

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE - 560 033.

Dated: 3 APR 1995

APPLICATION NO. 910 of 1994.

APPLICANTS: Sri.K.Narasimha Murthy, Bellary.

V/S.

RESPONDENTS: The Chief Commissioner of Income Tax,
Bangalore and two others.

To

1. Dr.M.S.Nagaraja, Advocate, No.11,
Second Floor, Sujatha Complex,
First Cross, Gandhinagar, Bangalore-9.
2. Sri.M.S.Padmarajaiah, Senior Central
Government Standing Counsel,
High Court Building, Bangalore-1.

Subject:- Forwarding copies of the Orders passed by the
Central Administrative Tribunal, Bangalore-38.

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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 23-03-1995.

Tested on
3/4/95
#

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm*

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. No.910/94

THURSDAY THIS THE TWENTY THIRD DAY OF MARCH 1995

Shri V. Ramakrishnan ... Member [A]

Shri A.N. Vujjanaradhya ... Member [J]

K. Narasimha Murthy,
Aged 58 years,
S/o K.P. Venkobachar,
34/A, 1st Cross, Shastri Nagar,
Bellary.

... Applicant

[By Advocate Dr.M.S. Nagaraja]

v.

1. The Chief Commissioner of
Income Tax,
Queens Road,
Bangalore-560 001.
2. The Chairman,
Central Board of Direct Taxes,
New Delhi.
3. Union of India,
represented by
Secretary to Government,
Ministry of Finance,
Department of Revenue,
New Delhi.

... Respondents

[By Advocate M.S. Padmarajaiah ...
Senior Standing Counsel for Central Govt.]

O R D E R

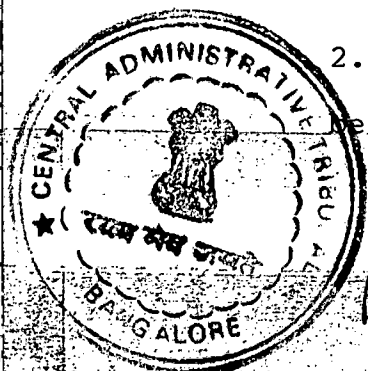
Shri A.N. Vujjanaradhya, Member [J]:

1. The applicant, K. Narasimha Murthy, is aggrieved by the order dated 31.3.1993, as in Annexure A-4, rejecting his request for stepping up of pay on par with his junior viz., one Shri Ahmed Ali.

2. Briefly stated the case of the applicant is as

below:

The applicant joined Income Tax Department as

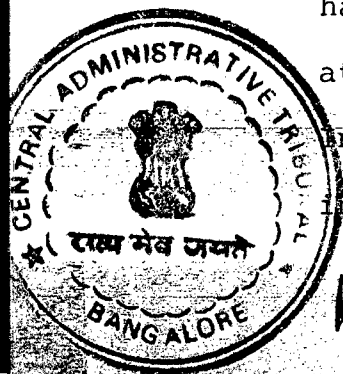


Steno Typist on 14.9.1957, he was promoted as Upper Division Clerk with effect from 5.2.1964 and later as Head Clerk ['HC' for short] on 5.7.1975. Subsequently the applicant was promoted to the cadre of Supervisor with effect from 11.8.1980 and as Income Tax Inspector ['ITI' for short] with effect from 25.3.1981 on his passing the prescribed examination. Consequent on the introduction of revised pay scale on the recommendation of IV Pay Commission, the pay of the applicant in the revised scale of Rs.1640-2900 was fixed at Rs.2120 with effect from 1.4.1986. During 1992, the Chief Commissioner of Income Tax, Bangalore, called for representations from the officials in whose case anomaly in fixation of pay had resulted and in whose cases juniors were drawing higher pay than their seniors on promotion to the grade of ITI as per Annexure A-1 dated 28.5.1992. Pursuant to the same the applicant made a representation stating that his junior one Ahmed Ali had his pay fixed as ITI on his promotion at Rs.725 with effect from 27.6.1984 when his pay was Rs.700. The statement indicating the particulars of pay drawn by the said Ahmed Ali in intermediary cadre from 1973 to 1992 was also enclosed. The applicant's name is at Sl.No.55 while the name of Ahmed Ali is at S.No.86 in the senior list as can be seen from Annexure A-2. The anomaly arose because of creation of a new cadre of Tax Assistant ['TA' for short] in the then scale of Rs.380-640 in the year 1978 which was intermediary in between UDC and ITI, by which

