

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 201/95

Transfer Application No.

Date of Decision clik

Shri W.H.Lokhande

Petitioner/s

Shri P.A.Prabhakaran

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri Suresh Kumar for Shri M.I.Sethna

Advocate for
the Respondents

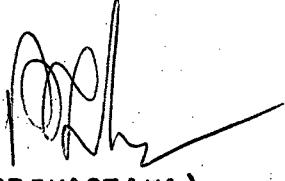
CORAM :

Hon'ble Shri. P.P.Srivastava, Member (A)

Hon'ble Shri.

(1) To be referred to the Reporter or not ? No

(2) Whether it needs to be circulated to other Benches of the Tribunal ? No


(P.P.SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY

(A)

OA.NO. 201/95

Shri W.H.Lokhande

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri P.A.Prabhakaran
Advocate
for the Applicant

Shri Suresh Kumar
for Shri M.I.Sethna
Advocate
for the Respondents

JUDGEMENT

Dated: 6/11/91

(PER: P.P.Srivastava, Member (A))

The applicant was appointed in Income Tax Department as U.D.C. in 1963. He was promoted as Head Clerk in 1971 and thereafter Supervisor Gr.II in 1977. The applicant got promoted as Inspector of Income Tax on 2.8.1979. On all these promotions the pay of the applicant was fixed in terms of the provisions contained in F.R. 22-C. On his promotion from Supervisor Gr.II the applicant was in grade Rs.550-750 and was promoted to the post of Inspector of Income Tax in grade Rs.425-800. The applicant retired from service on 31.7.1994 and the applicant was drawing a basic pay of Rs.3050/- at the time of retirement. The respondents reduced the pay of the applicant on 20.7.1994 from Rs.3050/- to Rs.2825/- in terms of their order dated 20.7.1994 (placed at page 13 of the OA.). In letter dated 20.7.1994 while reducing the pay of the applicant it was mentioned that the pay of the applicant was wrongly fixed under F.R.22-C on promotion as Inspector from Supervisor Grade II. Aggrieved by this order, the applicant has approached the Tribunal through this OA.

(S)

2. In a similar case this Tribunal has already held in OA.NO. 825/94 in the similar facts and circumstances that the respondents have arbitrarily revised the pay fixation of the applicant and therefore the order issued by the respondents reducing the pay of the applicant was quashed. The ratio of the decision in OA.NO. 825/94 is squarely applicable in the facts and circumstances of this case and the judgement of that OA. would govern the outcome of this case also.

3. I, therefore, order as under :-

The pay fixation order dated 20.7.1994 by the Respondent No. 2 is quashed. The order of recovery of Rs.35,200/- dated 27.7.1994 is also quashed. I further direct that the settlement dues of the applicant should be worked out as if the reduction in pay was not done in terms of letter dated 20.7.1994. The applicant will be entitled to payment of the settlement dues in terms of above directions along with the interest payable as per rules for the delayed payment of his settlement dues. There will be no order as to costs. A copy of the judgement in OA.NO. 825/94 is attached with this order.


(P.P. SRIVASTAVA)
MEMBER (A)

mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

DA.NO. 825/94

(9)

Shri Ram Sagar Tiwari ... Applicant
v/s.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri P.A.Prabhakaran
Advocate
for the Applicant

Shri V.S.Masurkar
Advocate
for the Respondents

JUDGEMENT

Dated: 6/11/95

(PER: P.P.Srivastava, Member (A))

The applicant was appointed in the Income Tax Department in the year 1959 as Lower Division Clerk. Thereafter, he was promoted as Upper Division Clerk in the year 1963 and was further promoted as Head Clerk in the year 1975. The applicant was further posted as Hindi Translator after competitive examination on 2.9.1978 in the pay scale of Rs.550-800. Thereafter, the applicant appeared in the departmental examination for the post of Inspector of Income Tax and after being declared successful was promoted and appointed as Inspector on 6.9.1979 in the pay scale of Rs.425-800 which was later on revised as a result of arbitration at the instance of JCM to the grade of Rs.500-900 w.e.f. 1.1.1980. The applicant continued to work as Inspector from 6.9.1979 till the date of retirement, i.e. 31.7.1993. The applicant was granted pay fixation in terms of F.R.22.C (now F.R.22-I (a)(i)) on his promotion from the post of Hindi Translator to that of Inspector. Just before retirement, i.e. on 12.7.1993 ZAO sent a letter mentioning that fixation of

10
 the applicant's pay in terms of F.R. 22C (now F.R.22-I(a)(i) on his promotion from Hindi Translator on 6.9.1979 was wrong. The applicant immediately represented against this letter on 23.7.1993 but the respondents revised the pay of the applicant on 27.7.1993 from 1.9.1979 onwards till his retirement. Thus, the applicant's pay was fixed at Rs.2300/- on 1.9.1990 wherein he was drawing the pay of Rs.2420/- on that date thereby incurring the loss of Rs.120/- every month. The applicant's pay was reduced by making fixation of pay treating the post of Inspector not higher than that of Hindi Translator and thereby depriving the benefit of F.R.22 C (now F.R.22-I(a)(i)) in terms of F.R. 22 (III).

2. The applicant has sought the relief through this OA. that the pay fixation of the applicant on his promotion as Inspector on 6.9.1979 was correct and has prayed that letter dated 12.7.1993 (Ex.A-2), order dated 27.7.1993 (Ex.A-7) and letter dated 22.2.1994 issued by the Respondent No. 2 to the Respondent No. 3 (Ex.A-1) be quashed. The applicant has further sought a direction for the respondents to clear the superannuation dues on the basis of original service records prior to 12.7.1993 and payment of the settlement dues on the basis of previous to pay fixation and also pay interest on all the delayed dues.

3. The counsel for the applicant has submitted that the reduction of the pay of the applicant on 27.7.1993 only 3 days before his retirement without giving any notice to the applicant is illegal as by this letter the pay of the applicant has been reduced and the principles of natural justice has been violated by not giving him an opportunity before reducing his pay. Since the applicant's pay was fixed in 1979 which is sought to be revised in 1994, after a long period of 14 years, it was all the more necessary

that an opportunity should have been given to the applicant to show cause before any reduction in his pay was made by the respondents by their letter dated 27.7.1993. (11)

4. The counsel for the applicant has also submitted that Respondent No. 4, the Deputy Commissioner of Income Tax (Admn.) had referred pay fixation of the applicant to Respondent No. 2, i.e. the Chairman, Central Board of Direct Taxes, New Delhi at the time of his promotion vide his letter dated 9.8.1979 (Ex.A-6). Para 4 of this letter reads as under :-

" The question now arises whether Shri R.S.Tiwari, on promotion to the post of Inspector can get his pay fixed under F.R.22(c) on the basis of the pay drawn by him as Hindi Translator which post he is holding for almost a year now, particularly because the maximum of both the scales is the same. The scales in question cannot be called identical as the minimum shows vast difference. It is, therefore, felt that it may, perhaps, be necessary to declare that the post of Inspector carries higher duties and responsibilities than Hindi Translator so that the benefit of fixation of pay under FR. 22(c) can be given to Shri R.S.Tiwari when he assumes charge of the post of Inspector."

It is the submission of the counsel for the applicant that although there is no formal reply to this letter but the fixation of the applicant has been done on his promotion from Hindi Translator to the post of Inspector under F.R. 22(c) and therefore the respondents have now no authority under law to cancel his fixation after 14 years.

5. The counsel for the applicant has also brought out that in an earlier case the Respondent No. 2, the Chairman Central Board of Direct Taxes has held that Supervisor Grade I scale Rs.700-900 is equivalent to that of Inspector for the purpose of fixation of pay in terms of FR 22(a)(ii).

Thus the pay scale of Rs.425-800 for Inspector and Rs.700-900 for Supervisor Grade I is treated as equivalent for the purpose of pay fixation in terms of Board's letter F.No.A-2601/145/76/AdIX dated 3.12.1976 (Ex.A-16). It is the argument of the counsel for the applicant that since Supervisor Grade I is treated as equivalent to the post of Inspector, post in the lower grades would be below to that of Inspector and therefore the post of Hindi Translator which was in the grade of Rs.550-800^{being lower than Supervisor Gr.I} would be considered lower than that of Inspector for the purpose of fixation of pay.

6. Counsel for the respondents on the other hand has argued that the pay of the applicant was wrongly fixed in 1979 and the respondents' administration has a right to correct the mistake which was made in 1979 when the mistake or error came to the notice of the administration in 1994. The counsel for the respondents has also argued that since the initial pay of the scale of Hindi Translator is more than that of initial pay of the post of Inspector, in fact, the post of the Inspector should be treated as lower post to that of Hindi Translator.

7. I have considered the matter. There is no doubt that reducing the pay of the applicant after about 14 years cannot be undertaking without giving an opportunity to the applicant to show cause and therefore the revision of the pay made by the respondents in terms of their letter dated 27.7.1993 cannot be sustained and is patently illegal. Normally, the respondents would have been permitted to give an opportunity to the applicant for showing cause and then after considering his representation would have been permitted to take a decision by giving a speaking order.

(D)

However, in the circumstances of this case when the revision of the pay has been made just three days before the retirement of the applicant, I am not inclined to permit the respondents to take this course of action. It has also been clearly brought out that the local administration at Bombay had referred the case of the applicant in 1979 by their letter dated 9.8.1979 (Ex. 'A-6') for declaring that the post of Inspector carries higher duties and responsibilities than Hindi Translator for enabling fixation of pay under FR.22(C) of the applicant.. The fixation of the applicant has been made thereafter, therefore, this cannot be treated as an error which is required to be corrected. By their letters dated 22.2.1994 (Ex. 'A-1') and dated 12.7.1993 (Ex. 'A-2') the respondents are in a way interpreting the rules as was done in 1979. I am also inclined to agree with the counsel for the applicant that there is sufficient material to show that the post of Inspector is an important post and the hierarchy of Income Tax department and its responsibilities are more than that of Hindi Translator or a Clerk. However, I am not inclined to give any ruling on this aspect as it is not necessary to do so for deciding this case. I am inclined to hold that the respondents have arbitrarily revised the pay fixation of the applicant and therefore the order issued by the respondents reducing the pay of the applicant vide (Ex. A-7) their letter dated 27.7.1993 is quashed. The respondents' letters dated 22.2.1994 (Ex. 'A-1') and dated 12.7.1993 (Ex. 'A-2') are also quashed. I further direct that the settlement dues of the applicant should be worked out as if the reduction in pay was not done in terms of

(M)

: 6 :

APL APL

27.7.793
letter dated 28.8.1979 (Ex. 'A-7'). The applicant
will be entitled to payment of the settlement dues
in terms of above directions along with the interest
payable as per rules for the delayed payment of his
settlement dues. There will be no order as to costs.

(P.P.SRIVASTAVA)
MEMBER (A)

mrj.