

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 411/92

Tuesday, this the 18th day of January, 1994

**SHRI N. DHARMADAN, MEMBER(J)
SHRI S.KASIPANDIAN, MEMBER(A)**

D. Suresh Babu,
Income Tax Officer,
Income Tax Office, Kollam. .. Applicant

By Advocate Shri K.M.V. Pandalai.

V/s

1. Union of India, rep. by
Secretary, Min. of Finance,
New Delhi.
2. The Central Board of Direct Taxes,
Represented by its Secretary,
New Delhi.
3. The Chief Commissioner of Incometax,
CR Buildings, IS Press Road,
Kochi-18.
4. The Commissioner of Incometax,
Kochi-18. .. Respondents

By Advocate Shri Mathew G.Vadakkal, ACGSC.

ORDER

N.DHARMADAN

Applicant is an Incometax Officer. He is aggrieved by the specification in Annexure-A2, to the effect that "the special pay to the posts has been allowed in view of the specially arduous nature of the duties assigned to them", which has been relied on for passing Annexure-A11 order to deny the benefit of the special pay, which the applicant enjoyed during the period when he was working as a member in the Special Audit Party before his promotion as Incometax Officer, continuously for more than three years. He is challenging both Annexures-A2 and A11.

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2. Applicant submitted that formerly in the Incometax Department works relating to the assessment was audited by the Internal Audit Party headed by an Incometax Inspector assisted by UDCs and LDCs. They were given ^{special} pay considering the arduous nature of work. Each Internal Audit party was headed by an Inspector of Incometax assisted by UDCs and LDCs. A special pay of Rs.25/- p.m. was granted to UDCs. Subsequently, by order dated 6.12.72 the above special pay was sanctioned in lieu of higher scale of pay. When the fixation of pay of those working in the Internal Audit party was made, without consideration of the special pay, they filed OP 4014/77-J before the Kerala High Court. It resulted in Annexure-A1 judgment. Later, Internal Audit Establishment was closed and the same work was entrusted to Special Audit Wing under the changed circumstances. The applicant who joined as Incometax Inspector, while working in that capacity, was continuously doing the audit work and he was getting special pay of Rs.55/-. Annexures-A3 and A4 orders are ^{produced} /to establish the case of the applicant. He claimed that he is entitled to fixation of pay in the post of Incometax Officer taking into consideration his special pay which he was drawing as Incometax Inspector for more than three years continuously. According to the applicant, his request was denied because of Annexure-A2 proceedings of the Government containing, the wordings in para 3 as extracted below:-

"Special pay of these posts has been allowed in view of the special arduous nature of duties assigned to them. The question of grant of special pay to Incometax Officers working in the Internal Audit is under consideration separately."

3. According to the applicant, because of the wordings, the applicant is not getting proper fixation of pay in the appropriate post taking into consideration the

special pay. He filed representation, which was ultimately decided against him by Annexure-A11. The relevant portion in the order is extracted below:-

" With reference to the petition put in by Sri D. Suresh Babu, Incometax Officer, Ward-2, I.T. Office, Quilon, the Board have intimated that the Special Pay was granted to Inspectors posted in Special Audit Parties having regard to the arduous nature of duties attached to the post. Hence the special pay drawn by Sri. D.Suresh Babu as Inspector (AAP)/SAD) cannot be treated as part of the basic pay for the purposes of fixation of pay on his promotion to the post of Incometax Officer."

4. The applicant relied on two documents in support of his claim viz. Annexure-A1 judgment of the High Court of Kerala in OP 4017/77-J and Annexure-A12 O.M. issued by the Director in connection with the special pay of UDCs working in the non-Secretariat Administrative Service.