time the applicant had already been promoted as HC in 1975. But his junior Ahmed Ali was promoted from UDC to the cadre of TA on 16.5.1978 and had his pay fixed under FR 22[c] and again when he was promoted as ITI. Because of this, the junior got more pay and it has resulted in creating anomaly between the applicant and the said junior. However, the applicant's representation for stepping up of his pay was rejected by endorsement dated 31.3.1993 as in Annexure A-4. Therefore, the applicant appealed to the authority to review as per representation dated 1.12.1993 as in Annexure A-5. Because the request was not conceded this application is filed seeking the following reliefs:

- a] to quash endorsement dated 31.3.1993 as in Annexure A-4
- b] to direct the respondents to step up the pay of the applicant on par with that of his junior Shri Ahmed Ali with effect from 27.6.1984; and
- c] for all consequential benefits.

3. The respondents oppose the application on the basis of Board's letter dated 13.5.1992 enclosed to Annexure R-1 wherein the direction to remove anomaly in fixation of pay at the level of junior person was directed, provided "[a] the compared junior should have been 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".



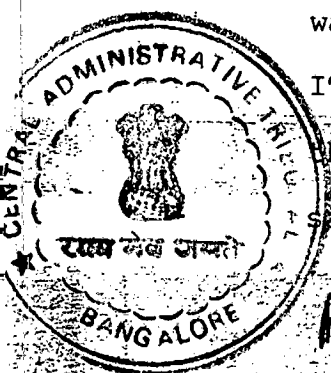
Because the applicant did not fulfill condition [b] his request for stepping of pay was not considered and on the said ground the action of the department is being sought to be justified.

4. We have heard Dr. M.S. Nagaraja, learned counsel for the applicant and Shri M.S. Padmarajaiah, learned Central Government Senior Standing Counsel for the respondents.

5. Dr. Nagaraja referred us to the various decisions of the Tribunal and contended that senior's pay should be stepped up to that of the junior in all cases more so in the case of the applicant. He particularly drew our attention to the decision in KRISHNA PILLAI V. UNION OF INDIA rendered by the Ernakulam Bench of this Tribunal reported in [1994]26 ATC 641 wherein it was observed that difference in pay and allowances would result from a variety of reasons, like a junior may receive an ad hoc promotion, a junior may receive special pay and there could be other reasons as well and in all cases except where reduction is by way of disciplinary proceedings, a senior will be entitled to have his pay stepped up to the level of the pay received by the junior due to fortuitous circumstances. Pointing out that the applicant who has been senior throughout could not have drawn less pay than that of the compared junior and, therefore, his pay should be stepped up to the level of the junior is the contention of Dr. Nagaraja. On the other hand

Shri Padmarajaiah, contended that as the applicant passed the departmental examination prescribed after his promotion as HC whereas his junior Ahmed Ali had passed the examination in 1971, the anomaly arose as the compared junior was granted increments but not the applicant. The applicant passed ITI examination in 1980 when the applicant was holding the post of HC and, therefore, he was not eligible for advance increments. He also pointed out that the condition that junior should have been promoted in the intermediary grades in the intervening period stipulated in Board's letter dated 30.5.1992 is not satisfied, the applicant cannot justifiably claim for raising his pay on par with that of his junior.

6. A comparative statement of the pay drawn by the applicant as well as his compared junior Ahmed Ali is enclosed to Annexure A-3 by the applicant. It is no doubt true that the applicant entered the department during the year 1957 whereas his junior Ahmed Ali entered in 1961 and even the applicant was promoted as TA earlier than his compared junior. While the applicant passed through the grade of Supervisor before he was promoted as ITI, his junior was promoted as Head Clerk after he was promoted as TA. The junior was given two advance increments on his passing the ITI examination whereas the applicant having passed the same after he was promoted as HC did not get the same. Therefore, even during the year 1985 i.e., on



