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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 789 of 1995

DATE OF ORDER: 13th August, 1996

BETWEEN:

Bh. HARNADHA BABU .. Applicant

and

1. The Chief Commissioner of Income Tax,
Andhra Pradesh, Hyderabad,
2. The Accounts Officer,
Zonal Accounts Office,
Central Board of Direct Taxes,
Ayakar Bhavan, Hyderabad. .. Respondents

COUNSEL FOR THE APPLICANT: SHRI GVRS VARA PRASAD

COUNSEL FOR THE RESPONDENTS: SHRI N.V.RAMANA, ADDL. CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

JUDGEMENT

(AS PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Shri GVRS Vara Prasad, learned counsel for the applicant and Shri V.Rajeswara Rao for Shri N.V.Ramana, learned standing counsel for the respondents.

2. The applicant in this OA had joined the Department as Upper division Clerk on 27.7.68. He was promoted as Tax Assistant on 8.8.78 and as Head Clerk on 27.1.87. He was promoted as Inspector of Income Tax by the order dated 12.10.90 and he joined that post on



22.10.1990. His pay as Inspector of Income tax was fixed on the basis of his last pay drawn as Head Clerk following the extant rules viz, FR 22-C. In between the posts of Head Clerk and Inspector of Income Tax there is another category called Supervisor Grade-II. The applicant was promoted from the lower post of Head Clerk to the higher post of Inspector of Income Tax skipping the intermediate category of Supervisor Grade-II.

3. He compares his pay with that of Shri K.S.Prasada Rao in the category of Inspector of Income Tax, when both were working in that category. Shri KS Prasada Rao joined the Department as UDC on 16.10.68. He was promoted as Assistant on the same day as the applicant viz, 8.8.78. Shri Prasada Rao was further promoted to the post of Head Clerk with effect from 28.10.87 later than the applicant. The said Shri Prasada Rao was further promoted as Supervisor Grade-II on 6.10.90 and as Inspector of Income Tax on 7.1.91, later than the date of promotion of the applicant. The pay of Shri Prasada Rao was fixed in the category of Inspector of Income Tax on the basis of the last pay drawn by him as ~~Supervisor Grade-II~~ following the extant rules viz, FR 22-C. Shri Prasada Rao when promoted as Supervisor Grade-II, his pay was fixed taking his last pay drawn as Head Clerk following FR 22-C.

4. The grievance of the applicant is that Shri Prasada Rao is junior to him in all the categories right from the category of UDC. When he was promoted as Inspector of Income Tax later than the applicant, his pay



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was fixed at higher stage than the applicant. Hence his pay has to be stepped up to be on par with Shri Prasada Rao. The representation submitted by the applicant in regard to the above grievance was rejected by the respondents by the letter No.C.R.A/C.No.121(1)/368/91-92 dated 3.10.94 (Annexure-I) on the ground that "his junior was drawing more pay even in the category of Head Clerk and hence the anomaly did not arise only on account of the junior being promoted at each intermediate level".

5. Aggrieved by the above reply, he has filed this OA for stepping up of his pay on par with that of his junior Shri Prasada Rao in the category of Inspector of Income Tax with effect from 7.1.91 and for consequential benefits such as arrears of pay etc.

6. The only contention made by the respondents for denying him stepping up of his pay is on the ground that his junior was drawing more pay than him even as Head Clerk and hence he cannot be granted the stepping up of pay. It is further stated that the applicant has not given his option to come over to the 4th Pay Commission scales of pay from a date advantageous to him and in view of his non option, his pay was fixed in accordance with the rules which resulted in the applicant drawing less pay than his junior in the category of Supervisor Grade-II.

7. The learned counsel for the applicant filed a rejoinder and submit that he did give his option in time and it is not known why that option was not considered. Further he submits that the applicant did not work as Supervisor and if his junior is also promoted to the post of Inspector of Income Tax without working as Supervisor



grade-II, he would have also got the same pay as the applicant in the category of Inspector of Income Tax and hence the applicant is entitled for stepping up of pay.

8. The contention of the respondents is not very clear. They are not able to pin point in which category the applicant had not given option to come over to the 4th Pay Commission scales of pay which is advantageous to him. But it is a fact that the applicant has not worked even for a single day as Supervisor Grade-II. Hence the question of fixation of pay has to depend on the law in force and not on any other consideration. This view is being explained extensively below. In that view, the contentions in para 6 supra as indicated above do not have any significance and hence it is not necessary to further go into this contention.

9. The applicant was promoted to the post of Inspector of Income Tax from the grade of Head Clerk and his pay was fixed following the extant rules on the basis of the last pay drawn by him as Head Clerk. His junior was promoted as Supervisor from the post of Head Clerk and thereafter to the post of Inspector of Income Tax. Hence the pay of his junior was fixed in the category of Supervisor Grade-II on the basis of his last pay drawn as Head Clerk and thereafter in the category of Inspector of Income Tax on the basis of his last pay drawn as Supervisor Grade-II. It is evident from the above that the applicant had skipped the intermediate category of Supervisor Grade-II as he was promoted from the post of



