

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.539/04

Thursday this the 3rd day of March 2005

C O R A M :

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

P.N.Achuthan Nair,
Retd. Office Superintendent (IT Department),
Vezhakkattu House, R-Edamon P.O.,
Ranni, Pathanamthitta District – 689 681.
Kerala State.

...Applicant

(By Advocate M/s.P.Balakrishnan & K.S.Menon)

Versus

1. Union of India represented by Secretary,
Ministry of Finance, Department of Revenue,
New Delhi.
2. The Secretary,
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training), New Delhi.
3. The Zonal Accounts Officer,
Central Board of Direct Taxes,
San Juan Towers, Cochin – 682 018.
4. The Chief Commissioner of Income Tax,
CR Building, IS Press Road, Cochin.
5. The Additional Commissioner of Income Tax,
Kottayam Range, Kottayam.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 3rd March 2005 the Tribunal
on the same day delivered the following :

ORDER

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant who commenced service as a Stenographer Junior in
the Dandakaranya Development Authority in 1967 was rendered surplus
and was appointed in the Income Tax Department as Upper Division Clerk
in the year 1984. He was promoted as Tax Assistant with effect from

25.1.1996 in the scale Rs.1350-2200 (revised to Rs.4500-125-7000) and his pay with effect from 1.4.1996 was fixed at Rs.6250/- (Annexure A-1). On being successful in the Department Examination for Inspectors of Income Tax his pay was fixed at Rs.6750/- after granting him two advance increments by Annexure A-2 with effect from 18.6.1998. The applicant was thereafter promoted as Senior Tax Assistant in the time scale of Rs.5000-150-8000 with effect from 5.7.2001 and his pay was fixed at Rs.7250/- (Annexure A-4). He was also promoted as Office Superintendent in the time scale of Rs.5500-175-9000 with effect from 30.11.2001 and his pay was fixed at Rs.7425/- and fixed at Rs.7600/- after revision as per the option with effect from 1.7.2002 (Annexure A-8). On implementation of the Assured Career Progression Scheme (ACPS for short) an order was passed on 2.11.2001 (Annexure A-6) fixing the applicant's pay as on 9.8.1999 at Rs.7425/- after grant of two ACP upgradation (Annexure A-9). The applicant superannuated from service on 30.4.2004 on which date his basic pay was Rs.8125/-. The Head of Office of the applicant had reckoning the pay drawn by the applicant at Rs.8125/- prepared the statement for the purpose of fixation of pension (Annexure A-10) correctly proposing pension at Rs.6081/-. The grievance of the applicant is that the 3rd respondent while issuing impugned orders Annexures A-11, A-12 & A-13 on payment of the terminal benefits wrongly reduced the applicant's monthly pension to Rs.5425/- as against Rs.6081/- and reduced the DCRG and Commuted Value of Pension also. Aggrieved by that the applicant has filed this application seeking to set aside impugned orders Annexures A-11 to A-13 and for a direction to the respondents to issue revised order sanctioning the terminal benefits due to the applicant on the basis of the details worked out by the 5th respondent in Annexure A-10 without withholding any DCRG. It is alleged in the application that there is absolutely no warrant for any deviation from the calculation made in

Annexure A-10 by the Head of Office because the calculation had been made correctly in accordance with the emoluments drawn by the applicant and his entitlement.

2. The respondents in their reply statement have stated that the revised P.P.O has been issued fixing the applicant's pension at Rs.5950/- and the DCRG, Commuted Value etc. also have been worked out and paid correctly as could be seen from Annexure R-10 to R-12. However they contend that the fixation of applicant's pension at Rs.6081/- as proposed by the Head of Office could not be made because on award of financial upgradation the applicant who had already been promoted from the post of U.D.C to T.A in terms of the clarification given by the Principal Chief Controller of Accounts based on the instructions from the Central Board of Direct Taxes in the case of U.D.C promoted to the post of T.A they be on financial upgradation under ACPS should be fixed only in accordance with FR 22 (i) a (ii). The applicant's pay having been fixed ignoring this the mistake was rectified while issuing revised P.P.O and fixing the pay of the applicant under ACPS without granting him the benefit of FR 22 (i) a (i) and that account for the difference. The respondents have produced the fixation statement as Annexure R-8.

3. I have carefully gone through the pleadings and all the materials placed on record. The short question is whether the applicant who had already been promoted as T.A from the post of U.D.C in the Income Tax Department was entitled to the benefit of fixation of pay under FR 22 (i) a (i) while fixing pay on financial upgradation under ACPS and whether the respondents was correct in not reckoning the emoluments which the applicant had been drawing on the date of his retirement. The respondents have relied on Annexure R-3 and Annexure R-6 to justify their contention

that the applicant's pay on financial upgradation to the scale Rs.5000-8000 should have been fixed only invoking FR 22 (i) a (ii) and not FR 22 (i) a (i).

Annexure R-3 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes reads as follows :-

New Delhi, the 9th July, 2001

To

All Chief Commissioners of Income Tax,
All Director Generals of Income Tax,

Subject : Assured Career Progression Scheme – Financial upgradation of UDCs/Tax Assistance to the grade of Assistant.

Sir,

I am directed to say that while implementing the A.C.P.Scheme for Tax Assistants, clarifications have been sought whether UDCs in offices under CCIT are to be allowed financial upgradation under A.C.P.Scheme in the grade of Tax Assistant or in the grade of Assistant.

2. The above matter was referred to the Department of Personnel & Training (DOP&T) for advice. The DOP&T has advised that Tax Assistants retain their basic seniority in the grade of UDC and the Grade of Tax Assistant cannot be treated as promotional grade in the normal hierarchy of UDCs. Therefore, under the A.C.P.Scheme, UDCs including Tax Assistants in the offices of CCIT may be allowed financial upgradation in the normal hierarchical grade of Assistant/Head Clerk (Rs.5000-8000) subject to fulfillment of all promotional norms and other conditions specified in the A.C.P.Scheme.

3. It is, requested that all cases of financial upgradation of UDCs promoted as Tax Assistants be decided in the light of DOP&T advice given above.

Yours faithfully,

Sd/-
(V.R.Ponnalagu)
Under Secretary to the Govt. of India.

4. Nowhere in this O.M it is seen that while fixing the pay at Rs.5000-8000 the provisions of FR 22 (i) a (i) should not be invoked. In Annexure R-6 dated 3.8.2004 issued long after the superannuation of the applicant it is seen stated as under :-

Ref.No.PCCA/CDN/Pay Fix/ACP/2003-04
OFFICE OF THE PRINCIPAL CHIEF CONTROLLER OF ACOCUNTS,
CENTRAL BOARD OF DIRECT TAXES,
9TH FLOOR, LOK NAYAK BHAVAN,
KHAN MARKET, NEW DELHI – 110 003.

To

The Sr.Accounts Officer,
 Zonal Accounts Office,
 Central Board of Direct Taxes,
 Bangalore/Bhopal/Chennai/Cochin/Mumbai/Nagpur/Poona.

Subject : Grant of Financial upgradation under ACP Scheme in respect of staff of Income Tax Department i.e.to the UDC/Tax Assistant – Pay fixation regarding.

Sir,

Please refer to the above.

Further, reference is invited to DOPT OM No.35034/1/2000 Estt.(D) (Pt) dated 23.4.2001 wherein it has been stated that "As Tax Assistants retain their basic seniority in the Grade of UDC, the Grade of Tax Assistant cannot be treated as a promotional grade in the normal hierarchy of UDCs. Therefore, under the A.C.P.Scheme UDCs including Tax Assistants in the office of CCIT may be allowed financial upgradation in the normal hierarchical grade of Assistant/Head Clerk (Rs.5000-8000) subject to fulfillment of all promotional norms and other conditions specified in the A.C.P.Scheme". In this regard Board has clarified as under :-

- (i) UDCs who are promoted to the post of Tax Assistants before restructuring of IT Department in the scale of Rs.4500-125-7000 and got their pay fixation made under FR 22 (a) (i) may not be again allowed the benefit of FR 22 (i) a (i) consequent upon award of ACP.
- (ii) Pay on ACP scale may be fixed under FR 22 (i) a (ii).
- (iii) Alternatively pay on ACP scale on the date of award of ACP may be fixed directly with reference to the notional pay in the grade of UDC under FR 22 (i) a (i).

Yours faithfully,

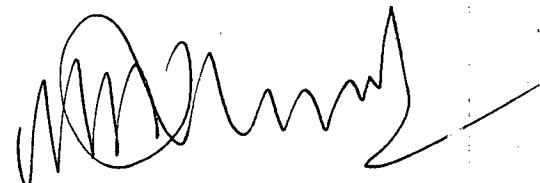
Sd/-
 (R.K.Jain)
 Accounts Officer.

5. It is seen the letter mentioned in Annexure R-6 has not been produced by the respondents in spite of the specific direction given by the Tribunal. I do not find any authority for denying the fixation of pay invoking the provision of FR 22 (i) a (i) to the applicant on his financial upgradation to Rs.5000-8000 just for the reason that he had been promoted from the post of UDC to that of Tax Assistant. If the post of Tax Assistant was not a functional promotion and fixation of pay under FR 22 (i) a (i) was not justified then no competent authority has issued any order recalling or

cancelling such a fixation and, therefore, the fact that the applicant had obtained the benefit of fixation of pay under FR 22 (i) a (i) on his promotion as Tax Assistant does not disentitle the applicant for fixation of pay under FR 22 (i) a (i) on his financial upgradation. Thus I find that there was no justification at all for the 3rd respondent not to act upon the calculation mentioned in Annexure A-10 by the Head of Office and to fix the applicant's terminal benefits accordingly, for, the Head Of Office has correctly worked out the entitlement and shown the details in that document.

6. In the result, in the light of what is stated above the application is allowed in part. The impugned orders Annexure A-11 to Annexure A-13 to the extent they are contrary to Annexure A-10 are set aside and the 3rd respondent is directed to sanction the terminal benefits of the applicant accepting the calculation contained in Annexure A-10 as correct and to make available to the applicant the difference in pension and other terminal benefits due to him issuing amended P.P.O and other necessary orders within a period of three months from the date of receipt of a copy of this order. On the delayed payment of DCRG the applicant shall be paid interest at the rates applicable.

(Dated the 3rd day of March 2006)



A.V.HARIDASAN
VICE CHAIRMAN

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