

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.299/2002

Tuesday, this the 10th day of December, 2002.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.Chandrika Rajan,
Stenographer(Ordinary Grade),
Office of Senior Authorised Representative,
Income Tax Department, K.K.Towers,
M.G.Road, Koch-11. .. Applicant

(By Advocates Sri T.C.G.Swamy, K.M.Anthru, Martin G.Thottan
& Mannatil Kumar)

vs.

1. Union of India rep. by the Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. The Chief Income Tax Commissioner, Kochi.
3. The Assistant Commissioner of Income Tax, Circle-I, Aluva.
4. The Senior Authorised Representative, Income Tax Appellate Tribunal, Kochi. .. Respondents

(By Advocate Mrs. P.Vani, ACGSC)

The Application having been heard on 6.11.2002, the Tribunal on 10.12.2002 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant while working as Stenographer(Special Grade) in the scale of pay of Rs.2000-3200 in Mumbai was transferred on her request to Kerala charge on 16.5.1988. Her pay in the scale Rs.1200-2040 was fixed at the stage of Rs.2040/- applying the provisions of FR 22. In the year 1996 the Zonal Accounts Officer of the Central Board of Direct Taxes, Cochin raised certain objections regarding fixation of applicant's pay w.e.f. 16.5.1988. Coming to know of it, the applicant made a representation to the

second respondent on 18.10.96, but nothing further was heard and she continued to get the pay as per the fixation on the Vth Central Pay Revision applicant's pay in the scale Rs.4000-6000 was fixed at Rs.6000/- w.e.f. 1.1.96 . She was also granted a stagnation increment by an order (A1) dated 30.3.98. The order of her pay fixation dated 4.6.98 is Annexure A2. While the applicant was granted the first and second financial upgradations under the ACP scheme, she made A3 representation in reply to which she was informed by letter A4 that the matter was pending for clarification in the case of employees who got inter- Commissionerate transfer after reversion to lower grade. While so, the applicant was promoted in the normal course to the scale Rs.5000-8000 by order dated 28.2.2001(Annexure A5). On her option her pay was fixed at Rs.6350/- w.e.f. 28.2.2001 and at the stage of Rs.6500/- after drawing the stagnation increment w.e.f. 1.1.2002 by A6 order dated 31.5.2000 by the Senior Authorised Representative, ITAT, Cochin(A6). On a consideration of the applicant's representation for grant of ACP , the second respondent issued A7 order dated 12.11.2001 fixing her pay at Rs.5500/- (2nd ACP) w.e.f. 9.8.99(A7). But since the order was not given effect to, the applicant made A7 representation. Against non-implementation of A7 order, the applicant filed the Original Application. After filing the O.A. the second respondent issued A9 order dated 3.5.2002 addressed to the 4th respondent indicating that fixation of pay of the applicant on transfer to Kerala charge under FR(1)(a)(2) was erroneous and that recovery of overpayment had to be made. The 4th respondent immediately

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issued letter dated 19.6.2002(A10) in which the applicant's pay on ACP was shown different from A7 and recovery of some alleged overpayment is also proposed. Aggrieved the applicant has amended the O.A. seeking the following reliefs:-

- (a) Call for the records leading to the issue of Annexures A9 and A10 and quash the same and direct the respondents to grant the consequential benefits thereof.
- (c) Award costs of and incidental to this Application.
- d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The applicant has alleged in the application that non-implementation of ACP in his case is arbitrary, as Annexure A7 has not been recalled, that as the applicant's pay on transfer has not been refixed, the statement in A10 order regarding recovery and fixation of pay is unsustainable, Annexure R3 letter dated 30.3.2002 being only prospective cannot be applied in this case, that the Supreme Court judgment relied on in the impugned orders do not apply to the case of the applicant who was transferred on request under FR 50(A) and therefore fixation of pay

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under FR 22(1)(a)(2) was perfectly right and that in any case as A2 and A7 having not been recalled the impugned order would not stand.

3. The respondents seek to justify the impugned action on the ground that the applicant having been transferred to Kerala from Mumbai charge on reversion to lower grade agreeing to take the bottom seniority in the lower grade, her pay should not have been protected and fixed under FR 22(1)(a)(2), that the ZAO raised objections, that the fixation of pay of the applicant should have been in accordance with R3 letter of the Board and that A2 and A7 having been wrongly issued, the impugned orders issued to rectify the mistake is perfectly valid and justified.

4. When the application came up for hearing , the learned counsel of the applicant submitted that prayer in sub-paragraph(b) of paragraph 8 having become infructuous , the same need not be considered. We have carefully gone through the pleadings and other other material papers brought on record and have heard the learned counsel of the parties.

5. Sri T.C.G.Swamy, the learned counsel of the applicant argued that R3 letter being issued long after the applicant's pay was fixed would not apply in the fixation of pay in her case and that the Hon'ble Supreme Court ruling relied on does not apply to the applicant's case as the facts are different. His further argument is that in any

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case as the order of fixation made in the year 1988(A2) has not so far been recalled and the pay has not been refixed after giving notice to the applicant, the reduction of the applicant's pay as shown in A9 and A10 and recovery of alleged overpayment is unsustainable, as such an action would be opposed to principles of natural justice. Smt. Vani , the learned Additional Central Govt. Standing Counsel appearing for the respondents on the other hand argued that the applicant having been transferred after reversion to the lower grade on her request, the pay should have been regulated as per instructions contained in R3 which is really a clarification, and that the ruling of the Apex Court in Comptroller and Auditor General of India and others vs. Farid Sattar, in C.A.No.13020 of 1996,2000(4) SCC 13, is squarely applicable to the case on hand as the facts are exactly identical.

6. In Farid Sattar's case, the Hon'ble Supreme Court has held that as Farid Sattar was on his request transferred on reversion to a lower post in a lower pay scale on his accepting all the conditions and tendering technical resignation from the higher post, his pay should have been fixed not with reference to the pay drawn by him in the higher grade, but with reference to the scale in lower post and therefore the refixation was justified. In this case also on the applicant's transfer was on reversion to a lower post at his request. However according to the respondents the applicant's request was under FR 15(a). If the condition under which the applicant was transferred from

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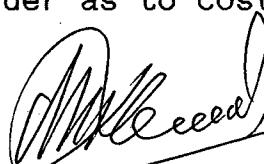
Mumbai charge were similar to those under which Farid Sattar was transferred , the ruling definitely would cover his case also. In this case we find that the applicant's pay on transfer was fixed in the year 1988 under FR 22(1)(a)(2) and she went on receiving the pay for more than a decade on the basis of that pay fixation. Any order retrospectively refixing and reducing her pay and making recovery would result in adverse civil consequence to her. No notice has been given to the applicant proposing refixation of her pay with retrospective effect. Had a notice been given to her, she would have had an opportunity to put up a case against the proposal. Further we find that Annexure A2 order has not been recalled. A7 order also has not been recalled. Any order of the competent authority refixing the pay of the applicant is seen issued excepting a statement of pay in A10. Under the circumstances, we find that the impugned order A9 and A10 is unsustainable as they are vitiated for non-observance of the principle of natural justice.

7. In the light of the above discussion, the application is allowed in part and the impugned orders Annexures A9 and A10 are set aside. No order as to costs.

Dated, the 10th December, 2002.



(T.N.T. NAYAR)
ADMINISTRATIVE MEMBER



(A.V. HARIDASAN)
VICE CHAIRMAN

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