

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH  
O.A. 40 OF 1997

Present : Hon'ble Mr. N.D.Dayal, Member (A)

Hon'ble Mr. K.B.S.Rajan, Member (J)

Jibendra Nath Maitra,  
Assistant Commissioner of Income-Tax,  
Inspection Division,  
Central Board of Direct Taxes,  
Calcutta Unit, 8/2 Sidu Kanu Daha,  
Calcutta-69  
R/o R-16, Panchasayar Income Tax  
Cooperative, Garia, Calcutta-94

VS

1. The Secretary, M/o Finance,  
Dept. of Revenue, New Delhi

2. The Dy. Secretary (Ad. IX),  
Dept. of Revenue, CBDT,  
Central Secretariat, (North Block)  
New Delhi

3. The Chief Commissioner of  
Income Tax, Calcutta  
P-7, Chowringhee Square,  
Calcutta-69

For the applicant :None

For the respondents : None

20-6-95

ORDER

Per K.B.S.Rajan, JM:

Since none appears on behalf of either side, invoking the provisions of rule 15 of the CAT (Procedure) Rules, 1987, this case is disposed of on the basis of pleadings in the file.

2 The facts of the case are brief. The applicant, a permanent UDC in State Govt. in the scale of pay of Rs. 375-10-415-15-610-20-650/- joined the Central Govt. in the Income Tax Department as Income-tax Inspector in the pay scale of Rs. 210-10-290-15-320-EB-15-425-EB-



15-485/- against the quota at the point of direct entry kept reserved for the State Govt. employees as a transferee. On his joining the Income Tax deptt. his pay in the aforesaid scale of Rs. 210-485/- was fixed at Rs. 309/- which, together with DA of Rs. 146/- at the Central Govt. rates in force at that time made a total of Rs. 455/-. The fixation was made on the basis of applicant's pay when he was working in the State Govt. at Rs. 445/- which together with DA of Rs. 10/- constituted Rs. 455/-. The applicant challenges this order and claims that his pay should be fixed at Rs. 445/- as basic pay with corresponding DA to be paid to him.

3. The respondents contests the OA. According to them, pay fixation has been made in accordance with the provisions of Ministry of Home Affairs, 28.10.63. According to them, even if the contention of the applicant that it is a provision contained in CBDT circular dt. 25.th January 1969 is applicable, then also when the appointment is to a higher post pay will be fixed according to new FR 22-C and when the appointment is to an equivalent post, the emoluments (Pay + DA i.e. Pay + DA at Central rates) will be made equal to pay + DA drawn in the State Govt. post would be protected and pay fixed on the analogy of FR 22-(a)(2). According to the respondents the applicant cannot claim that his appointment as Inspector in the Income Tax Deptt. was a higher post especially when such a comparison is not possible between the posts of the State Govt. and those under the Central Govt.

No rejoinder has been filed by the petitioner.

The case revolves round whether the post of Income-tax Inspector in the Central Govt. is superior or equal to the UDC in the State Govt.. If mere nomenclature is compared obviously the post of

Income Tax Inspector has to be treated as only superior. An identical situation has come up for consideration in the case of Tridip Chatterjee -vs- UOI & Ors in OA No. 914 of 1989, a copy of which has been annexed to the as Annexures-A4 (Also reported in 1993 (23) ATC 862). In that case the applicant was employed as a Statistical Assistant in the office of Director of Health Service under State of West Bengal and later on he joined in the Income Tax Deptt. as Income Tax Inspector. His basic pay while in the State Govt. was Rs. 620/- while in the Central Govt. his pay was fixed at Rs. 560/-. When the individual agitated against the same, this Tribunal allowed the application and directed the respondents to fix the initial pay of the applicant on his appointment as Inspector of Income Tax at Rs. 620/- in the scale of pay prescribed for Inspector and pay him the consequential benefits.

