

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A. No.28 of 1998 in

O.A.NO. /590/93

~~**T.A.NO.**~~

DATE OF DECISION 4th August 1998

V.T.Mathai _____ Petitioner

Party-in- person _____ Advocate for the Petitioner [s]

Versus

Union of India & another _____ Respondent

_____ 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 ? ^m
- 2, To be referred to the Reporter or not ? ^m
- 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 ? ^m

V.T.Mathai
Retired Income-tax Officer
residing at
A/25/26, Marvel Society
Behind Abad Nagar
Bopel
Ahmedabad- 380 058.

Applicant
(Original applicant)

Party-in-person

Versus

1. Union of India
(Notice to be served through
Secretary, Revenue Department
Secretariat, New Delhi).
2. The Chief Commissioner of
Income Tax, Aayakar Bhavan
Ashram Road
Ahmedabad- 380 009.

Respondents

--

ORDER

IN

R.A.No.28 of 1998 in
OA/590/93

BY CIRCULATION

Wt. Htl August 1998

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

The Review Applicant has prayed for directions
as follows:-

- (A) To allow this review application and
decided the petition as afresh for the issue
regarding the special pay in accordance with
law as interpreted in earlier petitions on
similar issue decided by the Hon'ble Court.
- (B) To direct the respondent authority to
consider the special pay drawn as U.D.C. while
fixing the pay as Head Clerk on promotion, before

issuing a fresh show-cause notice for rectifying the mistake in fixation of pay on promotion as Income-tax Officer.

(C) If the issue related to the consideration of special pay for fixation of pay on promotion as Head Clerk cannot be considered in the review petition, the applicant may kindly be allowed to file a separate petition for the same.

(D) 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.

2. In the O.A., the Review Applicant had challenged the action of the department in seeking to recover a sum of Rs.9570/- on account of overpayment on fixation of his pay in 1986 as per the recommendations of the Fourth Pay Commission. In particular, he claimed that as he had drawn a special pay of Rs.25/- as U.D.C. attached to the Internal Audit Party for the period from 2.4.73 to 28.8.73, on promotion as Head Clerk in Septr. 1977 his pay should have been refixed taking into account such special pay. and that the arrears arising out of such pay fixation should be adjusted against the alleged overpayment made to him on fixation of his pay w.e.f. 1986 on the basis of the recommendations of the IVth Pay Commission. The applicant retired on 31.3.91 and the authorities sought to recover what

they regarded as overpayment of salaries on account of wrong fixation of pay made in 1986 ^{and this was sought to be done} after his retirement.

3. During the hearing it was brought out that no show cause notice was given to the applicant before seeking to recover the sum of Rs.9570/- which was calculated by the department as excess over his correct entitlement on account of pay fixation in Jany.1986. On this short ground, the letter dated 11.2.92 seeking to recover the extra payment of Rs.9580/- was quashed. It was also noted that the counsel for the applicant did not press the claim for taking into account the special pay drawn as U.D.C. while fixing his pay as Head Clerk on his promotion to that level in 1973.

4. The Review Applicant now submits that this is not in conformity with the impression formed by him and seeks ~~xxx~~ review of the order to decide the question of his entitlement to special pay of Rs.25/- drawn by him on his promotion as Head Clerk. He relies in this regard on certain decisions of the Tribunal where he claims similar benefit was allowed.

5. The relief sought for by the applicant was to quash the letter seeking to recover a sum of Rs.9570 and he states that his claim based on Rs.25/- special pay drawn by him as U.D.C. should be ^sadjusted. He had also stated that the benefit of the judgement of the Tribunal in similar cases should be given to him. During the hearing, on a number of occasions we informed his counsel that the applicant cannot seek to reopen in 1993 the pay fixation on his promotion as Head Clerk

on 6.9.73. He had retired from service in March 1991. The counsel did not press for the special pay when he was told that it is clearly time barred and we propose to dismiss this part of the claim. The Tribunal on 30.6.98 passed an order quashing the letter dated 11.2.92 seeking to recover the excess payment on account of wrong pay fixation from January 1986 onwards. ~~Re~~ This order was dictated in the open court.

