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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD.

O.A.NO.158 of 1992.

Between

Dated: 15.2.1995.

Address Anthony

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Applicant

And

Union of India represented by:

1. Secretary, Ministry of Finance, Government of India, New Delhi.
2. Secretary, Central Board of Excise and Customs, New Delhi.
3. Collector of Central Excise, Hyderabad.

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Respondents

Counsel for the Applicant : Sri. K.S.R.Anjaneyulu

Counsel for the Respondents : Sri. N.R.Devaraj, Sr. CGSC.

CORAM:

Hon'ble Mr. A.V.Haridasan, Judicial Member

Hon'ble Mr. A.B.Gorthi, Administrative Member

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O.A. 158/92.

Dt. of Decision : 15-02-95.

ORDER

¶ As per Hon'ble Shri A.V. Haridasan, Member (Judl.) ¶

The applicant is a Superintendent of Central Excise and Customs in Hyderabad. On acceptance of recommendation of third pay commission, the Inspectors of Income Tax and Central Excise were given ^{the} pay scale of Rs. 425-800. The Income Tax Inspectors were given the higher pay scale of Rs. 500-900 with effect from 01-01-1980, pursuant to the award of the board of arbitration. When the Income Tax Inspectors were granted the higher scale the Inspectors of Central Excise and Customs made representation for extension of the same pay scale to them, on the ground that the duties and responsibilities of Income Tax Inspectors are comparable to that of the Inspectors of Central Excise and Customs and therefore there was no justification for not giving them the identical pay scale. Finding no favourable response to this representations some of the Inspectors of the Central Excise and Customs approached the High Court of Rajasthan filing a Writ Petition for extension of the benefit given to the Income Tax Inspectors in the matter of pay scale. This Writ Petition was transferred to the Jodhpur Bench of the CAT and was numbered TA. 609/86. The Tribunal after a careful consideration of the rival contentions in regard to the degree of duties and responsibilities of Inspectors of Central Excise and Customs and Income Tax Inspectors held that the Inspectors of Central Excise and Customs were also discharging duties which are as onerous as those of the Income Tax Inspectors and that there was no justification

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to them
in not granting the same pay scale of Rs. 500-900 as
given to the Income Tax Inspectors.

The Tribunal allowed
the application and directed the Government to extend to
the applicant the benefit of upgradation of the scale from
425-800 to 500-900 with effect from the same date as was
given to the Inspectors of Central Excise and Customs.
Pursuant to the above direction of the Tribunal, the
impugned order at Annexure-A-2 dated 27th August 1987
was issued whereby the benefit of upgradation of pay
scale from 425-800 to 500-900 was given to the Inspectors
of Central Excise and Customs with effect from 01-01-1980.
It was also stipulated in the above impugned order issued
in the name of the President that the fixation of pay for
such upgradation would be governed by FR 23 and Audit
Instructions No.1 under FR-22. The grievance of the
applicant is that by virtue of the stipulation that the
fixation of pay would be governed by audit instruction No.1
below FR-22 the applicant and similarly situated Inspector
of Central Excise and Customs would suffer a loss in as
much as their pay was to be fixed at a lower stage in the
pay scale and the difference to be made up by grant of
personnel pay. The applicant represented his grievance
and in reply to this representation he was told by the
impugned order Annexure-9, that the fixation of pay was
done strictly in accordance with the Presidential order
and therefore the applicant did not have any legitimate
grievance.

(16)

2. Under these circumstances the applicant has filed this application praying that the stipulation in the Presidential order at Annexure A-2 that the fixation of pay would be governed by audit instruction No.1 under FR-22 as well as impugned order at Annexure A-9 should be quashed and set aside in as much as it is against the principles of natural justice. It has been alleged in the application that while an employee should get a hike in emoluments on getting a higher pay scale on account of the audit instructions which is unconscionable, in the case of the applicant and similarly situated like him it resulted in a reverse effect.

3. The respondents in their reply, seek to justify the impugned orders on the ground that they are in full conformity with the Rules and Instructions.

4. We have perused the pleadings and material on record. We have also been taken through relevant provisions of the FRSR as also the Govt. of India instructions governing the subject. Shri Subramaniyam, learned counsel for the applicant invited our attention, to the government instructions under the FR 22 wherein having noted situation while coming over to a new scale by appointment from one post to an other without involving change of degrees of duties and responsibilities, there may be a situation where an employee suffers a dis-advantage in as much as while protecting the pay by grant of personnel pay he may lose the allowances attached to it. The government has decided that in such cases if the pay of the employee is not in a stage in the new pay scale his pay should be fixed at the next higher stage. Seeking support from the Govt. of India Instructions, Shri Subramaniyam with considerable tenability argued that the situation in the case before us is almost similar though not identical and that the same benefit should have been extended to the applicant and similarly situated. He argued that the audit instructions below FR 22 wherein it is stated

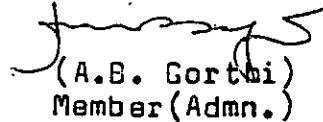
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Copy to:-

1. Secretary, Ministry of Finance, Government of India, Union of India, New Delhi.
2. Secretary, Central Board of Excise and Customs, New Delhi.
3. Collector of Central Excise, Hyderabad.
4. One copy to Sri. K.S.R.Anjaneyulu, advocate, CAT, Hyd.
5. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

that in such circumstances the pay should be fixed at the lower stage and the employee's pay ^{is} protected by grant of personnel pay is unconscionable. Shri N.R. Devaraj, learned counsel for the respondents on the other hand invited our attention F#-23 wherein it has been clearly provided that the employee concerned is entitled to opt to retain his old pay scale either until he acquired an increment or until he vacated the post and therefore there was no adverse Civil Consequences to the applicant and therefore there was no denial of principles of natural justice. He also argued that the government instructions under the FR 22a(ii) came into being only in the year 1986 and this cannot be extended to the period with effect from which the Inspectors of the Central Excise and Customs were given upgraded pay scale in the year 1980, while the rule position in such cases was that the pay had to be fixed at the lower stage and ^{above} loss of ~~any~~ compensated by grant of personnel pay. On a careful scrutiny of the rules position we find that the contention of the respondents is absolutely correct. The Govt. Instructions issued in the year 1986 would govern cases of fixation of pay on appointment after that date only. Since the applicant is claiming the benefit of the Presidential order by which a higher pay was given has to take the benefit as is given. However, we do not find any infirmity or illegality in the impugned order. Therefore, we find no merits in this application and we dismiss the same, leaving the parties to bear their own costs.


(A.B. Gorthi)
Member (Admn.)


(A.V. Haridasan)
Member (Judl.)

Dated : The 15th February 1995.
Dictated in Open Court.


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In the case for Benal
H.R.L.

Hm Mr. HAVH m (S)
Hm Mr. HABA. m (A)

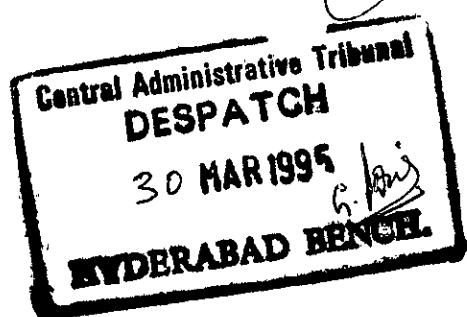
Judgement dt. 15/2/95

in

RA. 158292

OA. dismissed No order
as to costs.

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JL