

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.558/92

DATE OF DECISION : 26.07.1993

P.I.Leela,
Inspector of Income Tax,
O/o the Deputy Commissioner
of Income Tax, Ernakulam.

.. Applicant

Mr.K.M.V.Pandalai

.. Advocate for applicant

V/s

1. Union of India represented by
the Secretary, Min. of Finance,
New Delhi.

2. The Central Board of Direct
Taxes, rep. by its
Secretary, New Delhi.

3. The Chief Commissioner of
Incometax, Cochin - 18.

4. The Commissioner of Income
Tax, Cochin.

.. Respondents

Mr.George C.P.Tharakan, SCGSC

.. Advocate for respondents.

CORAM:

The Hon'ble Mr.N.Dharmadan, Judicial Member.

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

Applicant is an Income Tax Inspector. She is mainly aggrieved by the denial of stepping up of her pay considering the pay of her junior one Smt.E.Vijayalakshmi.

2. Applicant joined the Income Tax Department as a Lower Division Clerk in 1965 and promoted as Upper Division Clerk and Tax Assistant on 30.9.1968 and 1.1.79 respectively. She was promoted as Head Clerk on 10.11.86 and as Inspector of Income Tax on 7.7.89. Annexure-A3

proceeding was issued for fixation of pay of the Government servants who opt for revised scale of pay from a date subsequent to 1.1.86 in accordance with the decision of the President "that the pay of Government servants drawing their increments annually who opt to switch over to the revised scale of pay from the date of their next increment or subsequent increment falling after 1.1.86 but not later than 31.12.87 in respect of the post held by them on 1.1.86 shall also be fixed in accordance with the provisions of Rule 7 of the Central Civil Services (Revised Pay) Rules, 1986". Accordingly, the applicant submitted Annexure-A4 option in the following manner:-

"I, P.I. Leela, hereby elect to continue on the existing scale of my substantive post mentioned below until the date of my subsequent increment raising my pay to Rs.580/- with effect from 1.1.87, retaining the benefit of option filed under FR 22(a)(i) in respect of my promotion as Head Clerk.

Existing Scale : Rs.380-12-440-EB-15-560-EB-20-640. "

The option was duly considered by the Deputy Commissioner of Income Tax, Trivandrum and her pay was fixed under FR 22(a)(1) and under FR 22(c) as per Annexures-A5(1) & A5(2) dated 10.8.88. Annexure-A7 is a pay fixation statement dated 10.8.88 fixing the pay of the applicant as Head Clerk. But, on the basis of a letter of the Zonal Accounts Officer, Central Board of Direct Taxes, Annexure-A5 was cancelled by a further proceedings dated 16.1.89, Annexure-A8, without any notice to the applicant. Since it is illegal, applicant submitted Annexure-A10 representation making it clear that on the basis of Annexure-A3 instructions of the Ministry of Finance the applicant filed a revised option to continue pay in the pre-revised scale upto 31.12.86. Accepting the request her pay was fixed on the basis of revised option and she was allowed the revised scale as Head Clerk with effect from 1.1.87. That was rejected by Annexure-A11 order in the following manner:-

" The Board in their letter No.A.26017/46/89/Ad.IX dated 18/22-6-90 has intimated that your representation regarding removal of anomaly in pay has been considered by them in consultation with the Department of Personnel and Training and it has been observed that the option exercised once shall be final. There is no provision to remove anomaly which has arisen due to exercise of option in terms of OM No.7(52)-E.III/86 dated 27.5.88. "

Further representations filed by the applicant were considered and disposed of as per the impugned order. It reads as follows:-

" With reference to your representation cited above, the Chief Commissioner of Income-tax, Cochin by his letter C.No.250(1)/Estt/40/91-92 dated 20/12/91 has directed to inform you the following:

'The Board in letter F.No.A-26017/46/89-Ad.IX(pt) dated 13th November, 1991 informed that the representation filed by Smt. P.I.Leela for removal of anomaly in pay was rejected on advice of the Department of Personnel and Training. Since no new facts have been mentioned, there are no grounds for reconsideration.' "

3. The case of the applicant is two-fold. According to the applicant she was automatically brought to the revised scale of pay with effect from 1.1.86. On promotion as Head Clerk she filed an option for fixation of pay under FR 22(c) with effect from 1.1.87. She also filed Annexure-A4 to continue her in the pre-revised scale till 1.1.87. The request made by the applicant to continue her in the pre-revised scale till 1.1.87 was allowed. Since her request was allowed as per Annexure-A5 proceedings, its cancellation without notice is illegal and violative of principles of natural justice. Her further case is that there is an anomaly in the applicant's pay with reference to her junior one Smt. E.Vijayalakshmi. Applicant's pay was fixed at Rs.1760/- as on 1.1.87 under FR 22(c) in the post of Head Clerk in the scale of Rs.1400-2300 when she got promotion as Head Clerk on 10.11.1986. Applicant's junior Smt. E. Vijayalakshmi was drawing a pay of Rs.545/- (pre-revised) in

the post of Tax Assistant on 1.1.85. She was promoted as Head Clerk on 27.1.87 and her pay in the revised scale was fixed at Rs.1800/- as on 27.1.87. Details of the anomaly in the pay fixation has been explained by the applicant as follows:-

<u>" Date</u>	<u>Pay of P.I.Leela (Applicant)/ Post held</u>	<u>Pay of E.Vijayalakshmi (Junior)/Post held</u>
1.1.85	Rs.545/- / Tax Assistant	Rs.545/- / Tax Assistant
1.1.86	Rs.1640/- / Tax Asst. (Revised pay)	Rs.560/- / Tax Asst. (Pre-revised scale)
10.11.86	Rs.1680/- Promoted as Head Clerk - Pay fixed under FR 22(a)(1)	Rs.560/- / Tax Asst. - Continued in the pre- revised scale.
1.1.87	Rs.1760/- Head Clerk - Pay fixed under FR 22(C) (Applicant's option to continue in the pre- revised scale till 1.1.87 was disallowed)	Rs.1720/- Tax Assistant opted to switchover to revised scale.
27.1.87	Rs.1760/- Head Clerk - Revised scale.	Rs.1800/- Promoted as Head Clerk - Pay fixed in the revised scale.
1.1.88	Rs.1800/- Head Clerk - Revised scale	Rs.1850/- Head Clerk - Revised Scale. "

She filed Annexure-A10 representation which was rejected by Annexure-A11, a cryptic order stating that option exercised once shall be final.

4. According to the statement in the O.A. in para 13, the applicant has exercised two options. First she filed an option for fixation of her pay under FR 22(c) with effect from 1.1.87. She also filed a second option, Annexure-A4 to continue in the pre-revised scale until 1.1.87 which was allowed. The applicant objected ☐ Annexure-A11 by filing

. 5/-

a further representation, Annexure-A12. The statements in those representations have not been carefully considered while passing the impugned order. Even the disposal as contained in Annexure-A11 is not with due application of mind. ~~It~~ is stated in that order "option exercised once shall be final". It is not clear as to whether the Deputy Director of Income Tax is referring Annexure-A4 or the option stated to have submitted by the applicant for fixation of her pay in the post of Head Clerk on promotion. Annexure-A4 has been specifically submitted for allowing the applicant to continue in the existing scale of Rs.380-640 until the date of her subsequent increment raising her pay to Rs.580/- with effect from 1.1.87.

5. According to the applicant, if Annexure-A11 refers to her option as indicated in Annexure-A4, it shall be treated as final and it should be restored annulling its cancellation effected as per Annexure-A8 proceedings dated 16.1.89.

6. The applicant has a further case based on Rule 5 of the CCS (RP), 1986 which provides that a Government servant shall draw pay in the revised scale applicable to the post to which he is appointed, provided that such Government servant elects to continue to draw pay in the existing scale until the date on which he earns his next or subsequent increment in the existing scale or until he vacates his post. According to the applicant, Annexure-A4 option was given by the applicant under the aforesaid rule and it is a valid option. It has also been declared as final by Annexure-A11. Applicant further submitted that she is entitled to stepping up the pay as claimed in her representation.

7. The respondents have not given a very clear and convincing answer in the reply to ~~reject~~ the contentions of the applicant referred to above. According to them, Annexure-A4 option filed by the applicant was for postponing her promotion as Head Clerk to 1.1.87 which ^{is} the date of her increment in the cadre of Tax Assistant in the pre-revised scale of pay. "If the option filed on 21.7.88 (Annexure-A4) is with such an impression, the same is not in accordance with the Government's O.M. at Annexure-A3 and is invalid in such an event".

8. It appears that the respondents have not correctly understood the case of the applicant while filing the reply and giving the aforesaid statement. However, it is clear from the impugned order that the representations and the claims of the applicant have been rejected without due application of mind or a careful consideration of the contentions raised by the applicant.

9. The main grievance of the applicant, that here is an anomaly in the pay of the applicant, has been admitted by the respondents in the reply in the following manner:-

".... It is a fact that in seniority of Tax Assistant, Smt. E. Vijayalakshmi is junior to the applicant though both were drawing the same pay in the pre-revised scale immediately before 1.1.1986. It is also a fact that if both had been promoted as Head Clerks on the same day, both would have continued to draw the same pay, whether in the pre-revised scale or revised scale. It is also correct that the pay anomaly has arisen only because both got promotions as Head Clerks on different dates i.e. senior getting promotion on 10.11.86 while the junior got the promotion on 27.1.87."

10. If there is a real anomaly in the pay of a Government employee when comparing the ^{same with the} pay of a junior and it is an admitted fact, it is the duty of the department to remove the anomalous position by passing appropriate orders

without raising any technical objection. In the impugned order no reason has been given for rejecting the claim of stepping up the pay of the applicant considering the pay of her junior Smt. E. Vijayalakshmi.

11. In the result, having regard to the facts and circumstances of the case, I have no option but to allow the application by quashing the impugned order and directing the 3rd respondent to consider the case of the applicant afresh and dispose of the same in accordance with law after examining the case of the applicant vis-a-vis the case of her junior. I do so. This shall be done as expeditiously as possible, at any rate without any delay.

12. The application is allowed as above. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

26.7.93

v/-

LIST OF ANNEXURES:

1. Annexure-A3 .. Copy of O.M. No.7(52)-E.III/86 dated 27.5.88 issued by Min. of Finance.
2. Annexure-A4 .. Copy of option filed by the applicant dated 21.7.88.
3. Annexure-A7 .. Copy of statement of refixation of pay of the applicant dt. 10.8.88.
4. Annexure-A5 .. Copy of pay fixation statement dated 10.8.88.
5. Annexure-A8 .. Copy of letter dated 16.1.89 from the Zonal Accounts Officer.
6. Annexure-A10 .. Copy of representation filed by the applicant before Chief Commissioner of Incometax on 27.2.89.
7. Annexure-A11 .. Copy of letter dated 29.8.90 for Deputy Director, Incometax, Cochin.

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