6. Incidentally, the Govt. has in respect of candidates recruited from Central Autonomous bodies/public sector undertakings provided for fixation of pay by DOPT OM dt. 7<sup>th</sup> August 1989 as per which the emoluments is protected and not the basic pay. However, this is applicable to the public sector undertakings, no such protection of emoluments has been provided for in respect of erstwhile employees of State Govt. Again in the instant case the applicant has joined in the Income Tax Deptt. in December 1971 and as such orders issued prior to 1971 would apply. The Tribunal in the case of Tridip Chatterjee (supra) has categorically held that the circular of 1963 has been misinterpreted and thus allowed the OA. Since in the instant case also, the applicant has joined the Income Tax deptt. as in the other case and from the same State Govt., we have no hesitation the order dt. 17.92 in OA 914 of 1989.

7. It is appropriate to refer to a judgment of the Apex Court in almost a similar case in the case of **K. Gopinathan v. Union of India, (1992) 4 SCC 701**. The Apex Court has held, in that case, as under:-

**"2. The appellant K. Gopinathan was working as Assistant Sub-Inspector of Police. He was taken on deputation in the Central Bureau of Investigation (in short CBI) on February 1, 1965. On such deputation he was paid his pay pertaining to the post of his parent office, as modified from time to time. Besides, he was also paid deputation duty allowance. On February 1, 1983, he was permanently absorbed and his pay was re-fixed.**

**3. It requires to be stated at this stage that on such absorption his basic pay was reduced from Rs 510 to Rs 390. Therefore, he submitted a representation to the Superintendent of Police, C.B.I. pointing out the loss caused to him by an incorrect fixation. In this regard he made repeated representations and ultimately on September 13, 1990 the appellant was informed that his pay fixation had been correctly done.**

**4. Aggrieved by that order, he moved Central Administrative Tribunal, Madras Bench by way of Original Application No. 967 of 1990. Before the Tribunal it was contended on behalf of the appellant that the basic pay on account of the absorption should not be reduced. Therefore, merely because the overall pay is more, that does not mean there could be a reduction of the basic pay. He relied on the decision of the Bangalore and the New Delhi Tribunals for advancing this plea. However, the Tribunal rejected the same. Hence, Mr M.N. Krishnamani, learned counsel for the appellant commends the acceptance of the view of the Bangalore Bench as well as the Delhi Bench which found favour with this Court in SLP (C) No. 2196 of 1992 while the respondents would submit that the reasoning in the impugned judgment is correct.**

**5. By means of the following tabulated statement we will point out the position of the appellant's pay as a deputationist and as absorbee in C.B.I.**

|                             | <i>As a deputationist<br/>on the date of absorption</i> | <i>As an absorbee<br/>in the CBI</i> |
|-----------------------------|---|--------------------------------------|
| <i>Basic Pay</i>            | <i>Rs 510</i>   | <i>Rs 390</i>                        |
| <i>Spl. Pay</i>             | <i>Rs 30</i>  | <i>Rs 30</i>                         |
| <i>Deputation allowance</i> | <i>Rs 80—</i>   |                                      |
| <i>Personal Pay</i>         | <i>—</i>  | <i>Rs 85</i>                         |
| <i>Dearness Pay</i>         | <i>—</i>  | <i>Rs 214.70</i>                     |
| <i>DA/ADA</i>               | <i>Rs 279</i>   | <i>Rs 304</i>                        |
| <i>Total:</i>               | <i>Rs 899</i>   | <i>Rs 1023.70</i>                    |

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6. Two things are striking: (i) **His basic pay has been reduced from Rs 510 to Rs 390.** (ii) However the overall pay as a deputationist on the date of absorption was Rs 899 while after absorption in C.B.I. it is Rs 1023.70.

7. On these facts the Tribunal comes to the conclusion as follows: (ATC p. 581, para 4)

"In fact on the date of absorption, the dearness allowance available under the Tamil Nadu Government Pay Scales was only Rs 279 for the applicant, whereas the amount of DA available to him under the Central scales was Rs 518. It is also to be noted that out of Rs 518, an amount of Rs 214.70 has been merged with the pay. When the dearness pay of Rs 214.70 is added to the basic pay of Rs 390.00, we get the amount of Rs 604, which is higher than the basic pay of Government servant under the Tamil Nadu Government, attached to the post. We therefore hold that there has not been any reduction in the applicant's basic pay in substance, even though that basic pay consisted of two elements is different. Taking into account the fact that the Tamil Nadu Government scales were revised on April 1, 1978 and that of the Central Government on January 1, 1973, we are of the view that both the scales are not comparable. When a person is being governed by the Tamil Nadu Government pay scales while he was on deputation, and therefore as on February 1, 1983, is absorbed under Central scale of pay the diminution in basic pay of the applicant is bound to occur. We also notice that even though the basic pay of the applicant rose to Rs 604 from Rs 510 by virtue of the addition of the dearness pay of Rs 214.70 with the existing basic pay of Rs 390.00. Therefore, this is a case in which there has not been any real reduction in the basic pay of the applicant."

