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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, GULESTAN, BUILDING No.6
PRESOCOT ROAD, BOMBAY-1

CAMP: NAGPUR

OA NO. 483/91

R. M. Bhaskarwar
ITO Nagpur
95 Vandita Apartments
Vidyavihar; Ramapratap Nagar;
Nagpur 22

..Applicant

V/s.

Union of India through
Secretary, Min. of Finance
(Dept. of Revenue)
New Delhi & 2 ors.

..Respondents

CORAM: HON. SHRI M Y PRIOLKAR, MEMBER (A)

ORAL JUDGMENT:
(PER: M Y Priolkar, Member (A))

DATED: 30.7.93

Heard Mr. A B Choudhari, counsel for the applicant and Mr. K D Kelkar, counsel for the respondents.

2. The applicant while working as Upper Division Clerk (UDC) in the Income Tax Department was posted to work in the Internal Audit Party from 8.2.74 to 8.2.78 during which period he was paid a special pay of Rs.25 (later on revised to Rs. 35) per month. The grievance of the applicant is that on his promotion as Inspector of Income Tax on 10.2.78 the special pay of Rs.25/35 was not taken into account for fixation of his pay in the promotion post.

3. According to the applicant, the Kerala High Court in its judgment in W.P. No. 4014/77 have held that the special pay granted to UDCs should count for fixation of pay. The applicant also relies on a decision by a Division Bench of this Tribunal of Ahmedabad in Tr.A. No. 484/86 decided on 29.1.1988 in which a direction was given for fixing the pay of petitioners in the pay scale of the promotion post taking into consideration the special pay drawn by them on the date of their

promotion. The petitioners in that case were also UDCs working in internal audit party drawing a special pay. It is not in dispute that the applicant in the present case is also similarly situated as the petitioners in the case decided by the Ahmedabad Bench of the Tribunal.

4. The learned counsel for the respondents, however, argued that as per the rules, special pay is to be taken into account for pay fixation in the promotional post only in cases where special pay is sanctioned in lieu of a higher scale of pay and not merely for arduous nature of duty. According to the learned counsel for the respondents, the decision of the Ahmedabad Bench was based on the letter of the Central Board of Direct Taxes dated 6.12.72 in which it was conveyed that the President was pleased to decide that the post of UDC for internal audit party interalia would carry a special pay of Rs.20 or 25 and that this special pay is to be treated as having been sanctioned in lieu of higher scale of pay. The defence of the department before the Ahmedabad bench was that subsequently by the Government of India letter dated 31.12.1979 it has been clarified that in para 7 of the letter dated 6.12.72 referred to earlier it had been inadvertently stated that special pay is granted in lieu of higher scale of pay to the internal audit party and that the President was pleased to make the correction in para 7 of the said letter by substituting the words "for arduous work" instead of words "in lieu of higher scale". The view taken by the Ahmedabad Bench was that this subsequent amendment to the Presidential order could not have retrospective effect and, therefore, UDCs were entitled to special pay sanctioned from 1972 until 31.12.1979 for the purpose of counting of special pay for fixation of pay on promotion to a higher post in the department.

5. In my opinion, the facts of the present case are squarely covered by this judgment of the Single Bench of the Tribunal at Ahmedabad. The present applicant was also working in the internal audit party from 8.2.74 till 8.2.78. The amendment in the Presidential order dated 31.12.79 cannot affect him adversely as it has been held not to have any retrospective effect.

6. Learned counsel for the respondents, however, relies on a subsequent judgment dated 15.7.92 of a single member of the Bombay Bench of the Tribunal in which a similar claim was disallowed on the ground that circulars of the Government of India dated 15.5.74 and 9.6.77 had clarified that the special pay for the internal audit party was for arduous nature of duty and not in lieu of higher scales of pay. I have perused both the circulars. There is nothing to suggest that these circulars have been issued after approval or under the directions of the President. Since a contrary view has been taken in these two circulars as against the specific order of the President in letter dated 6.12.72 where the special pay was held to be in lieu of higher scales, these letters should have been issued only under the orders of or with the approval of the President. Evidently, an order of the President cannot be altered or amended merely by an order of a lower authority. These two orders on which reliance is placed are stated to have been issued under the directions of the Central Board of Direct Taxes or of Government of India and the learned counsel for the respondents could not make a categorical statement that they were issued under the directions of or with the approval of the President of India.

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7. I am, therefore, inclined to agree with the view taken by the Division Bench at Ahmedabad in its judgment dated 28.1.1988 rather than the view of a single Bench of Bombay dated 15.7.1992. In the latter judgment, it is clear that this point that the Government of India circulars dated 1974 and 1977 had not been issued with the approval of the President of India whereas the other two circulars dated 6.12.72 and 31.12.79 were both issued with the approval of the President had not been brought to the notice of the Bench.

8. On the basis of the foregoing discussion, the applicant succeeds. The respondents are directed to take into account the special pay drawn by the applicant while working as UDC in the internal audit party for the purpose of fixing his pay in promotion to the post of inspector. He would be entitled to consequential monetary benefits of arrears etc., which may be paid to him within a period of four months from the date of receipt of a copy of this order. No order as to costs.


(M Y Priolkar)
Member(A)