

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.289/2002

Monday, this the 20th day of January, 2003.

CORAM;

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.C.Samuel,
Inspector of Income Tax,
O/o the Joint Director of Income Tax(Inv.),
Ernakulam. - Applicant

By Advocate Mr M.R.Rajendran Nair

Vs

1. Zonal Accounts Officer,
Central Board of Taxes,
Kochi-18.
2. The Joint Director of Income Tax(Inv.),
Madaparambil Building,
Kochi-18.
3. The Chief Commissioner of Income Tax,
Central Revenue Building,
Kochi-682 018.
4. The Principal Chief Controller of Accounts,
Central Board of Direct Taxes,
Lok Nayak Bhavan,
Khan Market,
New Delhi-110 003.
5. Union of India represented by
the Secretary to Govt. of India,
Ministry of Finance,
New Delhi. - Respondents

By Advocate Mr C.Rajendran, SCGSC

The application having been heard on 8.11.2002 the Tribunal on
20.1.2003 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant, an Inspector of Income Tax, Office of
the Joint Director of Income Tax(Inv.), Ernakulam, due to

Q.

retire on superannuation on 30.4.2002, finds that the Zonal Accounts Officer, Central Board of Taxes, Kochi, the 1st respondent herein, has fixed his superannuation pension and other retiral benefits to his detriment on the ground that the pay fixation allowed to him with effect from 1.1.87 was erroneous and hence called for revision. The applicant apprehends that the 1st respondent's action would result in reduction of his pay with retrospective effect and would lead to recovery of the alleged overpayment and substantial reduction in pensionary benefits.

2. The facts in brief compass are: The applicant, while working as Upper Division Clerk in the Income Tax Department drawing Special Pay of Rs.35/- per month, was promoted as Tax Assistant in the scale of Rs.380-640 by order dated 17.6.1985. His pay, initially fixed without taking the Special Pay into account was subsequently fixed at Rs.560/- per month as on 1.1.86 in the light of the Government of India O.M.No.7(29)/E.III/1989 dated 25.5.89 reckoning Special Pay of Rs.35/- drawn in the post of Upper Division Clerk vide A-3 statement. Thereafter, his pay was fixed under CCS(Revised Pay) Rules, 1986 with effect from 1.1.86 at Rs.1640/- vide A-4. Since the O.M.No.7(29)E.III/89 was issued only on 25.5.89, the applicant could not exercise option for pay fixation after 1.1.86. The applicant made A-5 representation to the CBDT. Government of India issued order dated 25.9.90(A-6) permitting the applicant and similarly placed employees to exercise fresh option within three months for drawing pay in the revised scale with effect from 1.1.86 or

Q.

the date of increment in the prescribed scale falling during 1986 or 1987. The applicant exercised an option to have his pay fixed in the revised scale with effect from 1.1.87 after getting an increment in the pre-revised scale. This was allowed and his pay was refixed at Rs.1720/- as on 1.1.87 with the due date of next increment on 1.1.88 vide A-7 pay fixation statement dated 5.9.91. The applicant, by then an Inspector of Income Tax, was about to retire in April 2002. The first respondent as per A-9 communication dated 1.4.2002 worked out the applicant's superannuation pension at Rs.4010/- as against Rs.4098/- computed by the 2nd respondent, vide A-8 statement. The 1st respondent issued A-10 pension pay order dated 1.4.2000 on the same basis. Further, by his letter dated 2.4.2002(A-11), the 1st respondent is seen to have informed the 2nd respondent that the option exercised by the applicant while holding the post of Tax Assistant on the basis of O.M.No.7(52)/E.III/86 Vol.I dated 25.9.90 and the pay fixation allowed thereon with effect from 1.1.87 were not admissible and that in the light of the Deputy Controller of Accounts, CBDT, New Delhi's letter dated 15.3.2000, the O.M.dated 25.9.90 was not applicable to Tax Assistant. Accordingly, the 1st respondent advised the 2nd respondent to fix his pay at Rs.1640/- as on 1.1.86 as against Rs.1720/fixed as per O.M. dated 25.9.90 and consequently refixed his pay on 1.1.2002 at Rs.8125/-, instead of Rs.8300/-. The 1st respondent has also advised the 2nd respondent to recover the overpayment made to the applicant. The applicant made a representation dated 16.4.2002 to the 1st respondent requesting him to reconsider

Q.

the matter in the light of the Government of India order and the provisions of Rule 59(1)(b)(iii) of CCS(Pension) Rules. Against the above factual position, the applicant has sought the following reliefs:

i) To quash A-9, A-10 and A-11.

ii) To declare that the pay of the applicant is not liable to be revised with retrospective effect to his disadvantage with effect from 1.1.1987 and to declare that the applicant is entitled to get the pensionary benefits as originally computed by the Head Office and that the respondent are not entitled to recover any amount from the pensionary benefits of the applicant and to issue appropriate directions accordingly.

3. In the reply statement filed by the 1st respondent on behalf of all the respondents, the impugned orders have been defended mainly on the ground that A-6 is a general order applicable to UDCs/Junior Accountants/Auditors who are in receipt of special pay as on 1.1.86. The applicant was not a UDC, but was a Tax Assistant with effect from 17.6.85. Benefit of pay fixation by merging special pay of Rs.35/- with effect from 17.6.85 and the consequential benefits with effect from 1.1.86 in the pre-revised scale of pay were given to the applicant on the basis of the option exercised by the applicant at the time of his promotion. According to the respondents, the benefit of A-6 order dated 25.9.90 was available only to UDCs/Junior Accountants/Auditors who were in

9.

receipt of special pay as on 1.1.86 and not to the Tax Assistants as is clear from R-3 communication dated 15.3.2000 from the Principal Chief Controller of Accounts, CBDT.

4. We have heard Shri M.R.Hariraj, learned counsel for the applicant and Shri C.Rajendran, learned SCGSC.

5. Learned counsel for the applicant would take us through the pleadings on record and would contend that the 1st respondent did not have the competence to verify the service records to determine the correctness of the emoluments drawn by the applicant for purposes of determining his pension and retiral benefits. It was for the Head of Office to prepare the pension papers. If there was any error in regard to emoluments drawn by him, the Head of Office could correct the same subject to the provisions of Rule 59(1)(b)(iii) which prohibits scrutiny of service records beyond a period of 24 months prior to the date of retirement. Since in this case, scrutiny of records of 1990-91 were undertaken barely a few days before the date of retirement and a comprehensive re-fixation of his pay with effect from 1.1.86 was undertaken by the 1st respondent, there was clear violation of the relevant rules. In any case, the whole exercise was taken without notice to the applicant and therefore, there was denial of natural justice. Learned counsel for the applicant also drew our attention to A-14 and A-15 communications involving a similar case where the Zonal Accounts Officer had raised similar objections which were overruled by the CBDT confirming that the option exercised by the individual was in

Q.

order. Learned counsel would therefore, maintain that the claim preferred by the applicant and allowed under similar factual circumstances cannot be negated by undertaking scrutiny of past records. Learned SCGSC on his part would invite our attention to the provisions of the Civil Accounts Manual and would argue that it was mandatory on the part of the Accounts Officer to ensure that the pay being admitted by the Head of Office was correct and that the excess payment of pension, if any, due to erroneous fixation of pay is determined prior to the Government employee's retirement itself. In the instant case, the applicant's pay had to be fixed correctly before the pension and the retiral benefits could be determined correctly. On verification of the Service Book and connected records, the 1st respondent found that the pay fixation was erroneous and therefore, the necessary corrective steps were taken. This cannot be considered illegal, the learned Standing Counsel would urge.

