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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 153 OF 2005

Cuttack this the 28th day of June, 2007

Sk. Gulal Jaweed

Applicant

Vrs.

Union of India and another

Respondents

FOR INSTRUCTIONS

1) Whether it be referred to the Reporters or not? *yes*

2) Whether it be sent to the Principal Bench of the Tribunal or not? *yes*


(B.B. MISHRA)

ADMINISTRATIVE MEMBER


(N.D. RAGHAVAN)

VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO. 153 OF 2005

Cuttack this the 28th day of June, 2007

CORAM:

**THE HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE SHRI B.B.MISHRA, MEMBER(ADMINISTRATIVE)**

...

Sk.Gulal Jaweed, aged 41 years, S/o./ late Sk.Gulam Nabi, permanent resident Maimuna Manzil, Oriya Bazar, PO-Buxibazar, PO-Lalbag, Dist-Cuttack – at present working as Recovery Inspector, Debts Recovery Tribunal (Ministry of Finance), Govt. of India, Plot No.B/1412, Sector-6, C.D.A., Cuttack 14

By the Advocates :

M/s. R.C.Das
M/s.P.V.Ramdas
A.K.Das

-VERSUS-

1. Union of India represented through Secretary to Govt. of India, Ministry of Finance, Department of Economic Affairs (Banking Division), Jeevan Deep Building, Parliament Street, New Delhi-110001
2. Registrar, Debts Recovery Tribunal (Ministry of Finance), Govt. of India, Plot No.B/1412, Sector-6, C.D.A., Cuttack-14

...Respondents

By the Advocates :

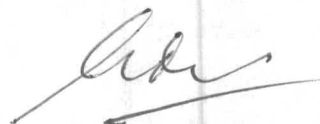
Mr.U.B.Mohaptra, SSC

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ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN:

The adumbration of the matter being complained of is two-fold. Firstly, the applicant has claimed parity with that of the Inspector of Central Excise & Customs



and the Inspector of Income Tax in the scale of Rs.6500-10500/-, and secondly, to lay down provision of promotion in case of Recovery Inspector to the grade of Recovery Officer in the Recruitment Rules.

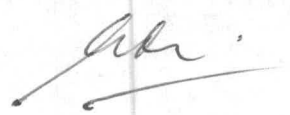
2. The facts, in brief, are that the applicant, while working as Head Clerk in the Ministry of Railways, joined on deputation in Debts Recovery Tribunal as Recovery Inspector with effect from 5.1.2001, being selected through a process of selection and this period of deputation was extended from time to time when the Recruitment Rules came into force with effect from 15.11.2001 and ultimately he was absorbed in that grade with effect from 29.11.2002(Annexure-A/6). It is the case of the applicant that all central civil posts under the Govt. of India are classified into Group-A, B, C & D in accordance with the nature of job and accordingly the scale of pay is attached thereto. Whereas he, being the holder of the post of Recovery Inspector, which is a Group-B non-Gazetted post, is drawing less pay than that of the Inspector of Income Tax/Central Excise, which is classified as Group C post under the same Ministry of Finance, and thus he has been discriminated violating Article 14 of the Constitution of India. In this connection, the applicant has produced O.M. dated 21.4.2004 issued by the Ministry of Finance, Department of Expenditure (Implementation Cell), New Delhi, by virtue of which the Inspectors of Income Tax/Central Excise have been extended the scale of Rs.6500---10,000/- (Annexure-A/11). It is the further grievance of the applicant that Debts Recovery Tribunal, Cuttack Group A and B (Gazetted) and Group B (Non-Gazetted) Posts Recruitment Rules 2001 prescribe the mode and



manner of recruitment/appointment for the post of Recovery Inspector. Unfortunately, the Recruitment Rules^{are} are silent with regard to promotional avenues in so far as Recovery Inspector is concerned. It has been pointed out that the next higher grade of Recovery Inspector is the post of Recovery Officer to which grade he should be promoted, but for the Recruitment Rules and thereby he is to stagnate till retirement. In this connection, the successive representations made by the applicant having not yielded any fruitful result, he has moved this Tribunal in the present O.A. seeking the following relief:

“...to direct the Respondents to consider for granting upgradation of the scale of pay from Rs.5500-9000 to Rs.6500-10,500 and for providing promotional avenues to the applicant”.

3. The Respondents have filed their counter opposing the prayer of the applicant. Their contention is that the pay and allowances of Central Govt. employees are fixed on the recommendations of the Central Pay Commission. They have further submitted that at the time of giving willingness for the post of Recovery Inspector, the applicant was well aware of the pay scale of that post. Besides, they have submitted that if the applicant was aware of his promotional prospects in his parent department, nothing prevented him to revert back to his parent Department within the lien period. As per the Recruitment Rules, the post of Recovery Inspector is to be filled either by promotion or deputation. So far as promotion to the grade of Recovery Inspector is concerned, it is the Court Masters who are eligible to be promoted to Recovery Inspector on completion of eight years regular service. They have further brought to

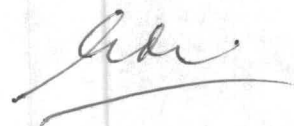


the notice of the Tribunal that the duties and responsibilities of the Recovery Inspectors, Debts Recovery Tribunal, are different from those of Inspectors, Income Tax/Central Excise. The pay scales of Recovery Inspectors were fixed after taking into account the nature of job. The revision of pay scale of Inspectors Income Tax/Central Excise has nothing to do with the pay scale of Recovery Inspectors of Debts Recovery Tribunal. With these submissions, the Respondents have prayed that the O.A. being devoid of merit, is liable to be dismissed.