6. As has been brought out, the applicant's claim for re-fixing his pay w.e.f. September 1973 cannot be agitated by an O.A. in 1993. It is hopelessly time barred. He relied on some decisions of the Tribunal where he claims that the special pay was taken into account for fixation of pay on promotion. We are not aware of the details of the cases referred to by the applicant. In any case, this cannot cure the major defect. We may refer in this connection to the decision of the Hon'ble Supreme Court in State of Karnataka and Others vs. S.M. Kotrayya and others (1996) 6 Supreme Court Cases 267. The Head Note reads as follows:-

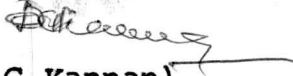
"Service Law- Administrative Tribunals Act, 1985- S.21- Condonation of delay- Grounds for- The mere fact that the applicants filed the belated Application immediately after coming to know that in similar claims relief had been granted by the Tribunal, held, not a proper explanation to justify

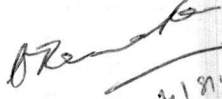
condonation of delay- The explanation must relate to failure to avail the remedy within the limitation period- Limitation".

In the present case there is gross delay in claiming re-fixation of pay at the time of promotion in 1973 and ~~was~~ this was brought to the notice of the counsel on a number of occasions and it was on this ground that he did not press the case for special pay. If he had done so, we would have dismissed the claim for special pay for the reasons brought out above as the claim is hopelessly time barred.

7. There is as ^{per} ~~stated~~ no error apparent on the face of record. 102

8. In the light of the foregoing discussions, we hold that the R.A. is totally devoid of merit and dismiss the same.


(P.C. Kannan)
Member (J)


(V. Ramakrishnan)
Vice Chairman

pmr

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No. RA/28/98 in

of 19

Transfer Application No. CA/590/93


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: 17/8/98

Countersigned.


Signature of the Dealing
Assistant

Section Officer/Court Officer.

1. Judgment / Order by

(i) Hon'ble Mr. V. Rama Krishna, V.C. and

(ii) Hon'ble Mr. P.C. Kannan, M(J)

2. Both the aforesaid Members are functioning in this Tribunal.

2. Hence to be placed before the said Members i.e.

Hon'ble Mr. V. Ramakrishnan (V.C.)

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

3. Hon'ble Mr. _____ still belongs to Local Bench but Hon'ble Mr. _____ is now a Member/V.C. of _____ Bench.

3. Hence may be sent for consideration by circulation to the said Members i.e. Hon'ble Mr. _____ and

Hon'ble Mr. _____

4. Both the aforesaid Hon'ble Members have ceased to be Members of the Tribunal.

4. Hence to be placed before Hon'ble V.C. for constituting a Bench of any two Members of this Bench.

5. Hon'ble Mr. _____ has ceased to be Member of Tribunal but Hon'ble Mr. _____ is available in this Bench.

5. Hence may be placed before Hon'ble V.C. for constituting a Bench of Hon'ble Mr. _____

_____ who is available in this Bench and of any other Member of this Bench for preliminary hearing.

6. Both the aforesaid Members are now Members of other Benches namely _____ and _____ Benches.

6. May be placed before Hon'ble V.C. for sending the R.A. to both the Members for consideration by circulation. If one of the Members is of the view that the petition merits a hearing, reference may be made by Hon'ble V.C. to the Hon'ble Chairman seeking orders of the Hon'ble Chairman.