6. We have given our anxious consideration to the grievance raised by the applicant and the facts of the case. This is a case where the applicant's pay on promotion from the post of UDC with special pay to the post of Tax Assistant had been eventually fixed at Rs.1720/- as per A-7 statement dated 5.9.91 taking effect from 1.1.87 on the basis of fresh option permitted to be exercised in accordance with A-6 O.M. dated 25.9.90 of the Ministry of Finance, Department of Expenditure, Government of India. It is in effect, this fixation which is attempted to be nullified by the impugned A-9 communication and A-10 pension payment order followed by A-11 letter dated

Q..

2.4.2002 of the 1st respondent. Thus, what was done in 1991 is sought to be reversed to the applicant's detriment after more than 10 years and that too a few days prior to the due date of his retirement on superannuation. The applicant has not been given any notice with regard to the proposed action which would have serious repercussions on his pension and other retiral benefits. This according to us, is impermissible in view of the provisions of Rule 59(i)(b)(iii) of the CCS(Pension) Rules which states as under:

"Calculation of average emoluments - For the purpose of calculation of average emoluments, the Head of Office shall verify from the service book the correctness of the emoluments drawn or to be drawn during the last ten months of service. In order to ensure that the emoluments during the last ten months of service, have been correctly shown in the service book the Head of Office may verify the correctness of emoluments for the period of twenty four months only, preceding the date of retirement of a Government servant, and not for any period prior to that date."

It is clear from the above that the Head of Office should verify the service book and ascertain the correctness of the emoluments drawn or to be drawn during the last 10 months of service and that such verification regarding the correctness of emoluments for the period of 24 months only preceding the date of retirement and not for any period prior to that date can be undertaken. Thus, the competent authority himself is precluded from looking back beyond 24 months for purposes of

Q.

verification of the correctness of the emoluments. In this case, A-8 statement was prepared by the Head of Office apparently in accordance with the provisions of Rule 59(i)(b)(iii) quoted above. A-9 communication and A-10 pension payment order are the result of a scrutiny of the applicant's service records beyond the permitted period of 24 months as is clear from the impugned communication A-11. In fact, A-7 pay refixation dated 5.9.91, made more than 10 years prior to the date of retirement is interfered with to the applicant's prejudice. This is unsustainable and the impugned orders are liable to be set aside for that reason alone. Even on merits, we find that the applicant has a valid case. A-7 refixation order which ^{is} sought to be reversed by the impugned orders was in pursuance of a fresh option exercised by the applicant on 20.12.90 in the light of A-6 O.M. No.7(52)E.III/86 dated 25.9.90 of Ministry of Finance, Department of Expenditure. The fresh option was exercised under proper authority. A-6 O.M. was issued in pursuance of several references received from various officials and organisations to allow an opportunity to revise the earlier option and submit fresh option. We find that on substantially similar facts, the Zonal Accounts Officer had raised objection against refixation of pay of one Shri T.V.Jacob who was promoted as Tax Assistant from UDC before 1.1.86 on the basis of the fresh option exercised by him. Recovery of over payment of salary was also advised by the ZAO. In the light of Shri T.V.Jacob's representation against it, the CBDT examined the matter and upheld the validity of the option

9.


exercised by the individual vide A-14 and A-15 communications. We notice that the applicant also has exercised a fresh option in accordance with A-6 order dated 25.9.90. The facts being substantially similar, the re-fixation of pay ordered 10 years prior to the applicant's retirement on the basis of such option permitted to be exercised has also to be upheld. We, therefore, hold that the impugned orders are unsustainable, both legally and factually. Accordingly, we proceed to set aside the impugned orders A-9, A-10 and A-11 and hold that the applicant is entitled to pension and retiral benefits in accordance with A-8 subject to arithmetical corrections, if any.

7. In the result, the impugned orders A-9, A-10 and A-11 are set aside. It is declared that the applicant is entitled to pension and retiral benefits as originally computed by the Head of Office subject, of course, to arithmetical corrections, if any. Appropriate pension pay order shall be issued and the monetary benefits be granted to the applicant within a period of two months from the date of receipt of copy of this order. There is no order as to costs.

Dated, the 20th January, 2003.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

trs