

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 1417/96

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.
Hon'ble Mr. B.P. Singh, Administrative Member.

Arati Mukhopadhyay, aged about 52 years, wife of Samarpalan Mukhopadhyay, working as Inspector at the Office of the Director General of Income Tax (Investigation) East, P-13, Chowringhee Square, Calcutta-700 069 residing at 142/2, Ramkrishnapur Lane, Shibpur, Howrah-700 012.

...Applicant.

- v e r s u s -

1. Union of India represented through the Secretary, Ministry of Finance, Deptt. of Revenue, New Delhi.
2. The Under Secretary, Central Board of Direct Taxes, Central Secretariat, North Block, New Delhi-110 001.
3. The Director General of Income Tax (Investigation) East, P-23, Chowringhee Square, Calcutta-700 069.
4. The Zonal Accounts Officer, Zonal Accounts Office, Central Board of Direct Taxes, 20-B, Abdul Hamid Street, Calcutta-69.

...Respondents.

For the applicant : Mr. S.K. Gupta, counsel.

For the respondents : Mr. B. Mukherjee, counsel.

Heard on 12.1.99

Order on 18.2.1999

O R D E R

B.P. Singh, AM

This is an application in which the applicant has sought for pay parity with her junior w.e.f. 30.9.81 with all consequential benefits and arrears of pay and allowances.

The applicant joined the Income Tax Department as U.D.C on 15.2.65 and was promoted to the post of Inspector on 19.5.85 crossing the intermediary promotional posts of Tax Assistant and Head clerk and her pay was fixed at Rs.640/-. Her junior was promoted as Inspector on a later date but her pay was fixed on 31.5.85 at a higher stage at Rs.660/-. The applicant joined earlier than her junior in the cadre of U.D.C. The comparative service history of the applicant as well as her junior Ms. Dolly ~~Devi~~ Mukhopadhyay has been furnished at page 3 of

the O.A. which shows that the applicant joined as U.D.C. on 15.2.65. The applicant passed D.E.I. on 20.7.76 and her pay was fixed at Rs.416/-. The applicant was promoted on 30.9.81 as Head Clerk when her pay was fixed at Rs.530/- and she was further promoted on 19.5.85 as I.T.I. when her pay was fixed at Rs.640/-. As against this, her junior Ms. Dolly Mukhopadhyay joined as U.D.C. on 19.2.65 and passed the D.E.I. on 22.7.80 when her pay was fixed at Rs.500/-. She was promoted as Head clerk on 30.9.81 and her pay was fixed at Rs.545/- and lastly she was promoted as I.T.I. on 31.5.85 when her pay was fixed at Rs.660/-. Thus the junior of the applicant got more pay on her promotion as Head clerk on 30.9.81 as well as I.T.I. on 31.5.85.

2. Mr. S.K. Gupta, Id. counsel for the applicant has pleaded that the applicant is senior in all the cadres viz. U.D.C., T.A., Inspector to her junior Ms. Dolly Mukhopadhyay and, therefore, she should not get less pay than her junior. It has also been stated that she made representation for stepping up her pay which was duly considered by the competent authority and her pay was stepped up vide Annexure-A/2 at page 19 w.e.f. 30.9.81. But the same order was directed to be re-considered vide Annexure-A/3 at page 20 which is the letter from the Deptt. of Revenue dated 22.2.96. Her case was considered by the authorities and it was found that the same was not covered by the instructions at Annexure-A/3, page 20-22. However, the matter was referred to the Board that the case of the applicant was genuine and, therefore, it should be re-considered for pay parity with the junior as per Annexure-A/4 at page 23 and Annexure-A/5 at page 24. The respondents have finally decided the case of the applicant on 2.9.1996 and informed her vide Annexure-A/1 at page 14 and 15 that there is no justification for rectification of anomaly as she passed the D.E.I. as a U.D.C. whereas her junior Ms. Dolly Mukhopadhyay passed the D.E.I. as T.A. The said decision of the respondents has been challenged by the applicant as the grade of T.A. did not exist when she passed the D.E.I. on 20th July '76. By the time her junior passed the D.E.I. on 20th July 1980, the grade of TA was created when Ms. Dolly Mukhopadhyay was promoted as T.A. w.e.f. 29.7.78. Therefore, she should

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not be penalised for passing the same examination four years in advance than her junior for the fact that a new intervening grade was created. It has also been stated that if passing a departmental examination earlier in one's career is a matter of greater performance, it becomes incongruous with that where passing the examination later results in, on comparison, greater monetary benefit as was observed by the Asstt. Accounts Officer while advising reconsideration of the case of the applicant vide Annexure-A/4 at page 23. It was, therefore, pleaded that the applicant's case is thus based on settled principle i.e. senior must not get less pay than his/her junior and, therefore, there is full justification for stepping up her pay to the level of her junior.

3. Mr. B. Mukherjee, Id. counsel for the respondents has drawn our attention that the difference in pay of the applicant as well as her junior Ms. Dolly Mukhopadhyay arose because of the intervening grade of TA which was created in 1978 after passing of the D.E.I. by the applicant. Ms. Dolly Mukhopadhyay was promoted from the grade of U.D.C. to the grade of T.A. on 29.7.78 and thereafter she passed the D.E.I. on 22.7.80 and this anomaly arose because of her two promotions with higher amount of yearly increments in both the grades. Id. counsel has emphatically pleaded that this anomaly of higher pay to the junior was the result of higher rates of increments which became admissible to the junior. It was further stated by the Id. counsel that the case regarding the stepping up of the pay of the applicant Smt. Arati Mukhopadhyay was considered at the higher level and the same was not found covered by the provision of the rules and, therefore, the same was rejected vide Annexure-A/1 at pages 14 and 15 of the O.A. as it was not a case of anomaly under FR 22. The anomaly arose not directly as a result of application of FR 22(6) but due to grant of advance increment at a higher rate in different grades which do not constitute an anomaly at all for stepping up of pay.

4. We have heard the arguments of both the counsels. We find that there is no doubt that the applicant was senior to Ms. Dolly Mukhopadhyay. She passed D.E.I. on July 20, 1976 whereas Ms. Dolly Mukhopadhyay passed on 22.7.80 and both were promoted as Head clerk

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on September 30, 1981. The stated anomaly in this case is that the junior started getting higher pay on 22.7.80 when Ms. Dolly Mukhopadhyay was promoted after passing the D.E.I. on 22.7.80 and her pay was fixed as Rs.500/- whereas the pay of the applicant on 1.7.80 after getting the annual increment was Rs.485/-. This difference of Rs.15/- continued from this date 22.7.80 and not from the date of promotion as Head clerk on 30.9.81 due to promotion of each as Head Clerk from different grades. Therefore, the drawal of higher pay by the junior Ms. Dolly Mukhopadhyay vis-a-vis the applicant w.e.f. 30.9.1981 when both were promoted as Head Clerk is not due to each passing the higher examination from the same grade ~~but due to each passing the higher examination from the same grade~~ but due to each passing the higher examination from different grades - the applicant from the grade of U.D.C. and Ms. Dolly Mukhopadhyay from the grade of T.A. Therefore, junior getting more pay than the senior - the applicant on 30.9.81 is not an anomaly justifying pay parity.

5. In view of the above, the application is rejected awarding no costs.

22/9/81
(B.P. Singh) 1872199
Member (A)

22/9/81
(D. Purkayastha)
Member (J)

a.k.c.