7. The case is not covered by any of the above contingencies.

7. Therefore, orders of the Hon'ble Chairman are required to be obtained by Hon'ble _____

28/7/98

28/7
S.O. (J)

28/7/98
S.O. (J)

A above will be disposed of by circulation
39/7/98

Submitted

On scrutiny, RA is found in order and if approved the same will be registered.

la.
28/7/98

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SOS

28/7/98
SOS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

ADDITIONAL AHMEDABAD BENCH

REVIEW APPLICATION NO. 28 of 1998.

IN

ORIGINAL APPLICATION No. 590 of 1993 DT. 30-6-98.

V. T. Mathai Applicant


Vs.

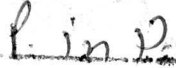
Union of India Respondent.

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Ahmedabad.
28-7-1998


V.T. Mathai
Applicant.


L. In P.
28/7/98

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

ADDITIONAL BENCH AT AHMEDABAD

REVIEW APPLICATION NO. 28 OF 1998

IN

ORIGINAL APPLICATION NO. 590 OF 1993.

V.T.Mathai, Retired Income-tax Officer.

residing at:

A/25/26, Marvel Society,

Behind Abad Nagar,

Bopel, Ahmedabad.380 058

... Applicant.

(Ori. applicant.)

Versus

1. Union of India

(Notice to be served through
Secretary, Revenue Department,
Secretariat, New Delhi.)

2. The Chief Commissioner of

Income-tax, Aayakar Bhavan,
Ashram Road,

Ahmedabad. 380 009.

.. Respondents.

APPLICATION FOR REVIEW OF THE ORDER
PASSED IN O.A.NO.590/93 dated 30.6.98

1. The application is filed by the original applicant for review of the oral order passed by this Hon'ble Tribunal (Coram: Hon'ble V.Ramakrishnan, Vice-Chairman & Hon'ble P.C.Kannan, Member (J)) in O.A.No.590/93 dated 30.6.1998. The applicant states that the applicant has filed the above mentioned application before this Hon'ble Tribunal against recovery order of Rs.9570/- and also respondent authority denying the pay fixation to the applicant, which is already given to other identically placed employees pursuant to the final Judgement of this Hon'ble Tribunal. The Original Application No.590/93 was finally heard on 30.6.1998 and the Hon'ble Tribunal was pleased to quash the letter dated 11th February, 1992 for recovery, as the recovery from the applicant is without giving him a show-cause notice, in violation of the principles of natural justice.

2. In the Original Application No.590/93, two issues were raised by the applicant - one

..3..

is the recovery of the excess payment in violation of the principles of natural justice and another issue is the respondent authority denying the special pay for fixation of pay to the applicant, which is already given to other identically placed employees pursuant to the final judgment of this Hon'ble Tribunal. After hearing of the matter, the Hon'ble Tribunal was pleased to quash and set aside the recovery order. So, the Advocate for the applicant formed the impression that the Hon'ble Tribunal will direct the respondent to consider the point raised in the Original Application regarding special pay of Rs.25/- per month for fixation in favour of the applicant. The applicant received the copy of the oral order passed by the Hon'ble Tribunal in OA No.590/93(Annexure A-1). In this order, it is stated that the recovery letter dated 11.2.1992 is quashed and set aside by the Hon'ble Tribunal, but regarding the special pay of Rs.25/- per month, it is stated in the order as "He does not press the claim for taking into account special pay drawn as UDC while fixing pay as Head Clerk on promotion to that level in 1973". This is

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not in confirmity with the impression formed by the applicant. In fact, the issue related to "special pay of Rs.25/- to be considered as part of basic pay for fixation of pay on promotion as Head Clerk" is the main issue being contested in appeal. The applicant is therefore seriously prejudiced of the order that the applicant's Advocate "does not press the claim for taking into account the special pay drawn as UDC while fixing the pay as Head Clerk on promotion". It is therefore prayed that this issue may not be treated as an issue not pressed during the course of hearing and Hon'ble members of the Tribunal may decide this issue keeping in view of the following facts.

3. The applicant submits that he has very good case for the claim for taking into account the special pay drawn as UDC while fixing the pay as Head Clerk on promotion to that level in 1973. The Hon'ble Tribunal decided this very matter regarding special pay to other identically placed employees and the dispute regarding the special pay has already resolved in TA No.184/86 in 1988. This order is already annexed with the Original Application 590/93.

The applicant further submits that the Hon'ble Tribunal has also followed this judgement in other similarly situated employees in O.A No. 354/89, O.A No. 5/90 and O.A. No. 323/91 (Annexure "A-2" , "A-3" and "A-4") Shri P.D. Panjwani, who is identically placed employee, was working in the Internal Audit party of the Department during 10-5-1968 to 4-6-1971 and was getting the special pay of Rs.25/- per month from 10-12-70 to 4-6-71 has approached before this Hon'ble Tribunal by filing O.A. No. 5/90 and the Department was prepared to refix his pay according to the previous Judgement of the Hon'ble Tribunal. In view of this, the Hon'ble Tribunal may observe that the applicant is not very late in approaching them with the original petition for imparting justice. It is therefore prayed that the Hon'ble Tribunal may direct the respondent authority to consider the issue regarding fixation of pay in view of the various Judgments of the Hon'ble Tribunal.

4. It may be submitted that if applicant's petition for consideration of spl. pay for fixation of pay on promotion as Head Clerk is not considered by the Hon'ble members of Tribunal, the applicant will incur great financial loss by way of recovery and reduction in monthly pension. The applicant is agreeable for payment of arrears from 1-9-1985 as provided in Department's Circular OM No. 7(29)/E. III/89 dated 22-5-1989 (Annexure "A-5") which has been relied upon by the Hon'ble Tribunal while deciding O.A No. 5/90 in the case of Shri Panjwani

is also followed in other similar cases involving Vs. Union of India & ors, where identical issue is involved.

5. It may also be brought to the kind notice of the Hon'ble members that while replying to the representation made by the applicant, the C.B.D.T. in their letter dated 3rd August, 1993 (Annexure A-4 of the original petition) has stated that "the C.A.T. decision in the case of Shri S.A. Sayed and 13 others is not automatically applicable in the case of Shri Mathai and accordingly he cannot claim benefit of the judgement of the C.A.T. in other cases " This clearly suggests that the applicant is required to approach the Hon'ble Tribunal for justice in the matter. Accordingly, the applicant had filed the original petition.

6. In view of the above facts, it is prayed that the issue related to special pay as part of pay for fixation of pay on promotion as Head Clerk may kindly be considered in the review petition. In any case, the issue cannot be considered in the review petition, the applicant may be allowed to file a separate petition in the matter.

7. The applicant, therefore, prays that the Hon'ble Tribunal may be pleased to review the order passed in Original petition No. 590 of 1993 and allow this application.

The applicant, therefore, prays that this Hon'ble Tribunal may be pleased to:

- (A) To allow this review application and decide the petition as afresh for the issue regarding the special pay in accordance with law as interpreted in earlier petitions on similar issue decided by the Hon'ble Court.
- (B) To direct the respondent authority to consider the special pay drawn as U.D.C. while fixing the pay as Head Clerk on promotion, before issuing a fresh show-cause notice for rectifying the mistake in fixation of pay on promotion as Income-tax Officer.
- (C) If the issue related to the consideration of special pay for fixation of pay on promotion as H.C. cannot be considered in the review petition, the applicant may kindly be allowed to file a separate petition for the same.
- (D) 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.

8. The applicant craves leave to add, amend, alter or modify any of the grounds stated hereinabove, in case of necessity, in the interest of justice.

~~SME~~ ~~SPR~~ AND FOR THIS ACT OF KINDNESS AND JUSTICE, THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY.

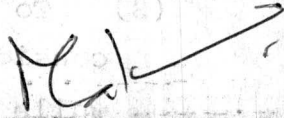
Ahmedabad
27-7-1998


V.T. Mathai
(Retired Income-tax Officer.)

