

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No.301/2000

Mumbai, this 12th day of September, 2001

Hon'ble Shri Justice Birendra Dikshit, VC(J)

Hon'ble Shri M.P. Singh, Member(A)

R.K. Gaur

MIG-75 (Duplex) C Sector, Shahapura
Bhopal, MP

Applicant

(By Shri P.A.Prabharakan, Advocate)

versus

1. Chairman

Central Board of Direct Taxes
North Block, Deptt. of Revenue
New Delhi

2. Chief Commissioner of Income Tax, Mumbai

3rd Floor, Aayakar Bhavan
M.K.Road, Mumbai

Respondents

(By Shri V.G. Rege, Advocate)

ORDER(oral)

By Shri M.P. Singh

Applicant in this case is aggrieved by order dated 16.9.98 whereby an amount of Rs.10,115/- is to be recovered from the salary of the applicant.

2. Brief facts of the case are that the applicant has been working as Assistant Director (Official Languages) since 1976 under R-2. He was promoted as Dy. Director (OL) w.e.f. 6.10.97. He retired on superannuation on 30.04.98. As per CCS(Revised Pay) Rules, 1997, the pay of the applicant was fixed at Rs.10,500/- in the pay scale of Rs.6500-10500. However as on 1.1.96 applicant's total emoluments were higher at Rs.10,980. Therefore in terms of the aforesaid provisions personal pay of



Rs.480/- was granted to him. On promotion to the post of Deputy Director(OL) his pay was fixed at Rs.10,975 + Rs.5 special pay making the total of Rs.10,980/- once again. Meanwhile, a few months after his retirement, R-2 asked the applicant to repay a sum of Rs.10,115 being the excess of pay and allowances paid to him for the period from 1.1.96 to 5.10.97. Applicant has submitted his reply to respondents not to recover the amount of Rs.10,115/-. According to the applicant, the Pay Commission in para 43.31 of its report had recommended new pay scale of Rs.2500-4000 for 65 posts (out of 145 posts) of AD. According to this, applicant's pay should have been fixed in the new pay scale of AD of Rs.2500-4000. This pay has been revised to Rs.7500-12000 on the recommendations of 5th Pay Commission. The contention of the applicant is that instead of fixing his pay in the pay scale of AD Gr.I, his pay has been fixed in the pay scale of AD Gr.II. The request of the applicant has been rejected by the respondents. He has therefore filed this OA claiming relief by praying for directions to the respondents to:

- (i) issue formal orders in terms of CCS(RP) Rules, Part C, Section XI, item 21 read with para 70.121 of the report of 5th CPC and the CCS(RP) Amendment Rules, 1999 as published in Swamy News Jan.2000, item No.12 and his pay be correctly fixed in the scale of Rs.7500-12000 during his period of tenure as AD (OL) w.e.f. 1.1.96;



(ii) fix applicant's pay on promotion as DD(OL) w.e.f. 6.10.97 and be corrected upto his date of superannuation on 30.4.98;


(iii) quantify the difference in emoluments due to him;

(iv) revise his retiral benefits; and

(v) pay interest on arrears/delayed payment.

3. Respondents in their reply have stated that the pay of the applicant was fixed in the pre-revised scale at Rs.3800. The corresponding revised scale recommended by the 5th CPC is Rs.6500-10500. Accordingly, his pay was fixed originally at Rs.10,980 (Rs.10500+480 pp). However, on receipt of OM dated 2.4.98 (Ex.R-1) it was redetermined at Rs.10,500 in the revised pay scale of Rs.6500-10500 and the applicant was informed by letter dated 16.9.98.

4. According to the respondents, the 5th CPC in para 43.31 of its report coined a new pay scale of Rs.2500-4000 in pre-revised scale and it corresponds to Rs.7500-12000 in the revised scale. However, as per para 3 of the text of Ministry of Finance resolution dated 30.9.97 regarding new pay scales and allowances, the recommendations of the Commission for revised pay scales of S-14 shall not be operative for CSS as also for other services where the cadre controlling authority does not consider it necessary. Hence the contention of the applicant that his pay should be fixed at Rs.7500 is not



correct as there is no such scale for AD in the IT Deptt. In the circumstances, there is no merit in the OA which deserves to be dismissed.

