

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA NO. 534/05

MONDAY THIS THE 3rd DAY OF JULY, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Smt. E. Vijayalakshmi
Incometax Officer (Retd.)
D-92, Incometax Quarters
Panampilli Nagar
Kochi-682936

Applicant

By Advocate Mr. P. Balakrishnan

Vs.

1 Union of India represented by
Secretary, Ministry of Finance
Department of Revenue
New Delhi.

2 The Chief Commissioner of Income Tax
CR Building, IS press road, Cochin.

3 The Zonal Accounts Officer
Central Board of Direct Taxes
San Juan Towers,
Cochin-682 018


Respondents

By Advocate Mr. P.S. Biju, A CGSC

ORDER**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

This original application is filed against the order No 250(1)3 CC/04-05 dated 13.6.2005 of the 2nd respondent rejecting the Annexure A-7 representation dated 1.11.2004 of the applicant praying for stepping up of pay with reference to the junior in view of the decision of the Tribunal in their ruling dated 30.7.2004 in OA No.578 of 2002.

2 The facts are stated as follows. The applicant joined the Income Tax Department as an Upper Division Clerk on 27.1.1969. She was promoted as Tax Assistant with effect from 1.7.1979 and as Head clerk with effect from 27.1.1987. On the basis of passing the departmental examination for Inspector of Income Tax (IIT) in the year 1972 she was promoted to the cadre of IIT and joined on 7-6-1989 and the promotion was subsequently made effective from 30.4.1990. On promotion as IIT her pay was fixed at Rs 1940/- with effect from 7-6-1989 and at Rs. 2060/- with effect from 30-4-90 and subsequent increments granted in the timescale of Rs 1640-60-2600-EB/75/2900 and her pay arrived at Rs. 2180/- on the eve of her passing the departmental examination for Income Tax Officers viz 14.7.1992. She passed the Departmental Examination for Income Tax officers in the year 1992 and accordingly she was granted two



increments and her pay was fixed at Rs 2300/- with effect from 14.7.1992 being the last day of the examination and subsequent increments sanctioned on 1st April 1993 and so on. Thus the applicant was drawing a pay of Rs. 2360/- as on 24.9.1993 including the two advance increments for passing the departmental examination for Income Tax Officers. One Sri R.Balagopalan who is junior to the applicant in the cadres of UDC,TA,& HC was also promoted on 24.9.1993 to the cadre of IIT like the applicant after getting a promotion with effect from 11.6.1993 in the intermediary cadre of Supervisor Gradell and his pay as on 24.9.1993 as IIT was also fixed as Rs 2360/-. He having not passed the departmental examination for Income Tax Officers like the applicant was not therefore granted the two advance increments in the cadre of IIT. The anomaly has arisen consequent to the junior getting the benefit of fixation under FR-22-C on his promotion as Supervisor Gradell which the applicant did not get as she got her promotion as IIT direct from the cadre of HC. If the two advance increments granted for passing the examination are excluded from her pay as on 24.9.1993 her pay would be Rs 2240/- thus causing an anomaly in the pay compared to the junior. The Board in their letter dated 13.5.1992 has issued instructions to step up the pay of the seniors to that of the juniors in cases where anomaly has arisen consequent to the junior getting the benefit of fixation under FR-22-C. Accordingly the applicant represented on 5.5.1998 to the 2nd respondent but the request was rejected. The applicant again took up the matter through

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another representation on 22.2.1999 which was also rejected by the Annexure A6 order. Subsequently the applicant came to know that the Tribunal in the case of a colleague has allowed the stepping up of pay in identical circumstances in OA 578/2002 and again represented to the respondent to allow her valid claim but the request has been turned down on the plea that the Department has not accepted the decision of the CAT and an SLP is being filed. It is under these circumstances that the applicant has approached this Tribunal.

3 The respondents have filed a counsel statement. The facts of the case are admitted. But they have not accepted the contention of the applicant that the advance increments granted to her should have been excluded from her pay and the pay should have been stepped up to that of the compared junior. According to them once the advance increments are granted it is treated as part of pay for all practical purposes and there is no rule or order to exclude it from pay for the purpose of anomaly. As on 24.9.1993 the pay of the compared junior was Rs 2360/- the pay of the applicant was also Rs 2360/-. It is also urged that an SLP is pending before the Hon. Supreme court in the matter and therefore a final decision is yet to be taken.

4 We heard the learned counsels. The learned counsel for the applicant submitted that his case was identical to that of the

applicant in OA578/2002 and hence the applicant was eligible for the relief and the respondents counsel submitted that the decision in that OA was pending before the Hon Supreme Court in the SLP filed by the Department and hence relief cannot be granted.

5 We have gone through the judgement referred to above. The applicant therein was a Tax assistant who was directly promoted as Inspector whereas his junior was promoted as Head Clerk, Supervisor, and then as Inspector of Income Tax and the prayer of the applicant was to step up the pay of the applicant to that of the compared junior without taking into account the two advance increments granted to the applicant for passing the departmental examination for ITOs. Hence the facts and circumstances and the reliefs are identical in both the cases. However the OA was decided on the basis of an earlier decision in OA1549/89 and applying Board's Letter dated 24.10 77 and the Ministry of Finance OM dated 18th June 1975. Reliance was also placed on the Dept of Personnel OM's dated 20th June 1993 and 31st January 1995 to arrive at the conclusion that advance increments should be excluded from the pay for considering stepping up for removal of anomaly. In the instant case the applicant has relied on a subsequent instruction of the Board in their letter FNo.B12014/5/92-ADIX, dated 13-5-92 at Annexure A2 which confirms the position that in the circumstances obtaining as in the case of the applicant anomaly can be removed by stepping up. The relevant portion is extracted below:



'In supercession of all previous instructions issued on the subject, it has been decided that such anomaly in fixation of pay may be removed by stepping up of pay of a senior person equal to the level of a junior person provided- (a) the compared junior should have qualified fully for the post of Inspector at the time when the senior is promoted directly as Inspector and (b) the junior should have been promoted in the intermediate grades in the intervening period.'

6 It is clear from the above that the applicant was eligible for the stepping up in terms of the above order. The respondents have also admitted that the instructions above alone are applicable to the applicant on 24.9.1993 in para 3 of their communication at Annexure A6. Hence the question whether stepping up is admissible in such cases is no more in doubt. The only other question is whether advance increments can be excluded from pay for this purpose. This issue has been decided in the earlier OA thus, relying on general clarifications issued in Dept of Personnel OMs referred above. 'Hence the intention of the rulemakers is very clear that advance increments granted for passing the examination should be excluded when computing the senior's pay while considering the stepping up of pay for removal of anomaly.' We are in full agreement with the same. We also notice that the Ministry of Finance had clarified this issue earlier vide their Letter F No -26017/129/77-Adix dated 24 th October 1977 that such advance increments given to senior inspectors for passing the ITO's examination should not be taken into account for calculating the pay of the senior officials in order to remove the anomaly. Though a cutoff date of 1.1.75 was fixed in the above OM, the principle once decided would have continued

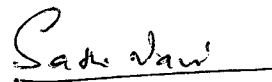
applicability in such cases unless replaced by subsequent instructions.

7 In the light of what is stated above we find no merit in the stand taken by the respondents. We allow this application directing the respondents to step up the pay of the applicant on par with the compared junior with effect from 24-9-1993 without taking into account the two advance increments granted to the applicant for passing the departmental examination for Income Tax Officers and to grant all other consequential benefits flowing therefrom and make available to her the monetary benefits within a period of four months from the date of receipt of this order. No costs.

Dated 3.7.2006.



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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