

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.369/05

Wednesday this the 3rd day of January, 2007

CORAM

HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

P.Rajumon, aged 33 years,
S/o P.E.Joseph,
Stenographer Grade III
Office of Assistant Director of Income Tax
(Investigation) Ayakar Bhavan,
Kannothumbal,
Chovva (PO) Kannur.Applicant

(By Advocate Mr. P.V. Mohanan)

V.

- 1 Union of India, represented by the
Secretary, Ministry of Finance,
Department of Revenue, Central Board
of Direct Taxes, Jeevan Deep Building,
Parliament Street, New Delhi.
- 2 Commissioner of Income Tax,
Office of Chief Commissioner of Income Taxes
C.R.Buildings, I.S Press Road,
Cochin.Respondents

(By Advocate Mr.Thomas Mathew Nellimootil)

The application having been finally heard on 13.12.2006, the Tribunal
on 3rd January, 2007 delivered the following:

ORDER


Hon'ble Mr. George Paracken, Judicial Member

The grievance of the applicant in this O.A is regarding
fixation of his pay on his inter-regional transfer from Mumbai to

Kerala on his request. Following are the reliefs sought by him:


- i) " To call for the records leading to Annexure.A4 and set aside the same in so far as it fixes the pay of the applicant in the lower grade at Rs. 5100/- with effect from 9.6.2004 in the cadre of Stenographer Grade-III in the pay scale of Rs. 4000-100-6000.
- ii) To direct the respondent to fix the pay of the applicant at Rs. 5600/- as on 9.6.2004 and protect the same in the transferred post as Stenographer Grade III and to fix increments on due date by protecting the pay of Rs. 5600/-.
- iii) To call for the records leading to Annexure.A5 and set aside the same.
- iv) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice."

2 The brief facts of the case for the purpose of disposal of this OA are that the applicant joined the Income Tax Department in Mumbai Region on 19.9.94 as Stenographer (Ordinary Grade) (later re-designated as Stenographer Grade-III) in the scale of pay of Rs. 4000-6000 and he was promoted as Stenographer Grade-II in due course on 10.1.2000 in the scale of pay of Rs. 5000-8000. On his request for inter-regional transfer having been granted, he was reverted to the Grade-II post as per the existing rules as well as on his undertaking that he was willing to be reverted to the lower post of Stenographer Grade-II vide Annexure.A3 order dated 9.6.2004. On his joining the Kerala Region, the respondent No.2 vide the Annexure.A4 impugned order dated 14.7.2004 ordered for the re-fixation of his pay and seniority in the lower grade as per the law and rules. Accordingly, vide Annexure A5 order dated 25.8.204 his pay was fixed at Rs. 5100 with effect from 9.6.2000 in the cadre of Stenographer Grade-III in the scale of pay of Rs. 4000-100-6000 as



against the pay of Rs. 5600 drawn by him with effect from 1.1.2004 in the scale of pay of Rs. 5000-150-8000 attached to the post of Stenographer grad-II. The applicant vide Annexure A7 representation brought to the notice of the respondents that earlier in similar cases the transferees were given pay protection. He has also, therefore, requested the respondents to protect his pay which he had been drawing in the grade of Stenographer Grade -II as provided under the FR. The applicant has challenged the impugned orders in Annexures.A5 and A6 on the ground that they are in violation of the provisions contained in FR 22(i) and FR 22(7) which warranted that in inter-charge transfer, the incumbent is entitled to get protection of pay. He has also relied upon the judgments of the Apex Court in Union of India and others Vs. C.N.Ponnappan, AIR 1996 SC 764 and Scientific Advisor to Raksha Mantri and another Vs. C.M.Joseph AIR 1998 SC 2318. In both these cases, the issue was regarding counting of service of the govt. servant rendered at the place from where the employee has been transferred for the purpose of eligibility for promotion at the place to which he has been transferred.

3 The various grounds raised by the applicant are not relevant in this case because the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training has issued a Memorandum during the pendency of this O.A vide O.M. No 16/6/2001-Estt. Pay.I dated 14.2.2006 clarifying the position regarding fixation of pay in the case of employees who seek transfer to lower post under FR 15(a). A copy of the said OM was annexed



as Annexure A8 along with the rejoinder filed by the applicant and the same is extracted below:

"The undersigned is directed to state that according to the existing provisions of FR 22 I(a)(3) a Government servant appointed/transferred to a lower post at his own request under FR 15(a) the maximum of the time scale of which is less than the pay drawn by him in the higher post held regularly, shall draw that maximum as his initial pay. It has been brought to the notice of this Department that this provision is being interpreted differently by different Ministries/Departments. The Staff Side has also demanded that a clarification is issued in this regard to bring about a uniform interpretation of this Rule.

2 The demand of the staff side has been examined in consultation with the Ministry of Finance and it is clarified that on transfer to the lower post/scale under FR 15(a), the pay of a Government servant holding a post on regular basis will be fixed at a stage equal to the pay drawn by him in the higher grade. If no such stage is available the pay will be fixed at the stage next below the pay drawn by him in the higher post and the difference may be granted as personal pay to be absolute in future increments. If the maximum of the pay scale of the lower post is less than the pay drawn by him in the higher post, his pay may be restricted to the maximum under FR 22(1) (a)(3).

3 Where transfer to a lower post is made subject to certain terms and conditions then the pay may be fixed according to such terms and conditions.

4 In so far as persons serving in the Indian Audit & Accounts Department are concerned these orders issued after consultation with the Comptroller & Auditor General of India.

5 These orders take effect from the date this OM is issued. Past cases already decided need not be reopened."

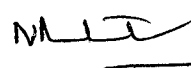
4 Since the respondents themselves have clarified the position vide Annexure.A8 OM dated 14.2.2006 issued by the Department of Personnel & Training, the only question to be decided

is whether the applicant can be denied this benefit just because the respondents have already decided the case of the applicant against him. Though the respondents have issued orders refixing the pay without protecting his last pay drawn, the applicant had disputed it and his representation was pending before the respondents. The respondents, therefore, cannot claim that it was a decided case.

5 In the above facts and circumstances of the case, we allow this OA and quash and set aside Annexure.A4 order dated 14.7.2004 to the extent that it directs for the fixation of the pay of the applicant to a stage lower than the one at which he was already drawing pay in the higher post. We also quash and set aside the Annexure A5 order fixing his pay at Rs. 5100/- with effect from 9.6.2004 in the cadre of Stenographer Grade-III in the scale of pay of Rs. 4000-100-6000. We direct that the respondents shall re-fix the pay of the applicant at Rs. 5600/- as on 9.6.2004 which he was drawing at the time of his reversion to the post of Stenographer Grade-III and protect the same in the transferred post and grant future annual increments from the due dates. The above direction shall be complied with, within a period of two months from the date of receipt of this order. There shall be no order as to costs.

Dated this the 3rd day of January, 2007


GEORGE PARACKEN
JUDICIAL MEMBER


N. RAMAKRISHNAN
ADMINISTRATIVE MEMBER