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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.1050/96

Date of Order: 3.7.97

BETWEEN :

A.Rajamouli

.. Applicant.

AND

1. The Union of India, rep. by
the Secretary, Central Board
of Direct Taxes, North Block,
New Delhi - 110 001.

2. The Chief Commissioner,
Income Tax, A.P.,
Ayakar Bhavan, Basheerbagh,
Hyderabad.

3. The Income Tax Officer,
Ward-I, Karimnagar.

4. U.L.Ganapathi .. Respondents.

Counsel for the Applicant .. Mr.S.Ramakrishna Rao

Counsel for the Respondents .. Mr.V.Bhimanna

CORAM :

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

JUDGEMENT

X Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) X

None for the applicant. Heard Mr.V.Bhimanna, learned
standing counsel for the official respondents. Notice has
served on R-4, but R-4 did not appear.

2. The applicant in this OA is senior to R-4 in the
cadre of IDC and UDC. This fact has been admitted even
by the respondents. The applicant was promoted as Tax
Assistant on 7.1.91 and R-4 his junior was promoted to
that cadre on 10.10.91. The pay of the applicant on his
promotion as Tax Assistant was fixed at the stage of Rs.1530/-



.. 2 ..

whereas the pay of the junior namely R-4 was fixed at the stage of Rs.1720/- on his promotion as Tax Assistant on 1.10.91. The applicant submits that his pay was fixed lower than that of his junior R-4 as R-4 was drawing special pay of Rs.70/- while working as UDC, Whereas he was promoted to the post of Tax Assistant even before granting him the special pay of Rs.70 while working as UDC. He now submits that he should be given the notional special pay and on that basis his pay should be fixed in the cadre of Tax Assistant on par with his junior when that junior was drawing more pay in the cadre of Tax Assistant. The applicant further submits that the above is in accordance with the circular of the department dt. 4.12.89. *Creating his demand* He also submits that he fulfills the letter dt. 1.12.94 for stepping up of pay as prayed for in this OA. The applicant submitted a representation dt. 22.12.96 for stepping up of *was rejected* his pay. That representation by letter No.121(1)/P-451/96-97 dt. 4.4.96 (A-1).

3. This OA is filed praying for a direction to the respondents to pay the applicant as Tax Assistant giving notional benefit of special pay of Rs.70/- as his junior was allowed this benefit with all the consequential benefits.

4. As per the memo dt. 4.4.96 the case of the applicant for stepping up of pay on par with R-4, his junior was rejected as there was no anomaly for removal in as much as R-4 was drawing more pay i.e. Rs.404/- then the applicant due to grant of 2 advance increments to R-4 for passing *ITT* examination from 10.6.83. From the above memo it appears that R-4 was ~~his~~ junior to the applicant was drawing more pay than the applicant when R-4 was promoted as Tax Assistant on two counts.



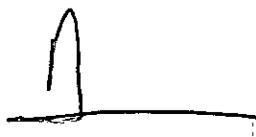
(1) R-4 was granted 2 advance increments for passing ITI examination from 10.6.83.

(2) R-4 was granted the special pay of Rs.70/- while working as UDC before his promotion to the post of Tax Assistant.

5. A reply has been filed in this OA. The whole reply deals with why his pay cannot be stepped up granting him the notional special pay of Rs.70/- in the lower grade of UDC. A passing reference has been made in the reply that the applicant cannot demand higher fixation as his junior was granted 2 advance increments while serving as UDC. The memorandum dt. 4.4.96 mainly states that the applicant cannot get the stepping up of pay as his junior was drawing more pay due to grant of 2 advance increments. This letter dt. 4.4.96 does not talk about the special pay of Rs.70/- enjoyed by R-4 while working as UDC which resulted in higher fixation of pay in the grade of Tax Assistant. Hence in my opinion the reply has not been prepared with due care. Such carelessness in my opinion has to be avoided by the respondents.

6. Coming to the case it is a settled principle that if the junior is drawing more pay in the lower grade due to grant of advance increments and similar other reasons, ^{then} the senior cannot ask for stepping up of pay. As R-4 was drawing more pay in the cadre of UDC due to grant of 2 advance increments the applicant cannot ask for stepping up of pay on that count. Hence the first reason for grant of stepping up of pay as indicated above is to be rejected.

7. The second reason is that the applicant was promoted to the post of Tax Assistant before ^{his promotion he was drawing} special pay of Rs.70/-, Whereas R-4 was promoted to the post of Tax Assistant when he was getting the special pay of Rs.70/- while working as UDC.



.. 4 ..

Whether the applicant should also be granted notionally the special pay in the grade of UDC and then his pay should be fixed on that basis in the grade of Tax Assistant. ^{in a point for consideration} The Apex Court in the reported judgement in Chief Commissioner of Income Tax v. V.K.Gururaj 1996 (33) ATC 269 (SC) had held that the special pay cannot be granted if an employee has not discharged the onerous ^{and} harduous nature of duties. On the basis of that this Tribunal had decided number of cases earlier that an employee cannot ask for notional fixation in the higher grade on par with his junior if the pay of the junior was fixed higher ~~grade~~ when promoted ~~is~~ taking into account the special pay drawn by the junior in the lower grade. In the present case the applicant was not granted the special pay as he had not discharged the onerous duties while working as UDC. Whereas his junior R-4 performed the harduous nature of duties while working as UDC and that helped him to get higher fixation when he was promoted as Tax Assistant. Hence the applicant cannot claim notional fixation of ^{his} special pay as UDC ^{keeping into account the special pay} and then refix his pay in the Tax Assistant grade on that basis as he has not discharged the harduous nature of duties in the cadre of UDC to claim the special pay. Hence the second reason for higher fixation is also to be rejected.

8. In the result I find no merits in this OA. Hence the OA is dismissed. No costs.

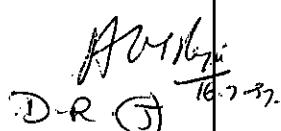

(R. RANGARAJAN)

Member (Admn.)

Dated : 3rd July, 1997

(Dictated in Open Court)

sd


D.R. (G) 16.7.97

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Copy to:

1. The Secretary,, Central Board of Direct Taxes,
North Block, New Delhi.
2. The Chief Commissioner, Income Tax, Ayakar Bhavan,
Basheerbagh, Hyderabad.
3. The Income Tax Officer, Ward-I, Karimnagar.
4. One copy to Mr.S.Ramakrishna Rao, Advocate,CAT,Hyderabad.
5. One copy to Mr.V.Shimanna, Addl.CGSC,CAT,Hyderabad.
6. One copy to D.R(A),CAT,Hyderabad.
7. One duplicate copy.

YLKR

25/7/97

(2)

HYDERABAD

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD

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

AND

THE HON'BLE SHRI B. S. JAI PARAMESHWAR: M
(J)

DATED

3/7/97

ORDER/JUDGEMENT

No. 1/R.A/C.A. NO.

D. 3. int. 1050/96

Admitted and Interim directions

Issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered Rejected.

No order as to costs.

YK/R

II Court.

केन्द्रीय प्रशासनिक विधिकरण
Central Administrative Tribunal
प्रेषण/DESPATCH

24 JUL 1997

हैदराबाद न्यायालय
HYDERABAD BENCH