4. The applicant, besides filing rejoinder has filed a written note of submissions. We have taken note of those materials.
5. Heard the learned counsel for the parties and perused the materials adduced before us.
6. The first point that emerges for our consideration is whether this Tribunal is competent to assess, consider and determine the scale of the applicant. In other words, whether this Tribunal has expertise to do so. Our answer to this is in the negative, because it is the Pay Commission is the expert body to so determine. Equation of posts and determination of pay scales is the primary function of the Executive and not the Judiciary and, therefore, ordinarily Courts will not enter upon the task of job evaluation, which is generally left to expert bodies like the Pay Commissions, etc. But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary State action or inaction. In the context of the aforesaid settled principle, the claim of the applicant has to be examined



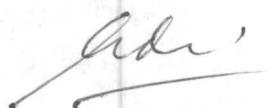
by us. It is the case of the applicant that the duties and responsibilities of Recovery Inspector, which is a Group B non-Gazetted Post, are the same as that of Inspector of Income Tax/Central Excise classified as Group-C posts and therefore, there has been sheer discrimination in the matter of pay scale. To determine this, we have gone through Annexure-A/10 dated 7.6.2003. By virtue of Annexure-A/10, there has been cadre restructuring of Customs and Central Excise Department and framing of Recruitment Rules for the Grade of Inspector of Central Excise, Inspector (P.O) and Inspector (Examiner). Annexure-A/11 dated 22.4.2004 is an order issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, upgrading the pay scales of Income Tax Officer and Income Tax Inspector. We find from O.M. dated 21.4.2004 that the scales of pay in respect of various categories of officers in the Income Tax Department as well as Central Excise & Customs Department have been revised on account of cadre restructuring. From this, we would like to observe that the nature of duties and responsibilities is not the whole object of determining the pay scale in respect of a particular post nor can it be the sole criterion to bring parity in pay scale to that of similar or identical posts. There are many factors involved for determining the pay structure of an employee. Aside the nature of duties and responsibilities, recruitment rules, hierarchical need, order and importance also play a vital role in this respect. Even conceding that the applicant's pay is upgraded from Rs.5500-9000/- to Rs.6500-10,500/- then it will have an effect on the Recruitment Rules in so far as promotion of Court Master to the grade of



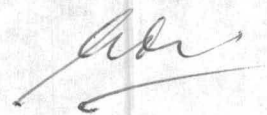
Recovery Inspector is concerned and in that event his promotion on completion of eight years of regular service carrying the scale of Rs.4000-6000/- will remain in a state of impasse unless his scale of pay is revised. Therefore, the prayer of the applicant for upgradation of his scale of pay as that of the pay scale of Inspector of Income Tax/Central Excise & Customs is a hope against hope, because what would be the qualifications for appointment to the grade of Recovery Inspector, nature of duties and responsibilities, scale of pay, promotion to that grade and hierarchical need, order and importance are all intertwined in the Recruitment Rules itself. Keeping all those facts and circumstances in mind, the pay scale of the applicant has been determined. The apprehension of the applicant that sailing in a same boat he has been discriminated, is nothing but an empty bluster. As the Respondents have submitted, it was wide open to the applicant to choose either to revert to his parent Department where promotional avenues are more or to get himself absorbed in the Debts Recovery Tribunal in accordance with the Recruitment Rules. Therefore, it is far fetched to lay a claim on the basis of certain benefits extended to the employees of certain Department albeit the applicant is working under the same Ministry but not in the same Department.

7. The next prayer of the applicant is to direct the Respondents to make provisions of promotion to Recovery Officer in the Recruitment Rules. This prayer is wholly misconceived for the following reasons:

- i) The applicant has never challenged the vires of the Recruitment Rules.



- ii) The Recruitment Rules for filling up of the post of Recovery Officer all along throw light on deputation ordinarily not exceeding three years. In Note.2 the Recruitment Rules have laid down that “ Departmental Section Officers with eight years’ regular service shall also be considered along with outsiders and in case the Departmental candidate is selected, the post will be treated to have been filled up by promotion”. This also puts emphasis for filling up of post of Recovery Officer on deputation basis and in that event the tenure of deputationist would not ordinarily exceed three years. Had it not been so, Departmental Section Officer with eight years regular service would have been considered for promotion, though the other mode of promotion being not considered along with other outsiders. In other words, the Recruitment Rules lay down that even if there is Departmental Section Officer with eight years regular service, he can only be considered along with other eligible outsiders and in case he is appointed to the grade of Recovery Officer, the said post would be treated to have been filled up by promotion. Thus, the intention of the rule maker is very much clear and unambiguous that the Respondents do not want to fill up the post of Recovery Officer on regular basis.
- iii) The grievance of the applicant is that he would be stagnating in the same grade of Recovery Inspector till his retirement is a misconception one,

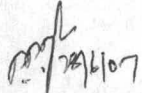


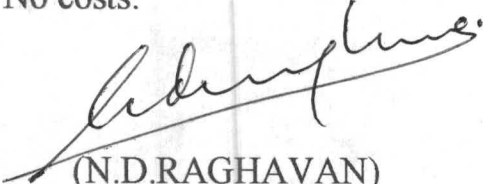
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because only for the purpose of safeguarding the interest of incumbents who stagnate in a particular post for want of promotional avenues in the departmental hierarchy, the Government of India have introduced the Assured Career Progression Scheme, under which, in our opinion, the applicant will certainly be entitled to the financial upgradation on attaining the qualifying years of regular service as enshrined therein.

8. For the reasons aforesaid, we do not find any justifiable reason to unsettle the settled position of Recruitment Rules, nor are we convinced to grant any of the relief sought for by the applicant in the present O.A., which, according to us, is devoid of merit.

9. In the result, the O.A. is dismissed. No costs.


(B.B.MISHRA)
ADMINISTRATIVE MEMBER


(N.D.RAGHAVAN)
VICE-CHAIRMAN