

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 12 DEC 1994

APPLICATION NO: 821 of 1994

APPLICANTS:- Sri.V.Yardi,
v/s.

RESPONDENTS:- The Deputy Secretary, Department of Revenue,
Ministry of Finance, New Delhi and others.,

To

1. Sri.H.S.Ananthapadmanabha, Advocate,
No.108, N.H.C.S.Layout, Third Stage,
Fourth Block, Basaveswaranagar,
Bangalore-560 079.
2. Sri.G.Shanthappa, Additional Central
Government Standing Counsel,
High Court Building, Bangalore-1.

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.
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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 17-11-1994.

Issued on
12/12/94

[Signature]

[Signature]

[Signature]

DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 821/ 1994

THURSDAY, THE 17TH DAY OF NOVEMBER, 1994

SHRI V. RAMAKRISHNAN ... MEMBER (A)

SHRI A.N. VUJJANARADHYA ... MEMBER (J)

Shri V. Yardi, Aged 60 years,
s/o Late Shri Annaji Yardi,
Deputy Office Superintendent (Rtd),
Customs & Central Excise,
H. No. 1329, Ramaling Khind Galli,
Belgaum - 590 001. ... Applicant

(By Advocate: Shri H.S. Ananthapadmanabha)

Vs.

1. Deputy Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
Ad-IIA, North Block,
New Delhi - 110 001.
2. Collector,
Central Excise,
No. 71, Club Road,
Belgaum - 590 001.
3. Chief Accounts Officer,
Central Excise, No.71,
Club Road,
Belgaum - 590 001. ... Respondents

(By Advocate Shri G. Shanthappa, Addl. Standing
Counsel for Central Govt.)

ORDER

SHRI V. RAMAKRISHNAN, MEMBER (A)

We have heard both sides. The applicant's prayer is that his pay should be stepped up at par with that of Shri S.G. Hulemani, who is his junior with effect from 30.1.89. When Shri Hulemani was promoted as DOS level II.



2. The applicant had joined the Central Excise Department in March 1956 as Sepoy and got promotions at various levels. He was promoted as UDC on 12.9.75. Shri Hulemani also joined the Department as Sepoy in April, 1956. He got his promotion as UDC on 4.10.76 i.e. subsequent to the applicant's promotion as UDC. The applicant functioned as Cashier from October 1983 and was drawing a special pay of Rs. 40/- attached to the post of Cashier. From this level he was promoted as DOS level II from 31.12.85. On his promotion, his pay was fixed in the higher level keeping in view the basic pay drawn by him as UDC and granting him personal pay to protect drop in emoluments in view of the special pay drawn by him as cashier. His pay was fixed at Rs. 1440/- as on 1.1.86 with the next increment raising it to Rs. 1480/- from 1.12.86. His junior, Shri Hulemani who had been working as UDC had been sent for deep study work with effect from 1.10.83 which carried a special pay of Rs. 35/- which was subsequently raised to Rs. 70/-. He was promoted to the intermediary grade of Tax Assistant. On such promotion as Tax Assistant his pay was fixed under the rules treating the special pay of Rs. 70/- drawn by him for deep study work as part of pay in terms of the Govt. of India, Ministry of Finance OM dated 10.10.90 Shri Hulemani received a further promotion to DOS L.II on 30.1.89 and his pay was fixed at Rs. 1720/- in this post in terms of relevant rules. The applicant who was admittedly senior to Shri Hulemani ~~who~~ was promoted to DOS L.II directly from the grade of UDC as the cadre of Tax Assistant did not exist at the time of his promotion and was drawing as on 30.1.89 ^{pay 7} Rs. 1560/-. The department however had stepped up the pay of the applicant to Rs. 1600/- as on 30.1.89. The applicant is aggrieved by the fact that his junior, Shri Hulemani has been drawing Rs. 1720/- on 30.1.89 whereas his pay had been fixed at Rs. 1600/-.