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Head Clerk to the post of Inspector of Income Tax. As the applicant had not served as Supervisor Grade-II, he cannot ask for fixation of pay on the deemed notional promotion as Supervisor Grade-II when he was promoted as Inspector of Income Tax. As his junior was promoted from the post of Supervisor Grade-II and his pay was fixed on that basis, the applicant cannot claim higher fixation on par with his junior. The above view of mine is supported by the judgement of the Supreme Court reported in 1996(1) SLR 773 (Chief Commissioner of Income Tax (Administration), Bangalore v. V.K.Gururaj and others) : In that case the Supreme Court had held that if an employee has not worked in a seat which entitles him to get higher pay either special or otherwise, he cannot claim arrears of special pay in which he has not worked. In view of the above law of the Apex Court, the present case has to be decided expanding the judgement of the Supreme Court to a logical conclusion. In effect, the Supreme Court judgement means that the special pay, if not drawn and paid, cannot give any entitlement for higher fixation in the promoted cadre even if the juniors are drawing more pay than the applicant in the promoted cadre as the seniors were drawing special pay in the lower cadre. This view has been taken by this Bench in a similar OA 152/96 and batch (B.Kullayaswamy v. Secretary, Department of Posts and another) and in view of the above, I am convinced that the applicant cannot claim for any stepping up of pay.

10. The learned counsel for the applicant relies on the judgment of the Chandigarh Bench of this Tribunal



reported in (1995) 31 ATC 84 (O.P.Gupta v. Union of India). But the facts of that case are different from the facts of the present case. Hence this citation will not be of any assistance to the applicant. He also relies on the judgement of the Bombay Bench of this Tribunal reported in (1995) 31 ATC 701 (T.P.Shyamalan v. Union of India). Same citation was also quoted in OA 152/96 and batch for claiming similar relief. Since the judgement of the Bombay Bench of the Tribunal was earlier to the judgement of the Supreme Court, the judgement of Bombay Bench ~~fails~~ ^{fails} into ~~in~~ significance. Hence this citation also will not be of any assistance to the applicant.

11. The learned counsel for the applicant submits that the judgement of the Supreme Court in 1996(1) SLR 773 cited above is distinguishable, in that higher fixation was denied as the applicant therein had not secured special pay whereas in the present case the applicant though can be promoted as Supervisor was promoted to the post of Inspector of Income Tax as his turn had come for promotion to that grade even before he can be promoted as Supervisor Grade-II. Hence the present case is distinguishable and so he is entitled for stepping up in view of the Shyamalan's case referred in para 10 supra.

12. This contention as stated above cannot be sustained. The Apex Court judgement when taken to the logical conclusion will mean that no employee can request for higher fixation if he is not enjoyed actual pay



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fixation either in the lower grade or getting special pay. In that view, the present contention of the applicant cannot be upheld.

13. The learned counsel for the applicant submits that the instructions existed for stepping up in cases similar to the present one in the Department. Hence the applicant was legitimately expecting for stepping ^{up} of his pay on par with his junior when both were working in the cadre of Inspector of Income Tax. Such legitimate expectation cannot be deprived to the applicant. If such circular is not available, he would have asked for promotion to the post of supervisor and then to the post of Inspector of Income Tax.

14. The applicant is at liberty to refuse promotion to the post of Inspector of Income Tax without going through the grade of Supervisor Grade-II. But he accepted promotion to the post of Inspector of Income Tax as the pay differential between the post of Head Clerk and Inspector of Income Tax is more. Had he been promoted as Inspector of Income Tax from the category of Supervisor Grade-II, the pay difference is bound to be less. Further, the higher post of Inspector of Income Tax has a more aroma as compared to Supervisor Grade-II. When the rule laid down by the Apex Court is not in favour of such a stepping up, the executive instruction cannot over rule the law laid down by the Supreme Court. The legitimate expectation arises only when there is a positive rule to

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back him. Mere departmental executive instructions, ^{intention} ~~though~~ backed by proper rule in the rule book cannot give any employee the unintended benefit. Such expectation cannot be termed as legitimate but only as illusory. In the ^{direction} present case as the Supreme Court ^{is} contrary to the executive instruction of the Department, the executive instruction cannot be upheld. Under such circumstances, the question of legitimate expectation may not arise and even if it arises it will not be in order. Hence this contention is also rejected.

15. In view of what is stated above, the OA lacks merit and hence dismissed. No costs.

[Signature]
(R.RANGARAJAN)
MEMBER (ADMN.)

DATED: 13th August, 1996
Open court dictation.

Amrit 13/8/96
Dy. Registrar (3)

vsn

Copy to:-

1. The Chief Commissioner of Income Tax, A.P.Hyderabad.
2. The Accounts Officer, Zonal Accounts Office, Central Board of Direct Taxes, Ayakar Bhavan, Hyd.
3. One copy to Sri. G.V.R.S. Vara Prasad, advocate, CAT, Hyd.
4. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
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HYDERABAD BENCH HYDERABAD.

THE HON'BLE SHRI R. RANGARAJAN : M(EA)

DATED: 13/8/96

ORDER/JUDGEMENT

M.A. NO/R.A/C.A. NO.

R.A. NO.

IN

789/95

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDERS AS TO COSTS

No Spare Copy

केन्द्रीय प्रशासनिक अधिकार अधिकारी
Central Administrative Tribunal
प्रेसल/DESPATCH

28 AUG 1996 *NSB*

हैदराबाद अधिकारी
HYDERABAD 500 001, INDIA