

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1043/97

Date of Decision : 25.2.2002

S.D.Panshikar Applicant

Shri P.A.Prabhakaran Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri V.D.Vadhavkar for Advocate for the
Shri M.I.Sethna Respondents

CORAM :

The Hon'ble Shri Justice Ashok C.Agarwal, Chairman

The Hon'ble Smt.Shanta Shastri, Member (A)

- (i) To be referred to the reporter or not ?
 - (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
 - (iii) Library ✓
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Shanta S.
(SMT.SHANTA SHASTRY)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1043/97

Monday this the 25th day of February, 2002.

CORAM : Hon'ble Shri Justice Ashok C.Agarwal, Chairman
Hon'ble Smt.Shanta Shastry, Member (A)

S.D.Panshikar,
Inspector of Income Tax,
under C.I.T.City-XIII,
O/o Tax Recovery Officer
Ward-17, 2nd Floor,
Room No.214, Aayakar Bhavan,
M.K.Road, Mumbai.

...Applicant

By Advocate Shri P.A.Prabhakaran

vs.

1. Union of India through
Chief Commissioner of Income-Tax,
3rd Floor, Aayakar Bhavan,
M.K.Road, Mumbai.
2. Commissioner of Income-Tax,
City-XIII, 4th Floor,
Aayakar Bhavan, M.K.Road,
Mumbai.
3. Dy.Commissioner of Income-Tax,
Range 17, 2nd Floor,
Aayakar Bhavan, M.K.Road,
Mumbai.

...Respondents

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna

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O R D E R (ORAL)

{Per : Smt.Shanta Shastry, Member (A)}

The applicant in this case joined as Lower Division Clerk in the Income Tax Department on 1.11.1968 and progressed in service as Upper Division Clerk w.e.f. 28.2.1972. He qualified in the Inspectors' Examination in July, 1980, was promoted as Tax Assistant w.e.f. 25.8.1981, as Head Clerk on 16.12.1993 and finally promoted as Inspector of Income Tax on 19.6.1997. As against this, one Shri M.S.Ganu joined the Department as LDC in 1969. Shri Ganu passed the Departmental examination for Income Tax Inspectors' in 1990. He was offered the post of Upper Division Clerk with Special Pay w.e.f. 24.4.1988 as he had passed the examination only partly. All along the applicant was senior and was in a higher post than Shri Ganu. Shri Ganu was further promoted as Tax Assistant on 1.5.1991 and as Head Clerk on 9.12.1994 and as Income Tax Inspector from 31.7.1998. Though Shri Ganu being junior to the applicant was promoted to all the higher posts later on than the applicant, Shri Ganu has been drawing more pay than the applicant. Shri Ganu's pay was fixed at Rs.1900/- w.e.f. 1.5.1991 as against the pay of Rs.1760/drawn by the applicant as on 1.1.1991 and the difference continued with the result that the applicant today is drawing only Rs.7775 as on 1.12.2001 whereas Shri Ganu is drawing Rs.7950/-, i.e. Rs.175/more than the applicant. The applicant is, therefore, seeking parity with Shri Ganu by stepping up his pay to the level at which Shri Ganu is drawing this pay.

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2. According to the applicant, Shri Ganu has been drawing more pay than the applicant because his pay has been fixed at every stage under F.R.22-C now F.R.22-1(a)(i). Since this is due to pay fixation in terms of F.R.22-1(a)(i), the applicant claims that he is also entitled to the same pay as his junior is drawing.

3. The applicant had made a representation to the respondents. However, his representation was rejected on 9.3.1997. It was further rejected on 1.9.1997 stating that the position has already been clarified to the applicant that there was no anomaly. According to the respondents, Shri Ganu's pay was fixed at Rs.1900/- on promotion as Tax Assistant w.e.f. 1.5.1991 merging the Special Pay of Rs.70/- which was drawn by him in the UDC cadre whereas in the case of the applicant, he has been directly promoted as Tax Assistant and his pay has been fixed at Rs.1750/- with his regular increment being in August. The difference in pay has arisen because of the Special pay drawn by Shri Ganu which has been taken into account and this is not due to anomaly and, therefore, the applicant is not entitled to stepping up of the pay.


4. The learned counsel for the applicant has drawn our attention to a similar matter which was discussed in OA.NO.435/94 and the OA, was allowed by this Tribunal by granting the stepping up of pay to the applicant therein. The applicant claims that he is similarly placed to the applicant in that OA. and therefore the judgement in that OA. applies to his case.

