has been extended by the Board to Shri R.R.Bangdiwala. In this connection it is submitted that the special pay to U.D.Cs working in the internal audit party has been sanctioned for arduous nature of duties and not in lieu of higher scale of pay. According to the Ministry of finance O.M.No.7(52)-E.III/78 dated 5/5/1979 (G.I. Order(28) below FR 9 (25) such special pay can be protected on promotion for grant of personal pay equal to the difference between pay + special pay drawn in the

...2/-

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lower post and the pay due in the higher post on the basis of the basic pay in the lower post, subject to the condition laid down therein. The said O.M. is annexed hereto and marked annexure.A. The Government's relevant instructions are annexed hereto and marked annexure 'B'. The Central Board of Direct Taxes, after due consideration of the representation of the applicant, has rejected the same by a speaking order. The communication thereof to the Chief Commissioner of Income Tax is annexed hereto and marked Annexure 'C'. At this point, it is pertinent to submit that special pay means an addition of the nature of pay to the emoluments of a post or of a Government servant, granted in consideration of (a) the specially arduous nature of duties or (b) a specific addition to the work of responsibility, as stated in FR 9.

3. It is further submitted that the Respondents have followed the general instructions issued by the Govt. from time to time regarding counting of special pay for purposes of fixation of pay on promotion to the next higher post. The general instructions issued by the Govt. vide G.I. M.F.O.M.No.6(1)E.III/B/65 dated 25.2.1965 divide such cases into two categories:

- i) When the special pay is in lieu of a separate higher scale, and
- ii) When the special pay is NOT in lieu of separate higher scale.

In regard to posts where special pay is sanctioned in lieu of a separate higher scale, the pay of the Govt.servant on promotion to ghigher post is fixed

after taking into account the special pay drawn in the lower post, subject to the condition that the special pay in the lower post was granted in lieu of separate higher scale and that the special pay has been drawn in the lower post continuously for a minimum period of 3 years on the date of promotion. In such cases, the pay in the higher post is fixed under the normal rules treating the special pay as part of basic pay. Even in cases falling in this category, where the condition of three years is not satisfied, the pay in the higher post is fixed under the normal rules with reference to the basic pay drawn in the lower post (excluding the special pay) and where this results in drop in emoluments, the difference between the pay so fixed and the pay plus special pay drawn in the lower post is allowed in the form of personal pay to be absorbed in future increases of pay. In both the types of cases, a certificate is to be given by the competent authority that but for promotion, the Govt. servant would have continued to draw the special pay in the lower post.

In the second category of cases where special pay is not in lieu of separate higher scale, the special pay is not to be taken into account for fixation of pay in the higher post but if there is a drop in emoluments, the difference between the pay so fixed and the pay plus special pay drawn in the lower post will be allowed in the form of personal pay to be absorbed in future increases of pay. The special pay to UDCs working in Internal Audits parties was granted by the Govt, NOT in lieu of higher scale of pay, but for arduous nature of work performed by UDCs while working in the Internal Audit parties. Thus according to the existing instructions of the Govt. which have been in force since 1965, the special pay

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cannot be allowed to count for fixation of pay on promotion to the next higher post. In the instant case, according to the applicant's own statement in the OA, he worked in the internal audit only for a period of about 5 months, viz. 2.4.1973 to 28.8.73. Apparently, therefore, he was not entitled for the merger of the special pay drawn by him.

4. The recovery of Rs.9570 is an account of wrong fixation of pay at the time of his promotion from Inspector to I.T.O. and there is no dispute about it. The issue about treatment of special pay drawn as U.D.C. has been raised by the applicant after about 21 years. It is a separate issue and should not be allowed to be linked with the issue of recovery of undisputed arrears.

5. In view of the aforestated facts, it is humbly submitted that the application is devoid of any merits and deserves to be dismissed with costs. Since the applicant has taken advantage in respect of the pay fixation at the time of his retirement, due to the mistake, he cannot claim advantage and contend that the difference is not payable to the Government. The respondents have therefore rightly started recovery proceedings against the applicant. The humble submission of the deponent is, the application is devoid of any merits and deserves to be dismissed with costs and the interim relief be vacated. Severe prejudice will be caused to the Government if the dues are not allowed to be recovered.



G.K. Mishra
Chief Commissioner of Income-tax,
Gujarat, Ahmedabad.

Dt:28.2.1994

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(M.R.Bhatt)

Advocate for the respondent.

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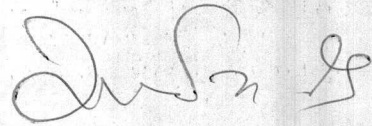
VERIFICATION

I, G.K.Mishra

age 54 year working as Chief Commissioner of Income Tax in the office of Income Tax, resident of Ahmedabad, do hereby verify that the contents of the above paras are believed to be true on legal advice and that I have not suppressed any material fact.

Dt:

3-2-94



Rate of Rs. 200 p.m. (raised to Rs. 300 p.m. with effect from 7-10-1980).

(ii) If, however, an Upper Division Clerk is engaged on the work of the type referred to in (i) above, he will be allowed to draw the special allowance at the rate of Rs. 150 p.m. (raised to Rs. 225 p.m. with effect from 7-10-1980).

(iii) The allowance will be admissible at full rates for every calendar month in which the Parliament is in session for at least fifteen days in that month. For months with shorter periods, the allowance will be admissible at half the rates prescribed for the full month.

(iv) Normally, the allowance will be admissible to only one Parliament Assistant in a Ministry. Where a Ministry considers it necessary to engage more than one Parliament Assistant in full time Parliamentary duty, the prior approval of Finance Ministry will be necessary. Such additional staff will also be entitled to the special allowance mentioned above according to the status he enjoys.

2. No overtime allowance shall be paid to Parliament Assistant for the calendar months in which the Parliament is in session.

3. The special allowance referred to above will be classified as "Other Allowances".

[G.I., M.F., O.M. No. 16(1)-E, II (B)/70, dated the 10th February, 1970 and the 31st July, 1970; O.M. No. F. 15020/4/78-E, II (B), dated the 18th August, 1978 and O.M. No. 15020/1/84-Estr. (Allowances), dated the 21st April, 1986.]

Clarification.—It is clarified in consultation with Ministry of Finance, Department of Expenditure, that Special Allowance shall be admissible to a Parliament Assistant with reference to actual period of sittings (including Saturdays, Sundays and Holidays) of either or both the Houses of Parliament and would exclude the period (including Saturdays, Sundays and Holidays) when Parliament is adjourned although it may be in session.

2. All other terms and conditions laid down in Ministry of Finance, O.M., dated 10-2-1970 and rates of Special Allowance, laid down in D.O.P. & T.'s O.M. No. 15020/1/84-Estr. (Allowance), dated 21-4-1986, will remain unchanged.

[G.I., Dept. of Per. & Tr., O.M. No. 15016/1/87-Estr. (Allowance), dated the 17th May, 1990.]

(23) Special pay to UDCs in non-Secretariat Administrative Offices.—It has been decided that Upper Division Clerks in non-Secretariat Administrative Offices attending to work of a more complex and important nature may be granted special pay of Rs. 35 (now Rs. 70) p.m. The total number of such posts should be limited to 10% of the posts in the respective cadre and these posts should be identified as carrying discernible

duties and responsibilities of a complex nature higher than those normally expected of Upper Division Clerks.

These orders take effect from 5th May, 1979.

[G.I., M.F., O.M. No. F. 7 (52)-E, III/78, dated the 5th May, 1979.]

NOTE 1.—The above orders have been made applicable to UDCs working in offices of the Accountants-General (Accounts) from 1-3-1984, the date of restructuring of cadres. The scheme of grant of special pay to Accountants/Senior Accountants is no longer available with the revised scales of pay under CCS (RP) Rules, 1986. However, this can be allowed to those working in the identified posts and who continue to draw pay in the pre-revised scales of pay.

[C.A.G.'s Circular No. NGE/14/1984, issued under Letter No. 230-N/4/46-78, dated the 27th February, 1984 and Circular No. NGE/72/1986 issued under No. 538-N/4/65-86, dated the 25th September, 1986.]

NOTE 2.—It has been decided that the benefit of special pay granted to certain posts of UDCs in the non-secretariat administrative offices may be extended to the Junior Accountants in the Circle Postal Accounts offices in accordance with the provisions of O.M. No. F. 7 (52)-E, III/78, dated 5-5-1979 and as clarified in D.G., P & T Letter No. 6-8/79-PAP, dated 26-12-1979.

[D.G., P. & T., Letter No. 6-17-79-PAP, dated the 3rd January, 1981.]

Clarifications

(a) It may be pointed out that the grant of special pay is related to posts of Upper Division Clerks as such, and not to individual Government employees, which posts are to be identified as carrying discernible duties and responsibilities of complex nature, higher than those normally expected of Upper Division Clerks. The queries raised have been considered in consultation with the Department of Personnel and A.R. and following decisions have been taken:—

Point of query

1. Whether these orders should be applicable only to posts of UDCs in the headquarters organisation or whether they should be extended to field offices also.

Decision taken

These orders are applicable to UDCs in subordinate offices not participating in the Secretariat Scheme and where there is no intermediary level between Supervisory grades and UDCs including Technical Assistants, Investigator, etc.

2. Whether the posts should be filled on seniority-cum-fitness basis in consultation with the Departmental Promotion Committee or on the basis of the suitability of a

The selection is to be made by the Controlling Authority on the suitability of a particular officer to handle the work in a post identified as carrying discernible

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(c) It may happen that a senior person promoted to the higher post before completing three years in the special pay post draws less pay than his junior who is promoted after completing three years in the special pay post. Where such cases occur, the pay of the senior should be stepped up to the level of pay of the junior from the date of promotion of the latter, provided the junior was not drawing a higher pay than the senior from time to time in the lower post and the lower and higher posts held by the junior and the senior belong to the same cadre.

[G.I., M.F., O.M. No. F. 6 (1)-E. III (B)/68, dated the 8th January, 1968.]

NOTE 3.—In partial modification of the provisions of para. (a) (ii) above, it has been decided that even in cases where the special pay in lieu of a higher scale of pay has been drawn in the same post for broken periods, the benefit of special pay being treated as part of basic pay on promotion to a higher post will be admissible provided the total of the broken periods put together is not less than three years.

[G.I., M.F., O.M. No. F. 6 (1)-E. III (B)/68, dated the 27th February, 1971.]

NOTE 4.—In cases where the special pay in respect of the same post has been enhanced during the preceding three years of the date of promotion, the rate of special pay to be taken into account for purpose of fixation of pay in the higher post, should be the one drawn immediately before the date of promotion, subject to the fulfilment of other conditions governing fixation of pay in the higher post, as laid down in various orders issued from time to time.

[G.I., M.F., O.M. No. F. 6 (1)-E. III (B)/68, dated the 12th December, 1974.]

(iii) *Authority competent to fix pay.*—In regard to fixation of pay on promotion under these orders, the following points have been raised:—

(i) Who is the authority competent to fix pay on promotion to higher post after treating special pay in a lower post as part of basic pay?

(ii) Whether Administrative Ministry is still required to issue sanction to the grant of personal pay under F.R. 9 (23) (b).

2. The above points have been examined in consultation with the Ministry of Finance and it is hereby clarified that the authority competent to fix pay of an official on promotion will also be competent to fix pay and grant personal pay under the above orders. In such cases the sanction of the Administrative Ministry is not necessary for the grant of personal pay unless it is the competent authority to fix pay on promotion.

[D.G., P. & T., Letter No. 2/1/67-PAP, dated the 6th April, 1967.]

(28) Treatment of special pay granted to UDCs in non-Secretariat Administrative Offices on promotion.—(a) The special pay granted to UDCs under the provision contained in Ministry of Finance, O.M. No. F. 7 (52)-E. III/78, dated 5-5-1979 [*G.I. Order (23) above*] is not in lieu of higher scale of pay, but it is intended for complex and important (arduous) nature of work performed by them. This special pay cannot be

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treated as part of pay for fixation of pay on promotion to higher post. However, it can be protected by grant of personal pay equal to the difference between pay plus special pay drawn in the lower post and the pay fixed in the higher post on the basis of pay in lower post, subject to the following conditions:—

- (i) It must be certified that but for his appointment to the other post, the Government servant would have continued to draw the special pay.
- (ii) The protection will be for so long as the Government servant would have continued to draw the special pay.
- (iii) The personal pay will be absorbed in subsequent increase of pay.

[G.I., M.F., Letter No. F. 9 (1)-E. III/80, dated the 18th June, 1980, addressed to Shri T.V. Anandan, National Council (JCM), Madras.]

(b) Pursuant to the Award of the Board of Arbitration, it has been decided that Rs. 35 per month paid to UDCs as special pay under Ministry of Finance (Department of Expenditure), O.M. No. F. 7 (52)-E. III/78, dated 5-5-1979 [*G.I. Order (23) above*] shall be taken into account for fixation of pay on promotion subject to the conditions—

- (i) that the incumbent is a substantive holder of the post to which the special pay is attached;

OR

- (ii) that the incumbent, on the date of his appointment to higher post, is officiating in the lower post to which the special pay is attached, continuously for a period of not less than three years.

These orders take effect from 1st September, 1985.

[G.I., M.F., O.M. No. 7 (35)-E. III/87, dated the 1st September, 1987.]

NOTE.—The condition, viz., that the incumbent is a substantive holder of the post to which the special pay is attached, mentioned in item (i) of the above O.M., dated 1-9-1987 is valid even after issue of G.I., Dept. of Per. & Trg., O.M. No. 18011/1/86-Est. (D), dated 28-3-1988 [*G.I.O. (1) below F.R. 9 (13)*] relating to simplification of confirmation procedure. However, the future incumbents whose confirmation will be made only once in the service, as per revised procedure, will have to fulfil the condition mentioned in item (ii) of the above O.M., dated 1-9-1987, to become eligible for the benefit of special pay for the purpose of fixation of pay on promotion, and condition (i) will cease to operate in their cases.

[G.I., M.F., U.O. No. 2329/E. III/89, dated the 1st August, 1989, circulated under C. & A.G. of India, Letter No. 708-Audit. 1/84-86-V/IV-89 (116), dated the 18th October, 1989.]

G.I.O. (ADM)

F.No. A-26017/31/92-Ad. IX (pt.)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

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New Delhi the 3rd August, 1993.

The Chief Commissioner of Income Tax,
Ahmedabad.

Sir,

Sub: Treatment of Special Pay for the purpose
of fixation of pay on promotion to higher
post - Shri V.T. Mathai, ITO (Retd.).

I am directed to refer to the representation dated 29.6.92 received from Shri V.T. Mathai, ITO (Retd.) of your Charge and your letter dated 2.11.1992 on the above subject and to state that the contention of the Z.A.O. that special pay of Rs. 25/- drawn by Shri Mathai while working as UDC in IPA ^{Grade} was not counted for the purposes of fixation of pay on promotion to the next higher post, is correct. The re-fixation pay and consequent recovery of Rs. 9570/- worked out by the Z.A.O. is in order and should be recovered from the dues of the retired officer concerned.

2. The CAT's decision in the case of Sh. S.A. Sayed & 13 others is not automatically applicable in the case of Sh. Mathai and accordingly he cannot claim benefit of the judgement of the CAT in other cases. Sh. Mathai retired ITO may be informed suitably.

Yours faithfully,


(D.M.L. MALHOTRA)

Deputy Secretary to the Govt. of India.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

ORIGINAL APPLICATION NO.590 OF 1993

V.T.Mathai ..Applicant

V/s

Union of India & anr. ..Respondent

-: REJOINDER TO WRITTEN REPLY ON BEHALF OF THE RESPONDENTS :-

As to para 2 of the Chief C.I.T's submission it is contended that the special pay to the UDCs working in the Internal Audit parties has been sanctioned for "arduous nature of duties" and not "in lieu of higher scale of pay". In support of this arguments he has quoted the circular OM No.7(52)-E.III/78 dated 5/5/1979 (G.I.Order (28) below FR 9(25) issued by the Ministry of Finance. According to the said circular it is argued that such special pay can be protected on promotion by grant of personal pay equal to the difference between Pay plus special pay drawn in the lower post and the pay due

...2/-

Received
Received
Clerk C.A.T.
M.R.Bhavs
Ad.
18/12/92

24/11/1993
File by Mr. M.R. Anand
Letter addressed to Respondent
Respondent with return
C-27 returned letter & other
18/12/92
By Registrar C.A.T. (I)
A. Ind. Bapat

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in the higher post on the basis of basic pay in the lower post, subject to the condition laid down therein. The circular quoted above is effective from 5.5.1979 whereas the petitioner has worked in the Internal Audit Party from 2.4.73 till promotion as Head Clerk on 6.9.1973. Prior to the issue of the said circular the notification issued by the Ministry of Finance vide its F.NO.6/84/69 Ad IX dated 10.12.70 forwarded by the Board vide F.No.66/88/72 AD VII dated 6-12-72 was in existence, according to which the special pay of Rs.25/- p.m. attached to the post of U.D.Cs in the Internal Audit parties should be treated as having been sanctioned in lieu of higher scale of pay. The Central Administrative Tribunal, Ahmedabad Bench has considered both these circulars while disposing of the petition filed by Shri Sadiqali Azamali Saiyed and 13 Others in order No.T.A No.184 of 1986 (SCA No.459 of 1982) dated 28.1.1988, and directed the department to fix the initial pay scale in the higher grade as part of their pay. Thereafter, the Central Administrative Tribunal, Ahmedabad Bench has allowed the appeals, following the above decision, in the below mentioned cases.

<u>Name of the petitioner</u>	<u>No. & Date of Decision</u>	<u>Remarks</u>
Shri V.B.Shah	O.A No.354 of 1989 dated 31.8.1990	Copy of CAT's order attached
Shri P.D.Panjwani	O.A.No.5/90 dated 12-2-1992	-do-
In the below mentioned case the Central Board of Direct Taxes itself allowed the benefit of the C.A.T judgement in Shri S.A.Saiyed and 13 Others (T.A.No.184 of 1986 SCA No.459/82)		
Shri RR Bangdiwala	F.NO.A-26017/85/88-Ad. 9X dt.20.8.88	Copy of Board's letter attached

1(a) It is also argued by the learned Chief Commissioner of Income-tax that the Central Board of Direct Taxes after due consideration of the representation of the petitioner has rejected the same by a speaking order. In this connection it may be submitted that the C.B.D.T vide F.No.A-26017/31/92-Ad IX (Pt) dated 3-8-1993 intimated the Chief C.I.T informing him that the C.A.T's decision in the case of S.A.Saiyed & 13 others is not automatically applicable in the case of the petitioner and accordingly he cannot claim the benefit of the C.A.T's decision in other cases. It is not clarified why the C.A.T's decision in the case of Shri S.A.Saiyed & 13 others is not applicable in the case of the petitioner. No reason whatsoever has been given by the Board while rejecting the petition though the facts are similar in both the cases.

2. It is next argued that the special pay can be considered for fixation of pay only in those cases those who have continuously drawn special pay for a minimum period of three years on the date of promotion. In none of the decisions quoted above or in the decision taken by the Board in the case of Shri R.R. Bangdiwala this point has come up for discussion. Even for arguments sake it may be submitted that in all the three cases mentioned in para 1 above though they have not drawn special pay continuously for three years, their petition have been accepted by the C.A.T or C.B.D.T as

the case may be. So there is no force in the argument put forth by the Chief C.I.T in his submission dated 28.2.94. The period for which the above three persons worked in the Internal Audit Parties is given below for ready reference.

<u>Name of the Petitioner</u>	<u>Period of working with Audit party</u>
1. Shri V.B.Shah	17-2-1976 to 30.6.1978 (2 years 4 months)
2. Shri P.D.Panjwani	10-5-68 to 4-6-71 Spl. pay drawn from 10-12-70 to 4-6-71 (6 months)
3. Shri R.R.Bangdiwala	Order of posting dated 27-5-1975 Promotion as Head Clerk 31-8.77 (Two years & 3 months)

3. It is also argued by Chief C.I.T that the issue about treatment of special pay drawn as U.D.C has raised by the petitioner only after 21 years. In this connection it may be submitted that the petitioner has come to know about the decision in the case of Shri S.A.Saiyed & 13 Ors. only after the petitioner's transfer to Ahmedabad from Jamnagar in the year 1990. I made representations immediately.

In the cases quoted above, though they were working in the Audit parties prior to 1979, ^{they made the representation after many years.} The department cannot have different standards for identically situated employees. The petition therefore, deserves to be allowed with costs, in my respectful submission.

....5/-

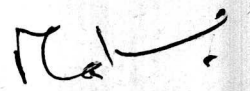
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-: VERIFICATION :-

I, V.T.Mathai, the applicant, Aged 63 years resident of Ahmedabad do hereby verify that the contents stated herein-
above are true to my personal knowledge, and are believed to be true on legal advice and that I have not suppressed any material fact.

Ahmedabad

Dt. 6 / 11 / 1995


APPLICANT

O.A. No. 354 of 1989

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Shri V.B. Shah,
C/91, (2nd floor)
Gagan-Vihar Society,
Khanpur,
Ahmedabad-380 001.

(Advocate-Mr. K.K. Shah)

.. Petitioner

Versus

1. Union of India, through
The Secretary,
Ministry of Finance,
Deptt. of Revenue & Insurance,
North Blocks,
New Delhi.
2. The Secretary,
Central Board of Direct Taxes,
New Delhi.
3. Chief Commissioner of Income
Tax (Administration), Gujarat,
Aayakar Bhavan,
Ashram Road,
Ahmedabad-380 009,

(Advocate-Mr. R.P. Bhatt)

.. Respondents

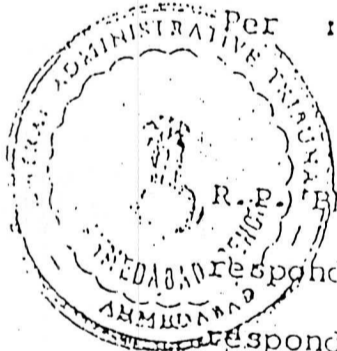
CORAM : Hon'ble Mr. P.H. Trivedi : Vice Chairman
Hon'ble Mr. J.N. Murthy : Judicial Member

ORDER

Date : 31.8.1990

Per : Hon'ble Mr. P.H. Trivedi : Vice Chairman

Heard Mr. K.K. Shah and Mr. M.R. Bhatt for Mr. R.P. Bhatt, learned advocates for the petitioner and respondents respectively. Learned advocate for the respondents Mr. Bhatt states that the Government has passed necessary orders under O.M. No. 7(35)E.III/87 dated 22.5.1989, which are allowed to be brought on the file, by which the claims of the petitioner have been allowed. Both advocates have no objection for disposal of the case in this term, accordingly allowed. The case stands disposed of.



by P.T.F.
by 04/07/90

TRUE COPY

B. S. S. S. S.
(K. B. SANE)

Chief Officer (I)

Sd/-

(J Narsinha Murthy)
Judicial Member

Sd/-

(P.H. Trivedi)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 5/90

~~XXXXXX~~

DATE OF DECISION 12.02.1992

P.D. Panjwani Petitioner

Mr. J.R. Nanavati Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

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

CORAM :

The Hon'ble Mr. R.C. Bhatt

..... Member (J)

The Hon'ble Mr.

P.D. Panjwani
(Advocate ; J.R. Nanavaty)

..... Applicant

Vs.

1. Union of India,
Through:
Secretary,
Ministry of Finance,
(Department of Revenue and
Insurance)
New Delhi.
2. Secretary,
Central Board of
Direct Taxes,
New Delhi.
3. The Chief Commissioner of Income- Tax,
(Administration), Aayakar Bhavan,
Navrangpura,
Ahmedabad.
(Advocate: Mr. R.P. Bhatt)

ORAL JUDGMENT

O.A. 5 of 1990

Date: 12.2.1992

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

On 29th Jan. 1992 the learned advocate for the respondents produced a letter dated 12th July 1990 addressed to him by the Chief Commissioner of Income- Tax Ahmedabad, stating therein that in view of the previous judgment of this Tribunal in V.B. Shah Vs. Union of India & Ors. in O.A./354/89 the Department was prepared to re-fix the pay of the applicant in accordance with the instruction contained in Board's letter dated 23rd Feb. 1990, the copy of which is also annexed with

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the letter. Learned advocate Mr. J.R. Nanavati for the applicant is satisfied with that letter and hence he does not press further this Original Application.

Hence the following order:

ORDER

Application is disposed of as not pressed, in view of the letter dated 23rd Feb. 1930, produced by the respondents. Application is disposed of. No order as to costs.

