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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Applications No. 802/93 & 803/93

C.A. 802/93

Shri. T. Soundararajan

C.A. 803/93

Shri. A.K. Khaladkar

... Applicants

Vs.

1. Union of India, Ministry of
Finance, Department of Revenue

2. Chairman
Central Board of Direct Taxes

3. Chief Commissioner of -
Income-tax, Pune

... Respondents

JUDGE : Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearances

1. Shri. M.A. Mahalle, Advocate
for applicants

2. Shri. K.D. Kelkar, Advocate
for respondents

JUDGMENT

DATED : 16-11-94

Per Shri. M.R. Kolhatkar, Member (A)

As facts are similar, we deal with these two C.A.s together. Reasons for the order are given in C.A. 803/93.

C.A. 803/93

The applicant is a direct recruit Inspector of the Income-tax Department and was promoted as Income-tax Officer

turned down by letter dated 9/2/1993 at Annexure 'A' in following terms :

" I am directed to refer to your letter F.No. SN/CC/EST/455/92-93 dated 8.1.1993 on the subject cited above and to say that one of the conditions for stepping up of pay is that both the junior and senior Government servants should belong to the same cadre in the lower grade and the posts in which they have been promoted should be identical. In other words, in the lower grade if the officers belong to the different cadres, the stepping up is not permissible.

2. In this case it is observed that while Shri.C.G.Hair, the compared junior, was working as Income-tax officer in Bombay charge, S/Shri. T.Sounderrajan, A.I.Khaladkar and S.S.Deodhar were not working in the same cadre i.e. Bombay Charge. The request for stepping up has not, therefore, been accepted "

2. It is this order which is impugned by the applicant.

His grievance is that not only his representation was **rejected though**

justified by rules and not only similar request of the similarly placed officers **was** considered by the department vide order dated 20.2.1990 but there is also a precedent **Viz.** of an officer of Pune Charge **Shri. T.Soundara Rajan**, who is the applicant in O.A. 802/93, being given the benefit of stepping up with reference to an officer of Bombay Charge, namely Smt. M.V. Bordavekar. In this connection, the applicant has annexed a copy of order dated 15/4/1976 from the office of the Commissioner of Income-tax, Pune at Annexure 'A5'.

3. The Department has resisted the claim of the applicant.

According to the Department, the seniority list of ITCs Group-B is prepared on All India Basis only for the purpose of promotion to the next higher grade i.e. A.C.I.T, Junior Scale. The said seniority list is not used for granting or withholding any other service benefit, nor the ITCs Group-B are transferred from one cadre to another.

4. For the purpose of control of cadre/ Shri. C.G. Nair and the applicant belong to different cadres. It was because the applicant belonged to a different cadre prior to his promotion, that his prayer for stepping-up was not conceded. So far as the case of Shri. Soundara Rajan and Smt. Bordavekar quoted by the applicant is concerned, it is contended that the facts are not applicable to the present case. Regarding the case of Shri. S.B. Kamat, all officers belonged to Bombay Charge.

5. During the course of hearing, on 22nd July 1994, it was noted that the case hinges on the connotation of term 'cadre' for the purposes of stepping up of pay as in April 1976 and February 1987. This is because what is required to be seen is whether the three-fold conditions laid down in the Government of India, Ministry of Finance O.M. No. F2(78)-E.III(A)/66 dated 4.2.1966 are fulfilled in the case of the applicant's claim for stepping-up. The relevant portion of the instructions is reproduced below for ready reference:

" (8) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior --

As a result of application of FR 22.C - In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1.4.1961, drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely :

- (a) 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;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of F.R. 22-C. 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 orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under F.R. 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay."