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5. The learned counsel for the respondents, however, produces another judgement in the case of Chief Commissioner of Income Tax (Administration), Bangalore vs. V.K.Gururaj & Ors. 1996 (33) ATC 269 decided on 22.1.1996 by the Supreme Court of India. In this case, Supreme Court has held that "Special Pay payable to a certain percentage of the posts of UDCs in the Secretariat and non-Secretariat administrative offices specified for discharging special duties - UDCs not discharging special duties, though seniors, held not entitled to such special pay". The UDCs who do not perform the special duties, though seniors, do not ipso facto get the same pay on the parity of equal pay due to juniors getting higher pay.' The Supreme Court held that the Tribunal was wholly incorrect in directing payment to all the persons who did not discharge such duties carrying special pay of Rs.35/- p.m. This covers up the disparity in the pay fixation of the applicant and that of Shri Ganu. Shri Ganu was getting Special Pay. The applicant was not getting such special pay whatever be the reason. Having counted the special pay Shri Ganu's pay was fixed at Rs.1900/- on his promotion as Tax Assistant w.e.f. 31.5.1991.

6. In our considered view, therefore, this is not a case of anomaly where stepping up of pay is called for. We, accordingly, do not consider it necessary to interfere with this ^{pay fixation} order. Accordingly, OA. is dismissed. No costs.


(SMT. SHANTA SHASTRY)
MEMBER (A)


(ASHOK C. AGARWAL)
CHAIRMAN

mrj.

dt: 25.2.2002.
Order/Judgement despatched
to Applicant/Interested (s)
on 7.3.2002.



CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

REVIEW APPLICATION NO.19/2002²
IN
ORIGINAL APPLICATION NO. 1043/1997

Date: 28-6-2002.

CORAM: HON'BLE SHRI JUSTICE ASHOK AGARWAL. CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

Shri S.D. Panshikar.

.. Applicant

Versus

M/o Finance & Others.

.. Respondents

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

The original applicant in OA No.1043/97 was decided on 25.02.2002, has filed the present review petition. The OA was rejected.

2. The ground taken by the applicant is that the OA was rejected on the basis of the decision of the Apex Court in Chief Commissioner of Income-tax (Administration) Bangalore Vs. v.K. Gururaj & Others (1996 (33) ATC 269). According to the applicant when the matter was being heard, the respondents produced a copy of the judgment. however, the matter was decided without providing an opportunity to the applicant to apply his mind to the said judgment with reference to the relevant OA out of which the SLP arose and thereafter, the applicant procured copy of the order on 08.3.2002 and after examining, he states that he came across two subsequent orders of the Apex Court wherein it was held that the senior applicants were entitled for


stepping up of their pay to the level of their juniors. The applicant's contention is that the later two decisions of the Apex Court are in consonance with the decision in the case of T.P. Shyamalan Vs. Union of India & Others decided on 30.01.1995 in OA No.435/94 (1995 (31) ATC 701) and relied upon by the applicant. According to the applicant, aforesaid development and the discovery of facts and legal position are in conformity with Order XL Rule 1 (b) of CPC and therefore he prays for review of the order dated 25.02.2002 in the OA.


3. We note that the ground taken by the applicant is solely that two later judgments of the Apex Court have favoured the applicant's case, whereas the Tribunal had relied on the earlier judgment of the apex Court. In our considered view, merely because the applicant had come across two later judgments of the Apex Court cannot be a ground for review. It only amounts to rearguing the case. It is not that the applicant had not cited any judgments in his favour. The Tribunal had taken a view. Just because it differs from the view taken in another case, it cannot be the basis for the review. Nothing prevented the applicant from producing those judgments at the time of hearing. The applicant is now trying to reargue his case on the basis of judgments which have come to his light after the judgment has been pronounced. The applicant also alleged that he was not given an opportunity to apply his mind to the decision

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of the Apex Court in Chief Commissioner of Income-tax, Bangalore. This again cannot be a reason for review as the judgment in this OA was pronounced in the open court. Therefore we do not find any reason to review our order dated 25.02.2002. Accordingly, the review petition is rejected.


(SMT. SHANTA SHASTRY)
MEMBER (A)


(ASHOK AGARWAL)
CHAIRMAN

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