AFFIDAVIT

I, V.T. Mathai, the applicant herein do hereby solemnly affirm and verify that what is stated hereinabove in paragraphs 1 to 8 is true to my knowledge, information, belief that I believe the same to be true and that I have not suppressed any material facts.


Verified at Ahmedabad on this day of 27th July 1998.



V.T.Mathai
(Retired Income-tax Officer)

DEPONENT.

SOLEMNLY AFFIRMED BEFORE
ME.



डप रजिस्ट्रार (न्या.)
Deputy Registrar (J),
केन्द्रीय प्रशासनिक अधिकारी,
Central Admn. Tribunal,
अहमदाबाद न्यायपीठ,
Ahmedabad Bench.

V.T. Mathai
(Retired Income-tax Officer)

27-7-1998

M. Anand
Annexure "A 1"

9

CAT/J/13

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

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

DATE OF DECISION 30.06.1998

V.T. Mathai

Petitioner



Mr. 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)

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 - 380 001.

... 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 fixed 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 arrears.

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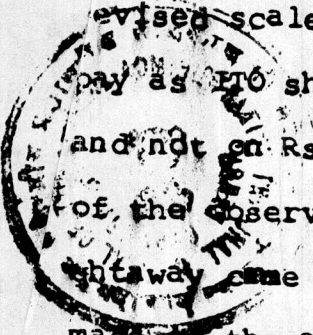
11

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 pay scales 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,



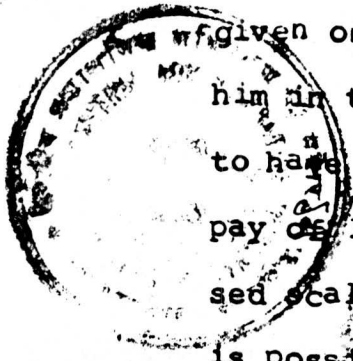
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Commuted value of pension, Leave salary encashment, monthly pension from April, 91 to January, 92 etc. and proceeded to issue an order dated 11.2.92 to the Income Tax Officer (Administration) Ahmedabad to recover the said alleged overpayment (Annexure 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 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-



Contd..5/-

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.

Sd/-

(P.C. Kannan)
Member (J)

Sd/-

(V. Ramakrishnan)
Vice Chairman

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[Faint, mostly illegible text from a stamp or form, possibly including 'RECEIVED' and 'OFFICE']

Certified true copy
 V.T. Mathan
 (Rtd. I.T.O)

O.A. No. 354 of 1989

14

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

.. Petitioner

(Advocate-Mr. K.K. Shah)

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,

.. Respondents

(Advocate-Mr. R.P. Bhatt)

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.



Certified true copy

Sd/-

Sd/-
J Narsinha Murthy
Judicial Member

(P.H. Trivedi)
Vice Chairman

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

TRUE COPY

C.B. SANEI

(K. B. SANEI)

04-07-90

Central Administrative Tribunal

(Rtd. 100)

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./254/89 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

...2..

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 : [Signature]
Checked by : [Signature]
TRUE COPY 19/2/32

[Signature] 17/2/32

Certified true copy
[Signature]
U.T. Mathur
(Pld. 1-20)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, MEMBERS BENCH,
AT AHMEDABAD.

ORIGINAL APPLICATION NO. 223 OF 1991.

(Application under Sec. 19 of the Central Administrative
Tribunal Act, 1985)

1. A.A. Timizi,

Inspector Circle I,
United India Insurance Bldg.,
Near Indulep Bldg., Ahmedabad.

Arbitrator

2. E. Shankar,

Inspector,
Commissioner Office I,
M.I.T.I., Ayakar Bhavan,
Ahmedabad.

110, Ahmedabad

3. P.C. Pillai,

Inspector (S.I.T.),
(Judicial), Ayakar Bhavan,
Ahmedabad.