6. The main reason why the applicant's prayer was rejected by the Department was that condition No. (a) was not fulfilled. In other words, it was contended that the applicant who is a senior officer and Shri.C.G. Nair, with reference to whom the applicant is claiming benefit of stepping-up and who is a junior officer did not belong to the same cadre. F.R. 9(4) defines cadre to mean "the strength of service or a part of the service sanctioned as a separate unit". The Department was asked to file an additional affidavit to clarify the points about cadre of ITO-Group 'B' being a separate cadre under Commissionerate of Income-tax at Pune and Bombay respectively. In the affidavit filed on 18th August, 1994, the respondents stated that in 1976 and in 1987, the Bombay Charge and Pune Charge were under different Cadre Controlling Authorities. Therefore, in 1976, Smt. M.V. Bordavekar, ITO, Group 'B' posted in Bombay charge and Shri.A.K. Khaladkar posted in Pune Charge were under different Cadre Controlling Authorities. Likewise, in 1987

Shri. C.G. Nair posted in Bombay and Shri. A.K. Khaladkar posted in Pune were under different cadre controlling authorities. So far as stepping-up in 1976 was concerned, it was under Rule 8 of the C.C.S (Revised pay) Rules 1973 and stepping-up in 1987 was under Rule 22-C of the Fundamental Rules. Therefore, stepping-up in the two years were under/totally different provisions and stepping-up in 1976 cannot be used, therefore, as a precedent for stepping up in 1987.

7. We have considered the matter. In addition to the Circular dated 4.2.66 which was reproduced above, we have also considered the provisions relating to stepping-up of pay in terms of C.C.S (Revised Pay) Rules 1973 and C.C.S (Revised pay) Rules, 1987. We note that the provisions are identical and the contention of the Department that the provisions for stepping-up under 1973 Revised Pay Rules were different from the conditions for stepping-up under CCS (Revised Pay) Rules 1987 is not borne out. Therefore, it is difficult to understand how in 1976 the Department could give the benefit of stepping-up to Shri. Soundara Rajan belonging to Pune Charge with reference to Smt. M.V. Bordavekar belonging to Bombay Charge. On the point of cadre, the applicant has contended that after the formation of the bilingual state the districts from Karnataka attached to Bombay South Charge were attached to the Commissioner of Income-tax, Bangalore. The Vidarbha area excepting Nagpur and Bhadara and Marathwada districts were attached to Pune. However, the Headquarters was still at Bombay and the Charge still continued to be known as Bombay South Charge. After some time, the Head-quarters of Bombay South were shifted to Pune. Thus the entire charge was distributed amongst the various charges of Commissioner of Income-tax charges

from time to time. However, there was mobility of officers from one charge to the other. While we note the contention of the Department that the seniority list of ITO Group-B officers is prepared on the All India Basis and is only for the purpose of promotion to the next higher grade, the same is not used for granting or withholding any other service benefit and that an ITO Group B though senior, but working in a cadre, cannot ask for parity in respect of pay etc., on the ground that another ITO, Junior to him in the All India list but in a different cadre is drawing more pay, the failure of the Department to explain the order dated 15.4.76 in which the Commissioner of Pune gave the benefit of stepping-up to an officer of his charge with reference to an officer from Bombay Charge ^{us} give/reason to believe that whatever may be the All India position of officers of this Cadre, atleast so far as Bombay concerned, they are and Pune Charges are ~~treated as common cadre~~ and therefore denial of benefit to the applicant on the ground that prior to his promotion, he belonged to a different cadre, namely Pune Charge of the Commissionerate, is difficult to accept. We therefore consider it unjust and unfair that the benefit of stepping-up was denied to the applicant with reference to Shri. C.G. Nair. We therefore, dispose of this application by passing the following order :

O R D E R

O.A is allowed. The respondents are directed to give the benefit of stepping-up to the applicant with reference to Shri.C.G.Nair ^{inc} subject to arrears ~~been~~ limited

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to one year prior to the date
of filing the O.A. There will
be no order as to costs.

O.A. 802/93

This O.A is also allowed with
similar order as to consequential
benefits.

(M.R. KOLHATKAR)
MEMBER (A)

J*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No.2/95 in O.A.802/93

2)T.Soundara Rajan

.. Review Petitioner
in O.A.802/93

-versus-

Union of India & Ors. .. Respondents

Coram: Hon'ble Shri M.R.Kolhatkar,
Member(A)

Tribunal's order on Review
Petition by circulation : Date: 12.1.95

These review petitions are in respect of common judgment delivered in O.A.802/93 and 803/93. In that judgment while allowing the O.A. the benefit of stepping up was restricted by limiting the arrears to one year prior to the filing of the O.A. In this application filed by the original applicant, the main ground given for applying for review is in respect of relief regarding interest and cost and the arrears. So far as interest and costs are concerned, since the relief was not granted same is taken to have been rejected. So far as the arrears are concerned, the main ground given by the applicant is as below:

"5. The judgment is not clear as to whether the arrears are restricted to the period 27-2-1987 as mentioned in relief No.2 of the application to 26/6/92 OR instead from 26/7/92 onwards.

6. Further there are no reasons given as to why the claim is restricted to above either period! Normally, the trend of the decisions is that arrears are limited from

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the day one year prior to the filing of the O.A. and they are entitled to arrears from that date onwards in such cases where the cause of action arises much prior to one year of the date of establishment of the Hon.Tribunal. In such cases the applicants give up the claim of arrears for a period beyond one year from filing of the application in order to overcome limitation."

2. We do not feel called on to deal with para-6 except to state that the restriction on arrears was specified keeping in view of the facts and circumstances of the case and we do not feel ^{it} necessary to review the same. So far as para-5 is concerned, it appears to call for clarifications. The intention in the order is that benefits ^{for} the period from 27-2-87 to 26-7-92 ^{are} to be given notionally. The benefits for the period from 26-7-92 ^{to be} given in terms of actual arrears.

3. With this clarification the review petitions are rejected with no order as to costs.

(M.R.KOLHATKAR)
Member(A)

M

Copy to:-

Mr. T.S. Rajan
C/O. Mr. M.A. Mahalle, Adv.

2. The Union of India & Ors.,
through Mr. R.K. Shetty, Adv.

SECTION OFFICER.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY : 1

Review Petition No. 7/96 and 8/96 in
Original Application No. 802/93 and 803/93

passed this the 29th day of January 1996

CORAM: Hon'ble Shri M.R. Kolhatkar, Member (A)

Union of India
Ministry of Finance
and Others.

... Petitioners
(Original Respondents)

V/s.

Shri T. Sounder Rajan

Shri A.K. Khaladkar

... Opponents
(Original Applicant.)

O R D E R (CIRCULATION)

(Per Shri M.R. Kolhatkar, Member (A))

These identical review petitions are in respect of a common judgement and therefore the review petitions are also been disposed of by a common order.

2. These Review Petitions by original respondents are against our judgement dated 10.11.94 which was issued to the respondents on 16.11.94. The Review Petitions ought to have been filed within a month of receipt of the judgement. The review petitions have, however, been filed on 27.11.95 i.e. to say there is a delay of more than 11 months in filing the review petitions. An M.P. 29/96 has been filed for condonation of delay in filing Review Petition 7/96 and M.P. 36/96 has been filed for condonation of delay in filing Review Petition 8/96.

The main reason given for condonation of delay is that they had to consult several offices including the office of CBDT at Delhi. The reasons given are of a general nature and do not explain the delay ~~and in a~~ satisfactory manner. Therefore, the Review Petitions are liable to be dismissed on the ground of delay alone.

3. On merits, it is contended that the Tribunal has failed to note the distinction between the cases decided in 1976 in terms of Rule 8 of R.P. Rules and F.R. 22(c). I have dealt with this aspect of the matter in my judgement in para 7 and I do not find any merit in the contention raised. It is further contended that the Tribunal grossly erred in drawing the conclusion that Bombay charge and Pune charge are treated as a common cadre. I have dealt with this point also in para 7 of the judgement. Thirdly it is contended that the order dated 15.4.76 being patently wrong has been withdrawn by subsequent order dated 24.11.95 in the case of T. Sounder Rajan and by a subsequent order dated 4.3.95 in the case of Shri A.K. Khaladkar. In my view, any action taken by the respondents subsequent to the judgement is irrelevant. The parameters of the Review jurisdiction of the Tribunal are well defined and are contained in Rules under order 47 of CPC. In my view no grounds have been made out for review of my judgement and the review petitions are liable to be dismissed.

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4. For the above reasons the review petitions are dismissed and the order of dismissal is passed by circulation as permissible under the Rules.

(M.R. Kolhatkar)
Member (A)

NS

CAT/JUDL/BOM/0A.Nos.802,803/93/

Dt:-

Copy to:-

The Union of India & Ors.,
through Mr. K.D. Kealkar,Adv.,
1229, Sadashiv Peth,
PUNE-411 030.

2. Mr. M.A. Mahalle, Adv. for
both the Applicants.

SECTION OFFICER.