5. In regard to Annexure-A1, the case of the applicant is that he is relying on Annexure-A1 only for the limited purpose of establishing that the Clerks and other members who worked in the Internal Audit Party were given special pay taking the view that the same was given to them in lieu of higher scale of pay and that position was accepted by the Kerala High Court in Annexure-A1 judgment when the Department changed the stand and attempted to deny the benefit for fixation of pay in the higher post. The applicant contended that even though he worked as Incometax Officer, he discharged the same duties and functions which were undertaken by the Clerks, who were members of the Internal Audit Party. Hence, according to him, there is absolutely no difference in the duties and functions so that he is entitled to fixation of pay taking into account the special pay. The view that the duties and functions are arduous/ⁱⁿnature and therefore special pay is available to them as indicated in the impugned order, Annexure-A2, is arbitrary and illegal. In other words, according to the applicant, incorporation of the wordings pertaining to

special pay in Annexure-A2 is arbitrary and cannot be sustained. After careful examination of the contention of the applicant, we feel that if this was the object and purpose, the Government could have very well stated so in clear terms and included the words to that effect that the special pay is to be given in lieu of higher pay as in the case of the Clerks who were functioning in the erstwhile Internal Audit Wing.

6. The respondents have objected to the contentions and stated that the applicant's case cannot be treated as on par with the Clerks who were getting special pay in lieu of higher scale of pay as was accepted by the Kerala High Court in Annexure-A1 judgment. The Inspectors and Clerks who worked in the audit party subsequent to the abolition of the internal audit are to be treated separately in the matter of granting special pay and fixation of pay in the respective category. They have also stated that the circumstance which was considered in Annexure-A1 judgment and Government order, Annexure-A12, are different and distinguishable.

7. We have gone through the judgment and Annexure-A12. After considering the contentions of the applicant as also the respondents in this behalf, we are of the view that the special pay which the applicant was enjoying while he was discharging arduous duties as member of the Special Audit Party cannot be treated as an accrued right in his favour for fixation of his pay in the post of Income Tax Officer treating the same as pay in lieu of higher scale of pay in accordance with law as contended by the applicant. If that was the purpose, as indicated above, the Government could have incorporated such wordings in Annexure-A2 while the same was issued. The Government have incorporated the same wordings in that order ~~stating~~ stating that the special pay to those posts is to be allowed to them in view of the

special arduous duties of the audit work. Under these circumstances, we see no force in the contention of the applicant in this behalf.

8. As indicated above, we see no merit in the statement of the learned counsel for applicant that the wording of the impugned order should have been modified or altered to the effect that special pay is to be granted to the applicant for fixation of his pay in the post of Incometax Officer treating it as 'pay in lieu of higher scale of pay'.

9. Another contention of the applicant is based on Annexure-A12. He submitted that the first respondent issued this order on 1.9.87 granting the benefit of special pay for fixation of pay of UDC working in non-secretariat administrative offices considering the duties and responsibilities of complex nature. But, according to the learned counsel for respondents, annexure-A12 order of the Government has no relevance to the facts of the present case. That decision was taken for giving special pay considering the 10% posts of UDCs, who are eligible for special pay in accordance with the OM dated 5.5.79, which is produced as Annexure-R4 along with the reply statement. The special situation pointed out in that case distinguishes the case of the persons covered by Annexure-R4 and Annexure-A12. There is no substance in the case of the applicant that Annexure-A12 supports his case. Hence, we reject the second point raised by the applicant.

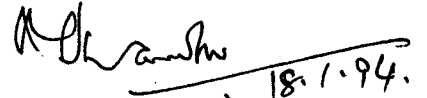
10. In this view of the matter, we are of the opinion that Annexure-A12 does not render any assistance to the applicant for establishing his case that he is entitled to fixation of pay in the higher post of Incometax Officer treating the same as pay in lieu of higher scale of pay to be granted to him in fixing his pay in the post of Incometax Officer.

11. In the result, we see no substance in the application; it is only to be rejected.

12. Accordingly, we dismiss the application. There shall be no order as to costs.



(S.KASIPANDIAN)
MEMBER (A)

 18.1.94.

(N.DHARMADAN)
MEMBER (J)

v/-