Sd/-
(R.C. Bhatt)
Judicial Member

*Kaushik

Prepared by 11/10/31
Reviewed by 11/10/31
TRUE COPY 17/2/42

17/2/42

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110.7-20017/35/00-1.9X
Government of India
Ministry of Finance
Central Board of Direct Taxes.

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(11)
New Delhi, the 20th September, 1938.

To

The Chief Commissioner of Income-tax (Admn),
Ahmedabad.

Subject:- Treatment of special pay for the purpose of
fixation of pay on promotion to higher post -
Shri R.R. Bangadiwala - reg.
.....

Sir,

I am directed to refer to your letter No. Est.62-2/38
dated 28.6.1938 on the above subject and to say that the
matter has been examined in detail. It has been decided
that the benefit of the C.A.T. judgement in the case of
S.A.Saiyad Vs Union of India may be given to Shri R.R.
Bangadiwala also.

Yours faithfully,

H Singh
2.9/9/38
(HARPANS SINGH)
UNDER SECRETARY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.

O.A./T.A./C.A./R.A./M.A. No.

MAF 13 / 98 17 OA / 590 / 93

V. T. Mathai

Mr. M.R. Anand

APPLICANT (S)

COUNSEL

VERSUS

V. Oil & ors.

RESPONDENT (S)

COUNSEL

DATE

OFFICE ORDER

ORDER

19/12/97 (1) Early Hearing.

(2) Copy served on the other side.

Submitted:

On scrutiny, MAF is found to be in order. If approved, MAF will be registered and placed before the Hon. Bench for orders.

19/12/97

50/5) 2491247 (J) 12/97

MAJ 10/17/97 / 52

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH AT AHMEDABAD

MISCELLANEOUS APPLICATION NO. 13 OF 1998

IN

ORIGINAL APPLICATION NO. 590 OF 1993.

Shri V.T.Mathai.

Residing at: A/25/26,

Marvel Society,

B/H. Abadnagar, Bopal Road,

Ahmedabad.380058

..Applicant,

Versus

1) Union of India (Notice of the petition to be served through Secretary, Revenue Department, Secretariat, New Delhi)

2) Chief Commissioner of Incometax,

Ayakar Bhavan,

Ashram Road,

Ahmedabad.380009

.. Opponents.

..2..

Received. Com
Clerk
M.R. Bhatt
15/12/97

Filed by Mr. M.R. Anand
Learned Advocate for Petitioner
with second set of spare
copies copy served/not served
other side

By Registrar C.A.T.C.
Ahmedabad Bench

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1. The applicant has filed the above mentioned Original Application against the action of the opponent authority, denying the pay fixation to the applicant, which is already given to other identically placed employees pursuant to the final judgment of this Hon'ble tribunal. The applicant submit that this matter is fully concluded by the judgment of this Hon'ble tribunal in T.A.No.184/86 (originally Special Civil Application No.459/82) delivered on 28th January, 1988 where as many as 14 identically placed employees were held to be entitled to the very benefits.

2. The applicant further submits that the Hon'ble Tribunal pleased to admit the matter in the year 1993 and thereafter the matter could not come on the board. The applicant submits that the applicant has already

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retired as an Incometax Officer-Group 'B' in the year 1991 and since 4 years have already been elapsed after filing this application, it is requested that this matter may be placed for final hearing in the interest of justice.

3. The applicant, therefore, prays that -

(A) to allow this Misc.Civil Application.

(B) To fix the above mentioned original application for final hearing.

(C) Be pleased to grant any such other and further reliefs, as deemed just and proper, looking to the facts and circumstances of the case, in the interest of justice.

Ahmedabad.
18-12-97

M R Anand
ADVOCATE FOR THE APPLICANT

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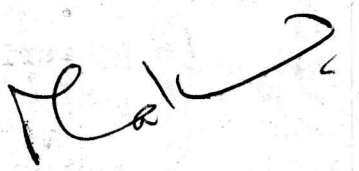
verification.

I, V.T Mathai aged 52 residing
at Ahmedabad, do hereby solemnly affirm and state
that what is stated hereinabove are true to the
best of my knowledge, information and belief and
I believe the same to be true. I have not suppressed any material fact.

Solemnly verified at Ahmedabad on
day of December, 1997.

Ahmedabad.

17-12-97


APPLICANT
DEPONENT.