

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE.

DATED THIS THE 23RD DAY OF FEBRUARY, 1987

Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman

Present:

Hon'ble Mr. P. Srinivasan, Member (A)

APPLICATION NO.920/1986

Shri V.L. Lamadade,  
Major, S/o Laxamana Lamdade,  
Income-tax Inspector,  
Office of the tax-Recovery  
Officer, Unity B'ldg Annexe,  
Mission Road, Bangalore-27.

.... Applicant

(Shri S. Ranganatha Jois, Advocate)

V.,

1. The Commissioner of Income Tax-  
Karnataka-I, Bangalore-1.
2. The Union of India represented  
by its Secretary,  
Finance Department,  
New Delhi.

.... Respondents.

(Shri M.S. Padmarajaiah, S.C.G.S.C.)

This application having come up for hearing  
to-day, Shri P. Srinivasan, Hon'ble Member (A)  
made the following.

O R D E R

This is a transferred application received from  
the High Court of Karnataka.

2. The facts giving rise to the controversy in  
this application are briefly as follows:-

*P. Srinivasan*

The applicant who entered service on 15.5.1969 as a Lower Division Clerk in the Income Tax Department in the Karnataka charge was promoted later to the post of Upper Division Clerk ('UDC'), and was again promoted to the post of Tax Assistant ('TA') w.e.f. 14.8.1978. His initial pay in the cadre of TA was fixed at Rs. <sup>416</sup>~~460~~/-. This was done by applying F.R.22-C. The applicant's pay as UDC on 1.10.1977 was Rs.392/- and that was the pay he was drawing when he was promoted as TA from 14.8.1978. Applying F.R.22-C one increment was added to this pay, raising it to Rs.404/- and his initial pay as TA was fixed at the next higher stage in the time-scale pay of TA. Another person Shri P.T. Shinde, who was junior to the applicant in the cadre of UDCs was promoted as TA w.e.f. 6.10.1978. His initial pay in the cadre of TA was fixed at Rs.428/-, again applying F.R.22-C. The process of fixation was like this:

His pay as on 1.10.1977 was Rs.370/-. He was given two increments on passing the departmental examination for Inspectors w.e.f. 16.1.1977, raising his pay to Rs.392/-. On 1.10.1978, he earned another increment, raising his pay to Rs.404/-. Applying F.R.22-C on his promotion as TA, his pay as UDC was increased by one increment to Rs.416/- and his initial pay as TA was fixed at the next higher stage in TA's scale, which was Rs.428/-. Thus, as on 6.10.1978,

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when Shri Shindhe was appointed as TA, his pay was fixed at Rs.428/- while the applicant, who was senior to him in the cadre of UDCs, was drawing a pay of Rs. 416/- only. The applicant thereupon made a representation to the authorities to step up his pay from 6.10.1978 to the same pay as was drawn by Shri Shindhe in terms of O.M. dated 4.2.1966 of the Ministry of Finance of the Government of India.

The respondents held the view that all the conditions prescribed in this O.M. not having been fulfilled, the applicant's pay could not be stepped up to equal the pay of Shri Shindhe. It is against this order that the present application was filed.

3. Shri Ranganatha Jois, learned counsel for the applicant, contended that the conditions of the O.M. referred supra have all been fulfilled and therefore the applicant's pay should have been stepped up to equality with that of Shri Shindhe from 6.10.1978.

4. Shri Padmarajaiah contended that all the conditions set out in the O.M. had not been fulfilled. One of the conditions was that "at no time in the past, the junior must have drawn a higher rate of pay than the person who claims the benefit of the said O.M." Shri Shinde had drawn higher pay than the applicant for 5 days from 11.10.1973 to 15.10.1973, and therefore this condition had not been fulfilled.



5. Having heard the rival contentions, we are of the view that the applicant should have been allowed the same pay as Shri Shinde w.e.f. 6.10.1978. The O.M. referred to above was intended to remove anomalies that might arise by fixation of initial pay on promotion by applying FR 22-C resulting in a senior drawing less pay than his junior in the promotional post. The conditions set out in that O.M. are that (1) that both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre; (2) the scales of pay of the lower and higher posts in which they are entitled to draw the pay should be identical; and (3) the anomaly should be directly as a result of the application of F.R. 22-C. To the last condition, an example has been added to illustrate how it should be worked and the example is as under:

"For example if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior, by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer."

The primary condition, therefore, is that the anomaly should have been resulted from the application of F.R. 22-C. In the present case, Shri Shinde was drawing

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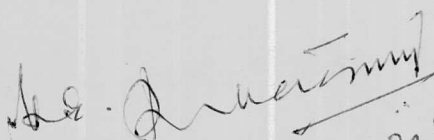
a lower pay than the applicant in the cadre of UDC as on 1.10.1977. The applicant's pay at that time was Rs.392/-, while that of Shinde was only Rs.370/-. Subsequently, Shri Shinde was given two increments raising his pay to Rs.392/- on passing the departmental examinations and that was from 16.7.1978. On that date, the applicant was also drawing Rs.392/-. So, both of them were drawing the same pay on 16.7.1978. The applicant's pay was fixed at Rs.416/- by applying F.R. 22-C. Shri Shinde earned one more increment in the grade of UDC on 1.10.1978 before he joined on promotion as TA, taking his pay to Rs.416/- <sup>M 416</sup> ~~Rs.428/-~~. As a result, of this his initial pay in the grade of TA was fixed at Rs.428/- by applying F.R. 22-C. The anomaly, thus, directly arose as a result of the application of <sup>M</sup> ~~of~~ F.R. 22-C, for otherwise, both the applicant and Shri Shinde were drawing the same pay in the grade of UDC from 16.7.1978. That being so, the condition prescribed in the Government's O.M. was completely fulfilled. We are not concerned with the example, which is only illustrative for interpreting the main condition. Moreover, even in the example, it is stated if the junior officer has drawn a higher rate of pay from time to time than the senior, the provision of stepping up the senior's pay in the promotional post would not be applicable. The objection of the respondents here is that for a period of 5 days, from 11.10.1973 to 15.10.1973, the applicant was drawing a lower pay than Shri Shinde because the latter

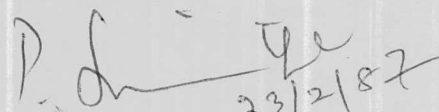
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reported for duty as UDC earlier. That does not mean that the junior drew pay at a higher rate from time to time, i.e. as a regular course over a long period of time. In any case, the anomaly here has undisputably arisen directly as a result of the application of F.R.22-C and that being so, the applicant is undoubtedly entitled to have his pay in the grade of TA fixed at the same pay which Shri Shinde drew w.e.f. 6.10.1978.

6. In the result, the application is allowed, the impugned order dated 12.8.1981 at Annexure-F negating the applicant's claim is quashed, and the respondents are directed to pay all arrears to the applicant as a result of refixation of his pay from 6.10.1978 at the same pay as Shri Shinde was drawing on that date. Parties will bear their own costs.

  
Vice-Chairman 23/2/87

  
Member (A) 23/2/87

dms/Arv.