1.3.1985 the applicant was getting the pay of Rs.725 whereas Ahmed Ali has drawn Rs.750 as on 1.7.1985 as ITI respectively. The applicant was fixed at Rs.750 only on 1.3.1986 and on 1.6.1986, Ahmed Ali was fixed at Rs.775. Consequently after the recommendation of the 4th Pay Commission came to be implemented the applicant was fixed at Rs.2120 whereas Ahmed Ali was fixed at Rs.2300. It is thus clear that anomaly between the pay of the applicant and Ahmed Ali existed even during the year 1985. The compared junior, Shri Ahmed Ali passed through two levels from the grade of UDC before he was promoted as ITI ie., TA and HC. The applicant also passed through two levels as he was promoted as HC from the rank of UDC and subsequently as Supervisor before he became ITI ie., while he did not become TA like Shri Ahmed Ali, he passed through the level of Supervisor which was not the case with Shri Ahmed Ali. As such the anomaly has arisen not on account of the junior passing through intermediary stages but because the junior passed the ITI examination while he was UDC which entitled him to two advance increments. The applicant himself passed this examination when he was HC and he was not eligible for such advance increments. Because the condition [b] stipulated in Board's letter dated 30.5.1992 the junior should have been promoted in the intermediary grades in the intervening period is not satisfied the applicant is not entitled to

get his pay stepped up with that of his junior.

7. Dr. Nagaraja referred us to the following decisions:

- [a] B.V. CHANDRA MOHAN V. CHIEF COMMISSIONER OF INCOME TAX, BANGALORE [1992] 19 ATC 675;
- [b] P.V. ANJANEYULU AND OTHERS V. UNION OF INDIA AND OTHERS reported in [1993] 23 ATC 450;
- [c] N. POOKOYA V. UNION OF INDIA AND OTHERS [1993] 23 ATC 887;
- [d] P. KUNHIRAMAN NAIR V. UNION OF INDIA AND OTHERS [1994] 26 ATC 257; and
- [e] K. KRISHNA PILLAI V. UNION OF INDIA AND OTHERS [1994] 26 ATC 641.

Dr. Nagaraja pointed out that in all these cases the pay of the senior was stepped up to the level of junior, on the ground that seniors pay should be equal to the pay received by his junior and contended that the case of the applicant is comparable to those cited by him. Therefore, it was urged that pay of the applicant should be stepped up to the level of that of his junior Ahmed Ali. All the decisions are of various Benches of this Tribunal. Because there is a decision of Supreme Court which holds the field, from which learned Standing Counsel has sought support we do not proposed to go into the details about the facts and the point of law discussed in the above decisions except making reference to the observations of the Supreme Court in STATE OF ANDHRA PRADESH AND OTHERS

G. SRINIVASA RAO reported in 1989[1] ATR 676. The relevant observation is at para 15 of the judgment



and the same is required to be quoted. It reads thus:

"15. 'Equal pay for equal work' does not mean that all the members of a cadre must receive the same pay packet irrespective of their seniority, source of recruitment, educational qualifications and various other incidents of service. When a single running pay scale is provided in a cadre the constitutional mandate of equal pay for equal work is satisfied. Ordinarily grant of higher pay to a junior would ex-facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equality doctrine. To illustrate, when pay-fixation is done under valid statutory Rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower or a transferee from another cadre is given pay protection, when a senior is stopped at Efficiency Bar, when advance increments are given for experience/passing a test/acquiring higher qualification or as incentive for efficiency; are some of the eventualities when a junior may be drawing higher pay than his seniors without violating the mandate of equal pay for equal work. The differentia on these ground would be based on intelligible object sought to be achieved. We do not therefore find any good ground to sustain the judgments of the High Court/Tribunal."

As can be seen from the above decision, one of the illustrations referred to in the decision is that when advance increments given for passing test, acquiring higher qualification, or as incentive for efficiency as a sequence of which a junior may be drawing higher pay than his senior will not violate the mandate of equal pay for equal work. Because the junior Ahmed Ali passed the ITI examination during 1971 he got advance increments and, therefore, the pay of the junior came to be fixed at a higher level than that of the applicant and as such the difference has occurred. Because the applicant does not satisfy the condi-

tion [b] mentioned in the Board's letter dated 30.5.1992 his request for stepping up of pay to the level of the junior was rightly rejected. It is but proper for us to follow the decision of the Supreme Court referred to supra and hold that the applicant is not entitled to the stepping up of pay to the level of Ahmed Ali, the junior and, therefore, he is not entitled to get any relief in this application.

8. In the result the application fails and the same is dismissed with no order as to costs.

Sd/-

Sd/-

23/11

MEMBER [J]

MEMBER [A]

bsv



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[Signature]
03/11/95
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore