

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.578/2002.

Friday this the 30th day of July 2004.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

(By Advocate Shri P.Balakrishnan)

vs_i

1. Union of India, represented by its Secretary to Government of India, Ministry of Finance, North Block, New Delhi.
2. The Chief Commissioner of Income Tax, CR Buildings, I.S.Press Road, Cochin-682018.
3. The Zonal Accounts Officer, Central Board of Direct Taxes, San Juan Tower, Cochin-682018. Respondents

(By Advocate Mr.C.Rajendran, SCGSC)

The application having been heard on 30.7.2004, the Tribunal on the same day delivered the following:

ORDER

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

The applicant was senior to P.S.Muraleedharan as Tax Assistant.

The applicant was directly promoted from the post of Tax Assistant as Inspector of Income Tax on 22.1.87. His pay as on 22.1.87 was fixed at Rs.2000/- . His junior P.S. Muraleedharan was promoted as Head Clerk, Supervisor and then as Inspector of Income Tax on 9.9.91. His pay on 9.9.91 was fixed at 2480/- . The applicant had passed the IIT Departmental Examination in 1971 and Muraleedharan passed it only in 1977. The applicant was given two advance increments for passing the examination on 6.1.1992 retrospectively from 26.7.1991. The applicant's pay on

the date of promotion of Muraleedharan, the compared junior arrived at only 2240 (excluding two advance increments) while the pay of Muraleedharan was fixed at Rs.2480/-. The applicant represented for stepping up of his pay on par with his junior w.e.f. 9.9.91. The respondents stepped up the applicant's pay on par with his junior w.e.f.9.9.91 fixing his pay also at Rs.2480/by order dated 23.5.97 including the two advance increments granted to the applicant for passing the examination with effect from 26.7.91. The claim of the applicant is that the two advance increments granted to the applicant should have been in addition to the pay fixed on par with the compared junior. Therefore, the applicant has filed this application for the following reliefs.

1. To direct the 2nd respondent to step up the pay of the applicant to that of the compared junior with effect from 9.9.1991 without taking into account the 2 advance increments granted to the applicant for passing the departmental examination for Income Tax Officer and then to regularise his pay by grant of the two advance increment and to revise all consequential fixations of pay of the applicant draw and disburse the arrears of pay and allowances in consequence thereof.
- ii. To declare that the applicant is eligible for stepping up of his pay to that of the compared junior with effect from 9.9.1991 without taking into account the 2 advance increments granted to him for passing the departmental examination for Income Tax Officers.
- iii. To grant such other relief as this Hon'ble Tribunal considers appropriate on the facts and circumstances of the case."

2. The applicant has argued that the Tribunal has in O.A.1549/98 allowed identical claim.
3. The respondents contend that the Board's letter dated 24.10.1977 which stipulates that the advance increment for passing the Income Tax Inspectors' Examination granted to some

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officials for calculating the pay for removing the anomaly does not apply to the case of the applicant because that was regarding officials who passed the examination prior to 1.1.1975 in the nature of a special order and not a general one, and the applicant who passed the examination after 1.1.75 is not entitled to the benefit. The respondents admit that the case of Shri P.K,Prabhakaran the applicant in O.A.1549/98 was identical and that O.P.No.16538/2002 filed against that order has been dismissed by the Hon'ble High Court of Kerala. Yet they contend that the said decision has not become final as the matter has been referred to the Central Board of Direct taxes for seeking instructions in the matter.

4. We have heard the learned counsel on either side. An identical issue was considered by the Division Bench of this Bench of the Tribunal in O.A.1549/98. After noting the contention the Bench ordered in paragraph 5 of the order as follows:

"5. In this context it is worthwhile to refer to G.I., M.F.O.M.No.(23)-E.III(A)/75 dated 18th June 1975 to which our attention was drawn by the learned counsel for the applicant. It shows how advance increments in the given 3 types of cases should be regulated. On a reading of the said O.M. and A8, we are of the view that A8 is a general order for if the applicant had appeared for Income Tax Officers' test not in July 1992 and only later he will get the benefit of advance increments. That being the position, we have to see whether A1 is sustainable or not. A1 says that A8 is not applicable in the case of the applicant as it is not a general order but a specific one. As we have already found that A8 is a general order A1 is liable to be quashed."

5. We find ourselves in complete agreement with the view taken. We are also fortified in accepting the view *by what's contained* *because*, in the Government of India, Department of Personnel & Training in

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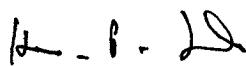
O.M.No.1/2/89-Estt.(Pay-1), dated the 28th June, 1993 and 31st January, 1995. It has been stated that :

"No stepping up of pay shall be allowed in the case of juniors by virtue of drawing more pay under the scheme of advance increments."

It is very clear that the advance increments therefore is not to be treated as regular pay for the purpose of stepping up. If the junior's pay is more on account of the advance increment, senior who has not been granted such increment will not be entitled to reckon that for stepping up. Hence, the intention of rule makers is very clear that the advance increment granted for passing the examination should be excluded when computing the senior's pay while considering stepping up of pay for removal of anomaly.

6. In the light of what is stated above, we find no merit in the contention of the respondents and therefore, we allow this application directing the 2nd respondent to step up the pay of the applicant on par with that of his compared junior with effect from 9.9.91 without taking into account the two advance increments granted to the applicant for passing the departmental examination for Income Tax Officers, to regularise his pay by granting two advance increments, revise his pay accordingly and to make available to him the consequential monetary benefits flowing therefrom within a period of three months from the date of receipt of a copy of this order. No costs.

Dated the 30th July, 2004.



H.P.DAS
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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