

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH : MUMBAI
OA 389/1996

Mumbai this the 1st day of August, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Smt. Shanta Shastry, Member (A)

Shri Arvind Kashinath Karve
Resident of Shree Prasad
Plot No, 32-A, Near Kalpataru
Society, Vadavali Section,
Ambarnath (East) 421 501.

.Applicant

(By Advocate Shri P.A. Prabhakaran)

VERSUS

1. The Chairman, Central Board of Direct Taxes, Department of Revenue, North Block, 1st Floor, Central Secretariate, New Delhi.
2. The Chief Commissioner of Income Tax, Aayakar Bhawan, 3rd Floor, Maharshi Karve Road, Mumbai
3. The Commissioner of Income Tax, Central -1, New CGO Building, M. Karve Road, Mumbai.
4. Dy. Commissioner/D.D.O. (PBU), Central Range-III, IIth Floor New CGO Building, M. Karve Road, Mumbai.
5. Pay and Accounts Office, Central Pension Accounting Office, Ministry of Finance, Govt. of India, Trikot-II Complex (Behind Hotel Hyatt Regency) Bhikaji Cama Place, New Delhi through the Pay and Accounts Officer Zonal Accounts Office, Central Board of Direct Taxes, Aayakar Bhawan, M. Karve Road, Mumbai

.. Respondents

(By Advocate Shri M.I. Sethna, learned counsel through proxy counsel Shri V.D. Vadhavkar)

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O R D E R

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

The applicant has impugned the letter issued by the respondents dated 31.3.1995 to the extent that he has been denied the salary in the same pay scale as that of his junior, Shri D.K.Apte from February, 1977.

2 The issues raised in this application fall within a narrow compass. Para 3 of the aforesaid letter dated 31.3.1995 reads as follows:-

"3. The Board has looked into the matter. It is noted that Shri Karve passed the Inspectors Examination in 1973. He was promoted as Inspector directly from the post of UDC on 26.2.1977. He has represented that his junior, Shri D.K.Apte, who had been promoted in the meantime to the intermediate grades was promoted in June, 1977 and his pay was fixed at a stage higher than that of Shri Karve. It may be recalled that the question of removal of anomaly in the fixation of pay where a junior person on his promotion as Inspector gets higher pay than a senior person because of the application of FR 22(C) on promotion at intermediate levels was considered in consultation with the DOP&T and it was decided that such anomalies in fixation of pay be removed by stepping up of the pay of senior person equal to the level of junior provided - (a) the compared junior should have qualified fully for the post of Inspector at the time when the senior is promoted directly as Inspector and (b) the junior should have been promoted in the intermediate grades in the intervening period. It is seen that Shri D.K.Apte, the compared junior, has passed the Departmental Examination for the post of Inspector in 1976 and had been promoted in the intermediate grades before his promotion in June, 1977 in the grade of Inspector. It would thus appear that both the conditions laid down in Board's letter No. B-12014/5/92-Ad.IX dated 13.5.1992 are fulfilled in the case of

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Sh.Karve,Inspector (Retd.) and the anomaly in fixation of his pay on promotion to the post of Inspector in February,1977 may be removed by stepping up his pay equal to the pay of his junior Sh.Apte. The pensionary entitlements of the retired officer may also be revised accordingly after fixation of pay, but no arrears of pay and allowances will be admissible. However,arrears of revised pensionary benefits are allowed to him."

3. Shri P.A.Prabhakaran,learned counsel for the applicant has submitted that admittedly as per the letter dated 31.3.1995 addressed by respondent 1 to respondent No.2, all the conditions laid down in Board's letter dated 13.5.1992 have been fulfilled by the applicant. Hence, he contends that a direction was given to that authority to fix the pay of the applicant on promotion to the post of Inspector in February, 1977 equal to the pay of his junior, Shri Apte. The pensionary entitlements of the applicant were also ordered to be revised after fixation of the pay and the main grievance of the applicant is that he has not received any arrears of pay and allowances from Feb.,1977. Learned counsel has very vehemently submitted that all other persons similarly situated like the applicant have received the arrears of pay and allowances, including Shri Apte, and denying the same to the applicant is, therefore, discriminatory and in violation of the Article 14 of the Constitution.

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4. The respondents in their reply have themselves stated that it is a brief affidavit. They have submitted that the applicant had retired from service on 30.9.1991 and he had made representation on 30.11.1992 for removal of the anomaly in pay fixation with effect from Feb.,1977 and inspite of the long delay, they had considered the same in terms of the letter dated 13.5.1992. Shri V.D.Vadhavkar, learned proxy counsel for the respondents has submitted that there is no mention about retired person in the Circular but nevertheless, the Department had considered the applicant's case. They have further issued another letter dated 5.5.1997 in which it has been stated that the order for removal of anomaly was to take effect from the date of the decision and not from the date of the anomaly itself. Hence according to them, the applicant is eligible for arrears w.e.f.31.3.1995 and not from 1977. He has, therefore,submitted that since removal of anomaly order was issued on 31.3.1995 when the applicant stood retired, only revised pensionary benefits were admissible to him.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. From the reply of the respondents,it is seen that even though they have stated that the Board's

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letter dated 13.5.1992 did not apply to retired persons, they had in fact considered the applicant's claim for removal of anomaly in pay fixation vis-a-vis his junior, Shri Apte. In the letter dated 31.3.1995, quoted above, it has been stated that the applicant fulfils the conditions laid down in that Circular and hence the decision had been taken to remove the anomaly in his pay fixation and give him pay fixation equal to that of his junior from Feb., 1977. That being the case, we are unable to agree with the contentions of the respondents that the applicant would be eligible for arrears only with effect from the date of the decision i.e. 31.3.1995. Having regard to the Board's letter dated 13.5.1992 once the respondents have themselves realised the fact that there was an anomaly in the pay of the applicant in comparison with that of his junior and this fact had been corrected by their Board's letter dated 13.5.1992, there is no reason why the applicant should not be given the benefit of arrears of salary, consequent on the revision of his pay. The decision of the respondents that the cut off date is 31.3.1995, which is the date of the letter they have issued in pursuance of the applicant's representation in 1995, does not, therefore, appear to be reasonable. There is no explanation for the delay in taking the decision by the respondents based on the Board's letter dated 13.5.1992. Since the respondents have themselves decided to extend the

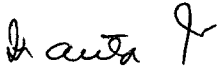
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benefits of the Circular for refixation of the pay of the retired persons like the applicant, there is no reason to deny him the consequential benefits at least from the date when the Board's letter was issued i.e.13.5.1992, which according to the applicant has also been given to other similarly situated persons. However, learned proxy counsel for the respondents has submitted that to the best of his knowledge no such payments have been made to other similarly situated persons.

6. In the facts and circumstances of the case, the O.A. succeeds and is allowed as below:-

The respondents are directed to pay to the applicant the arrears of revised pay and allowances with effect from the date of refixation of his pay in terms of the Board's letter dated 13.5.1992 till the date of his superannuation. Consequently, the applicant shall also be entitled to revision in pensionary benefits in accordance with the relevant rules and instructions. Necessary action in this regard shall be taken within three months from the date of receipt of a copy of this order.

No order as to costs.


(Smt. Shanta Shastry)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman(J)