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4. V.H. Mishra,

Inspector, D.D.I. Office,
Babar Hotel Bldg., Khanpur,
Ahmedabad.

110, Ahmedabad

5. K.L. Arni,

Inspector Comp. Authority BAZAAR,
Ayakar Bhavan, Ahmedabad.

110, Ahmedabad

6. I.C. Patil,

Inspector Circle I,
Bldg., Ahmedabad.

Arbitrator

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7. Mr. K.M. Thakkar,
Retd. Inspector, Circle III,
residing at 32, Pramesh Society,
Jodhour Road, Satellite,
Ahmedabad.380 015.

8. Mr. C.U. Nair,
Inspector, D.I. Office,
Ayakar Bhavan,
Ahmedabad.380 009.

110, Camp Auth

9. Mr. P.P. Philip,
Inspector, Central Circle 1(3),
Ayakar Bhavan, (Third Floor),
Ahmedabad.380 009.

110(40), Central

... Applicants.

Versus

1. Union of India,
(Notice to be served through
The Secretary, Ministry of
Finance, Department of Revenue
and Insurance, North Blocks,
New Delhi. 110 001).

2. The Secretary,
Central Board of Direct Taxes, *Mreyar Bhavan*
New Delhi.

3. The Chief Commissioner of
Income Tax (Administration),
Gujarat,
Ayakar Bhavan, Ashram Road,
Ahmedabad.380 009.

4. The Competent Authority,
SAFEMA,
Ayakar Bhavan,
Ahmedabad.380 009.

5. The Director of Inspection
(I.T. Investigation),
Ayakar Bhavan (1st Floor),
Ahmedabad.380 009.

6. The Commissioner of Income Tax
(Central),
Ayakar Bhavan, (3rd Floor),
Ahmedabad.380 009.

... Respondents.

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

The Applicants are not given the benefit of
merger of special pay as Upper Division Clerk
(*U.D.C.* for brevity) on promotion to the higher

*Corrected
true copy
of
V.T. Mathur
Cell-1-70*

Office Report

ORDER

19.1.96

Heard Mr.K.K. Shah and Mr. M.R. Bhatt. The applicants are aggrieved by the respondents' refusal to take into account special pay of Rs.35/- per month they were receiving as UDC for fixation of pay at the time of promotion to the next higher post. Mr. Shah for the applicants state that as per the decision of this Tribunal in T.A.184/86 dated 28.1.88 it was ruled that UDCs who were drawing special pay are entitled to count special pay at the time of promotion to the next higher post. The Government has also issued order dated 22.5.1989 that the special pay of Rs.35/- should taken into account for fixation of pay in the higher scale on promotion on notional basis and actual benefits to be allowed from 1.9.1985. It is not clear as to why inspite of the order of the Government as well as the judgment of this Bench the present applicants are not being allowed the benefits of the special pay at the time of promotion in fixation of their pay in the higher post. Mr. Shah states that the representation given by the applicant dated 11.12.89 is still not been replied to nor decision taken thereon. It would appear that the applicants are squarely covered by the judgment of this Bench in T.A.184/86 subject to fulfilment of the required conditions. Taken into account the above observations the ~~reper~~ respondents are directed to consider and decide the representation dated 11.12.89 of Mr. A.A. Tirmizi. The other applicants who are

p.t.o.

Certified
True Copy
A.A. Tirmizi
U. T. Mulkhan
Ctd 17.1.96

~~7-9-87~~

F(22-5-89)
Annexure "A 5"

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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-ord.dated 16.6.89 of Ministry of Finance, Department of Revenue, New Delhi. Circular No.134/89.



Handwritten signature and date: 20-7-89

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 fulfil 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 pay arrears.

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.Cs (Adm/GS) Gujarat.

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

RK
 7.7. Certified true copy

[Signature]
 V. T. Mathan
 (Asst. I.T.O)