5. Heard the learned counsel for the parties and perused the records.

6. During the course of the arguments, the learned counsel for the applicant drew our attention to the recommendations of the 5th CPC wherein two scales of pay have been recommended for the post of Assistant Director. Out of the total 145 posts, 65 posts have been placed in the pay scale of Rs.2500-4000 while the remaining 80 posts in the pay scale of Rs.2000-3500. According to the counsel, where the upgradation of posts involves only the placement of existing incumbents in higher scales without the assumption of any higher responsibilities or changes in eligibility criteria, the suitability of the incumbents to occupy such posts in the higher pay scale is not required to be assessed fresh. They can, therefore, be appointed to the posts in the higher pay scales w.e.f. the date notified by the Government giving effect to the recommendations of the Pay Commission. Accordingly, the higher replacement scale of pay will be extended retrospectively w.e.f. 1.1.96 only in respect of those



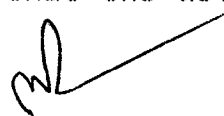
posts not involving the assumption of higher responsibilities or changes in the eligibility criteria. Since in this case, the upgradation of posts of Assistant Director Grade-I does not involve assumption of higher responsibilities, the higher pay scale of Rs.2500-4000 as recommended by the Pay Commission should be extended retrospectively w.e.f 1.1.1996. He also submitted that Government has not taken a decision regarding higher pay scale recommended by Pay Commission for the post of AD-I, while in other similar cases Government has already taken a decision, which amounts to discrimination against the applicant. In support of his contention, the learned counsel relied on the judgment of Delhi High Court dated 1.2.1970 in W.P. No.553/69 (J.C. Jain Vs. UOI) and that of Apex Court in the case of Purushotham Lal and Others Vs. UOI AIR 1973 SC 1089.

7. On the other hand, learned counsel for the respondents submitted that the recommendations of the Pay Commission for giving higher pay scale to the applicant would not be applicable to the applicant unless and until government takes a conscious decision to implement the recommendations of the Pay Commission. Therefore, higher pay cannot be granted to the applicant.



8. After a perusal of the records, we find that the Pay Commission has recommended two different scales for the post of AD. However, the same has not yet been accepted and implemented by the Government. First Schedule 1 (Part-C) to the ^{CCS,} revised pay Rules, 1997 provides that in cases where conditions such as changes in r/rules, etc. which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministries to decide upon such issues and agree to the changes suggested by the Pay Commission before applying these scales to these posts w.e.f. 1.1.96. In certain other cases where there are conditions prescribed by the Pay Commission as prerequisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts, etc., it will be necessary for the Ministries/departments concerned to not only accept these pre-conditions but also to implement them before the scales are applied to these posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then.


9. In this case we find that the Government has not yet



identified the 65 upgraded posts and has also not amended the recruitment Rules for appointment to the post of AD Gr.I. We also find from the recommendations of the Pay Commission that for the post of AD Gr.II the pay Commission has recommended modified mode of recruitment. It is, therefore, clear that the Government, has to take a decision and agree to the changes suggested by the Pay Commission before applying these higher pay scales recommended for the post of A.D. Grade-I. Therefore, the contention of the applicant that he should be given the revised higher pay scale w.e.f. 1.1.96 needs to be rejected.

10. As regards the judgements of the Hon'ble High Court/Supreme Court cited by the applicant, we find the same are distinguishable and therefore shall not apply to the case of the applicant.

11. For the reasons stated aforesaid, the OA is devoid of merit and is accordingly dismissed. Interim order granted on 5.5.2000 stands vacated. No costs.


(M.P. Singh)
Member(A)


(Birendra Dikshit)
Vice-Chairman(J)

/gtv/

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

RA No.81/2001 in OA No.301/2000

Mumbai, this 28 day of January, 2002

Hon'ble Shri Justice Birendra Dikshit, VC(J)
Hon'ble Shri M.P. Singh, Member(A)

R.K. Gaur

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Applicant

(By Shri P.A.Prabhakaran, Advocate)

versus

Chairman, CBDT & Another

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Respondents

ORDER(in circulation)


By Shri M.P. Singh, Member(A)


The present RA is filed on behalf of the applicant for review of our oral judgement dated 12.09.2001 by which OA No.301/2000 was dismissed being devoid of merit and for the detailed reasons recorded therein.

2. Review is sought on the ground that the applicant was able to obtain and despatch to his counsel orders dated 17.08.2001 and 4.01.2001 issued by the Ministry of Home Affairs, which is the cadre controlling authority in his case, only on 12.09.2001 and in pursuance of these orders, judgement dated 12.09.2001 needs to be recalled and reviewed. A perusal of the order dated 17.08.2001 makes it clear that officers presently working against the identified post shall not automatically be granted these pay scales and that orders regarding identification of the posts of Jt. Director and Asst. Director Gr.I in the Cadre Units of Central Sectt. Official Language



Service by virtue of above cadre restructuring were being issued separately. In our aforesaid judgement dated 12.09.2001 we have already held that the Government has not yet identified the 65 upgraded posts and has also not amended the R/Rules for the post of AD Gr.I as suggested by the Pay Commission. That apart, order dated 4.1.2001 talks of upgradation of the pay scale of the post of Director, which is not applicable to the review applicant, who actually retired as Dy. Director (OL). In view of this position, the present RA is not maintainable under Rule 22(3)(f) of AT Act, 1985 read with Order 47, Rule 1 CPC and is accordingly dismissed.


(M.P. Singh)
Member(A)


(Birendra Dikshit)
Vice-Chairman(J)

/gtv/