8. We are afraid we cannot subscribe to this reasoning. While upholding the view of Central Administrative Tribunal, Principal Bench, New Delhi in Original Application No. 1680 of 1989 in SLP (C) No. 2196 of 1992, we have pointed out how the basic pay cannot be reduced. The same principle will be applicable to this case as well. Accordingly, the appeal is allowed. However, there shall be no order as to costs." (Emphasis supplied)

8. Thus, it is settled law that basic pay cannot be reduced. In the instant case, since the basic pay of the applicant when he was serving in the State Government was Rs 445/-, his pay should be at par with the same i.e. in the scale of 210-485 the stage which is nearest to the said amount should be the basic pay and in this case the same is Rs



440/- which is the nearest to in the stage in the scale of Rs. 210 - 485/- to the pay in the scale of Rs 375/- 650/- of the State Government service. However, the next question to be decided is as to whether the applicant is entitled to the arrears and if so from which date. The claim relates to 1971 but the application has been filed in 97. The Administrative Tribunals Act is specific about the limitation and claim which could be considered. Here is the case where the individual, though the pay of the applicant was fixed as early as 19-07-1973, Annexure A-3, no effective step seems to have been taken by the applicant to have his grievance redressed. The records reflect his representation of 1995 only and in the absence of any favourable response, the applicant has moved the Tribunal. As the matter relates to fixation of pay, the ratio of the judgment in the case of **M.R. Gupta v. Union of India, (1995) 5 SCC 628**, inasmuch as there is recurring cause of action, limitation is applicable only in regard to payment of the past arrears. And in regard to the same, the ratio laid down by the Apex Court in the case of **Jai Dev Gupta v. State of H.P., (1997) 11 SCC 13**, applies, wherein the Apex Court has held as under:-

**“2. Learned counsel appearing for the appellant submitted that before approaching the Tribunal the appellant was making a number of representations to the appropriate authorities claiming the relief and that was the reason for not approaching the Tribunal earlier than May 1989. We do not think that such an excuse can be advanced to claim the difference in back wages from the year 1971. In Administrator of Union Territory of Daman and Diu v. R.D. Valand<sup>1</sup> this Court while setting aside an order of the Central Administrative Tribunal has observed that the Tribunal was not justified in putting the clock back by more than 15 years and the Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way. In the light of the above decision, we cannot entertain the arguments of the learned counsel for the appellant that the difference in back wages should be paid right from the year 1971. At the same time we do not think that the**

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*Tribunal was right in invoking Section 21 of the Administrative Tribunals Act for restricting the difference in back wages by one year.*

*3. In the facts and circumstances of the case, we hold that the appellant is entitled to get the difference in back wages from May 1986. The appeal is disposed of accordingly with no order as to costs."*

9. When the above ratios are telescoped upon the present case, the applicant having filed the OA only in 1997, he could claim arrears of pay and allowance only for a period of three months anterior to 1997. i.e. from 01-01-1994 onwards and not earlier.

10. Thus, the OA succeeds to the extent that the respondents shall fix the pay of the applicant as Inspector of Income tax @ Rs 440/- (which is the nearest in the pay scale of 210-485 to the basic pay drawn by the applicant in the State Government. The fixation shall be notional from December, 1971 till 31-12-1993 and actual from 01-01-1994 onwards. They would work out the difference of pay and allowance due to the applicant from 01-01-1994. Needless to mention that the applicant shall be afforded corresponding replacement pay in the wake of the 3<sup>rd</sup> and 4<sup>th</sup> Pay Commissions and thereafter. This order shall be complied with within a period of six months from the date of communication of this order. Under the circumstances, no order as to costs.

  
(K.B.S.RAJAN)  
MEMBER(J)

  
(N.D.DAYAL)  
MEMBER (A)