3. We have heard both sides. Shri H.S. Ananthapadmanabha draws our attention to the Ministry of Finance communication No.B. 12014/15/89-AD.II A dated 9.7.90 as at Annexure A-4 which deals with removal of anomaly on account of the creation of intermediary level of Tax Assistant. He particularly refers to para 5 of this communication which reads as follows:

"Accordingly the President has been pleased to decide that as a one time measure, the pay of a senior UDC promoted as Deputy Office Superintendent (Level-II) before the creation of cadre of Tax Asstt. (Viz. filling up of the first post of Tax Asstt.) in the cadre may be stepped up equal to the pay of Junior UDC promoted as DOS (L-II) after holding the post of Tax Assistant provided the Senior DOS (Level-II) has been drawing more pay than the junior in the cadre of UDCs."

This para requires that the person who shall get the benefit should be senior and that he should not have drawn less pay in the grade of UDC earlier. He submits that as the applicant is senior to Shri Hulemani and he was drawing more pay as UDC as compared to Shri Hulemani, he fulfils both the conditions and that the department should have straightaway acted on the communication dated 9.7.90 and stepped up his pay to the level of Rs. 1720/- as on 30.1.89 to be at par with Shri Hulemani. He further submits that the fact that his junior was drawing special pay which in terms of the relevant instructions can be taken as part of pay on promotion whereas the applicant's special pay as cashier cannot be taken ~~into~~ as part of pay on promotion does not make any difference to the situation as the OM does not make any such distinction. We are unable to agree with the submission of the learned counsel for the applicant. The OM is clearly issued in the context of the setting up of intermediary cadre of Tax Assistant and the anomalies flowing out of such creation and seeks to safeguard the interest of the seniors who were directly promoted to the DOS level II from UDC at a time when the cadre of

....3/-



Tax Assistant did not exist. In the present case even if both the applicant and his junior had been directly promoted from UDC to DOS level II, the applicant would have drawn less pay because the latter was receiving the special pay for the deep study work which is complex in nature and which is taken into account on fixation of pay. If Shri Hulemani had not drawn any special pay as UDC he would have drawn Rs. 1600/- as DOS L-II on 30.1.89 and the applicant's pay was accordingly stepped up from 1560/- to 1600/- as on 30.1.89. We see nothing wrong in this action of the department and we cannot agree with the submission of the applicant that para 5 of the letter dated 9.7.90 should automatically be applied without taking into account the fact that the junior was drawing special pay as UDC which was taken as part of pay on promotion. This OM is clearly intended to protect the pay of a senior UDC promoted as DOS Level II before creation of the cadre of Tax Assistant and to remove only the anomaly arising out of such situation.

4. The learned counsel for the applicant submits that if the applicant had been appointed as Tax Assistant he would have got the benefits under FR 22 (6) (x) both therein and also subsequent to the promotion to the level of DOS L-II. In such case his pay as on 30.1.89 would have been ^{fixed} paid at Rs. 1640/- and not at Rs. 1600/-. The learned counsel requests that the applicant's pay should be at least stepped up to the level of Rs. 1640/- on this consideration. The letter dated 9.7.90 referred to supra envisages stepping up of pay of the senior at par ^{with} to that of the junior on fulfilment of certain conditions. It does not provide for a notional fixation for the senior both at the level of Tax Assistant and at the DOS L-II. The suggestion of the learned counsel for the applicant for such notional stepping up of his pay does not conform to the relevant instructions. We are therefore unable to accept this contention also.

5. In the light of the above we hold that the department has rightly acted in fixing the pay of the applicant at Rs. 1600/- on 30.1.89. Accordingly we find no merit in this application and the same is dismissed with no order as to costs.

Sd-
17/11/94
(A.N. VUJJANARADHYA)
MEMBER (J)

Sd-
17/11/94
(V. RAMAKRISHNAN)
MEMBER (A)



TRUE COPY
[Signature]
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore