

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH  
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No. 180/2005

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SECTION OFFICER (JUDI.)

*B. Lalit*  
03/04/2008

FORM NO.  
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 180/05

Misc. Petition No. \_\_\_\_\_

Contempt Petition No. \_\_\_\_\_

Review Application No. \_\_\_\_\_

Applicant(s): N.C. Kar Pinkayamha

Respondent(s): M.U. Ahmed

Advocate for the Applicant(s): B. Bhattacharjee, M. Chanda, S. Nath

Advocate for the Respondent(s): Addl.Case M.U. Ahmed

Notes of the Registry. Date.

Order of the Tribunal

This application is in form  
is filed/ S. F. No. 134/05/  
deposited in PO/BD  
No. 2006/134/692.

Dated 30.6.05

1.7.05

Heard Mr. M. Chanda, learned Counsel  
for the applicant and Mr. M. U. Ahmed,  
learned Addl. C.G.S.C for the respon-  
dents.

Application is admitted. Issue  
notice to the respondents.  
Post on 4.8.05 for order.

Steps taken

pg

4.8.05

Post the matter on 8.8.05.

Chanda  
Member

Chanda  
Vice-Chairman

Not filing by the  
date of date by the applicant  
and so on

30.6.05

1m

6.9.2005

Mr. M. Chanda, learned counsel  
for the applicant is present. Mr. M.  
U. Ahmed, learned Addl. C.G.S.C.  
seeks time for filing written  
statement. Post on 07.10.2005.

mb

Notice & order  
dt. 1/7/05, sent to  
D/Section for  
issuing to resp.  
Nos. 1 to 4 by regd.  
A/D post. 1/105

Chanda  
Vice-Chairman

7.10.2005

Mr. M. Chanda, learned counsel

D/No-1130 to  
1133.  
Dt. 14/7/05.

for the applicant is present. Mr. M. U. Ahmed, learned Addl. C.G.S.C. submits that some more time is required for filing written statement.

Post on 14.11.2005.

① Service report are still awaited.

My  
3.8.05

Member  
Member

2/1/05  
Vice-Chairman

bb

14.11.2005

Mr. S. Nath, learned counsel

for the applicant is present. Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that some more time is required for filing written statement. Post on 15.12.2005.

No. W/Ls has been  
filed.

My  
6.10.05

mb

2/1/05  
Vice-Chairman

11-11-05

① Service report are still awaited.  
② No. W/Ls has been filed.

My  
14-12-05

bb

No. written statement has been filed.

My  
14-12

17-1-06

No. W/Ls has been  
filed.

My

No. W/Ls has been  
filed.

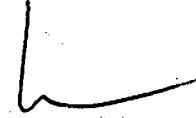
mb

2/1/06  
Vice-Chairman

Present : Hon'ble Sri K.V. Sridhara Sachidanandan, Vice-Chairman, Mr. M.U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that he will file statement of compliance. Post on 22.02.2006.

22.2.2006 When the matter came up Mr.M.U. Ahmed, learned Addl.C.G.S.C. submits that orders have already been complied with. Mr.S.Nath, learned counsel for the applicant submits that he would like to take instruction on the matter. Let it be done. Post on 13.3.2006.

9 - 3 - 06  
No W/B has been  
billed.

  
Vice-Chairman

bb

13.03.2006 Present : Hon'ble Sri K.V. Sachidanandan  
Vice-Chairman.

The claim of the applicant is for granting the benefit of stepping up of pay at par with his juniors. The matter was admitted on 01.07.2005.

When the matter came up for hearing, Mr.M.U. Ahmed, learned Addl. C.G.S.C. for the respondents submits that he has got instructions from the respondents that the relief has been granted to the applicant vide order dated 13.09.2005. Mr. M. Chanda, learned counsel for the applicant submits that he is fully convinced about the said order. However, liberty may be granted to the applicant to approach the appropriate forum, if the petitioner has any further grievance.

Recording the said submissions and keeping the order dated 13.09.2005 on record, this Court is of the view that the O.A. has to be dismissed. Accordingly, the O.A. is dismissed with liberty to the applicant to approach the appropriate forum, if the applicant has any further

Contd/-

Contd/-

13.03.2006 grievance.

The O.A. is dismissed. In the circumstances, no order as to costs.

21.3.06

Vice-Chairman

/mbj

Copy of the order  
has been sent to  
the office for it to  
be sent to the  
applicant as well  
as to the Addl. C.G.S.C.  
for the Respsn.

Ans  
W 21/3/06

30 JUN 2005

Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

O.A.No/ 180 /2005.

Sri N.G. Kar Purkayatha

-Versus-

Union of India and Others.

List of dates and synopsis of the case

05.05.1970      Applicant on promotion to the cadre of Inspector, who was getting less pay than his junior Sri B.B.Das in the cadre of Inspector in the Department of Income Tax. This anomaly with respect to the junior arose as a result of application of F.R 22- in the fixation of his pay on his promotion to the grade of Inspector.

01.02.1986      Applicant retired on superannuation, he was senior to Shri Shantimoy Bhattacharjee and Sri B.B.Das, the then Inspectors, Shri Bhattacharjee was senior to Sri B.B.Das in the cadre of Inspector but Sri Bhattacharjee was also drawing less pay i.e Rs. 290/- Whereas Sri B.B.Das junior to Shri Bhattacharjee was drawing pay of Rs. 365/- on 05.05.1970, applicant is also similarly circumstanced and victim of the pay anomalies.

12.11.1996      By the judgment and order dated 12.01.1996 passed in O.A. No. 22 of 1994, which was filed by Shri S.M.Bhattacharjee for stepping up of his pay at par with his junior was decided by this learned Tribunal in favour of Sri S.M.Bhattacharjee.

26.2.2000      Applicant submitted detailed representation claiming stepping up of pay at par with Sri B.B.Das, the then junior to the applicant.

11/16<sup>th</sup> July, 2001      By the letter dated 11/16<sup>th</sup> July 2001, the claim of the applicant for stepping up pay of pay is denied to the applicant on the ground that,

DOPT have opined that it is not obligatory on the part of the Govt. to extend the benefit of a judgment given in favour of the similarly situated persons.

26.5.04, 18.9.04, 21.11.04 The applicant again submitted representations claiming stepping up of pay as well as refixation of his pay in the light of the direction contained in the judgment referred above but the same are still pending with the respondents. Hence the present application for redressal of his grievances.

### PRAYERS

1. That the Hon'ble Tribunal be pleased to direct the respondents to grant stepping up of pay at par with Shri B.B.Das junior to the applicant in the light of the decision rendered by this Hon'ble tribunal dated 12.01.1996 in OA.No 229/94 with all consequential benefits including difference of pay and arrear benefits and other retirement benefits.
2. That the Hon'ble Tribunal be pleased to direct the respondents to re-fix the pay and the pensionary benefits of the applicant in terms of prayer no. 8.1.
3. Costs of the application.
4. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

#### Interim order prayed for:

During pendency of his application, the applicant prays for the following interim relief:-

1. That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this application shall no be bar for granting the reliefs to the applicant prayed for.

\*\*\*\*\*

31.06.2005

Guwahati Bench  
Guwahati Bench

Filed by the applicant  
through  
Subroto Naskar  
30/6/05

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

**GUWAHATI BENCH: GUWAHAI**

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the case : O.A. No. 180 /2005

Sri N.G.Kar Purkayastha. : Applicants

- Versus -

Union of India & Others : Respondents.

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04.	2	Copy of the Representation dated 26.02.2000.	
05.	3	Copy of Reply dated 16.7.01/27.7.01	
06.	4	Copy of the representation 26.5.04.	
07.	5	Copy of the reminders dated 189.2004.	
08.	6	Copy of the reminders dated 189.2004.	
09.	7	Copy of the judgment dated 21.8.1995.	

Filed by

Date

Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH : GUWAHATI

*(An Application under Section 19 of the Administrative Tribunals Act, 1985)*

O.A. No. 180 /2005.

**BETWEEN**

Shri N.G. Kar Purkayastha  
Retd. Income Tax Officer, Group-A,  
Giribala Kutir,  
2<sup>nd</sup> Link Road (Main)  
Silchar – 788 006.  
Cachar, Assam.

----- **Applicant.**

**AND –**

- 1) The Union of India,  
Through Central Board of Direct Taxes,  
(Represented by it's Chairman)  
Department of Revenue  
Ministry of Finance,  
New Delhi – 110 001.
- 2) The Commissioner of Income Tax  
Shillong – 793 003.
- 3) Deputy Secretary to the Govt. of India,  
Ministry of Finance,  
Department of Revenue,  
Central Board of Direct Taxes  
New Delhi.
- 4) Zonal Accounts Officer,  
Central Board of Direct Taxes,  
Dhanketi, Shillong – 793 003.

----- **Respondents.**

Shri N.G. Kar Purkayastha

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Moni Gopal Baruah  
Secretary

(2)

## **DETAILS OF THE APPLICATION**

1) **Particulars of order(s) against which this application is made.**

This application is made praying for a direction upon the respondents for granting the benefit of stepping up of pay to the applicant at par with his juniors namely; Shri S.M. Bhattacharjee and Shri B. B. Das in the grade of Inspector of Income Tax under the charge of Commissioner of Income Tax NER Shillong in the light of Board's circular F.No. B12014/5/92/Ad 1/x dt. 13.5.92 and subsequent clarification of even No. dated 9.3.93 and also in the light of decision and direction contained in the order dated 12.01.1996 passed in O.A. No. 229 of 1994. (Shri Shantimay Bhattacharjee – Vs – Union of India & Ors.) by the Hon'ble Administrative Tribunal, Guwahati Bench and also praying for a declaration that the Memo No. E—20/2000-2001/Pt-11/551-552 dt. 27.7.01 issued to the Applicant by the Commissioner of Income Tax forwarding a copy of Ministry of Finance letter No. F. No. A-26017/25/99-Ad-IX dated 11/16<sup>th</sup> July, 2001 is void ab initio and further be pleased to declare that the applicant is entitled to stepping up of pay at par with juniors in the grade of Inspector of Income Tax as on and from 5.5.70 and refixation of his pay in different grades thereafter with all consequential pay benefit including arrear monetary benefit and retirement benefits.

2) **Jurisdiction of the Tribunal.**

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3) **Limitation**

The applicant further declares that this application is filed within the period of limitation prescribed under Section – 21 of the Administrative Tribunals Act, 1985.

(3)

4) **Facts of the Case.**

4.1. That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2. That your applicant has retired from service as Income Tax Officer on 01.02.1986 on superannuation. The applicant while serving as Inspector of Income Tax in C.I.T's Charge, North Eastern Range, Shillong, one Shri B.B. Das, Inspector of Income Tax, who was junior to the applicant in the grade of Inspector was drawing pay of Rs. 365 per month on 5.5.70 on his promotion as Inspector whereas the applicant was drawing pay of Rs. 290 per month on that day i.e. on 05.05.1970 resulting in an anomaly in the pay of the applicant with respect to his Junior Shri B.B. Das. This anomaly with respect to the junior arose as a result of application of F.R. 22-C in the fixation of his pay on his promotion in the grade of Inspector after getting promotions in the intermecliary grades of Head Clerk and Supervisor.

4.3. That it is stated that Shri Shantimay Bhattacharjee, the then Inspector of Income Tax department junior to the present applicant was a victim of similar circumstance as because, said Shri Shantimay Bhattacharjee was drawing less pay of Rs. 290/- on 05.05.1970 but his junior namely Shri B.B. Das was drawing pay of Rs. 365/- per month. The difference of pay between Shri Shantimay Bhattacharjee with his junior Shri B.B. Das cropped up on 0.5.05.1970 i.e. when Shri B.B. Das was promoted to the post of Inspector. In this connection it may be stated that the present applicant infact was senior to Shantimay Bhattacharjee as well as Shri B.B. Das and was also a victim of the pay anomalies in the same manner with respect to the pay of Shri B.B. Das, junior to the present applicant.

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of our local New Zealand

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Manuscript ver  
Drafting of the

(4)

4.4. That it is stated that Shri Shantimay Bhattacharjee became entitled to stepping up of his pay to Rs. 365/- per month at par with Shri B.B. Das and consequential fixation as per the decision of CAT, Guwahati Bench dt. 12.1.96 (Shri S.M. Bhattacharjee V Union of India & Others (O.A. No. 229 of 1994). As the case of the applicant is similar to that of Shri S.M. Bhattacharjee, the applicant's case is fully covered by the ratio of the said decision of Hon'ble Central Administrative Tribunal which was rendered after examining and applying the instructions contained in Board's Circular F. No. 12014/5/92/Ad IX dt. 13.5.92 and subsequent clarification of even No. dated 9.9.93.

A copy of the judgment and order dated 12.01.96 passed in O.A. No. 229/94 is enclosed herewith for perusal of Hon'ble Tribunal as Annexure-I.

4.5. That your applicant being similarly circumstanced submitted a detailed representation on 26.02.2000 addressed to the Commissioner of Income Tax, Shillong. In the said representation the applicant inter alia prayed for stepping up of his pay at par with Shri B.B. Das, the then Inspector and pointed out the anomaly which resulted w.e.f. 05.05.1970 due to fixation of pay of Shri B.B. Das on promotion to the grade of Inspector whose pay was fixed at Rs. 365/- per month whereas on the relevant date the applicant was drawing the pay of Rs. 290/- per month. The applicant also pointed out the decision rendered by this Hon'ble Tribunal on 12.01.1996 in similar facts and circumstances in the case of Shri Shantimay Bhattacharjee – Vs. - Union of India & Others (O.A. No. 229/94).

Plaintiff's Special Leave Petitioners/10  
Plaintiff's Special Leave Petitioners/10

(5)

4.6 That another retired I.T.O. Shri Guru Saday Datta Choudhury being similarly circumstanced filed a representation to the Central Board of Direct Taxes, through the Commissioner of Income Tax, Shillong praying for stepping up of his pay with respect to Shri B.B. Das. This representation was however turned down by the Board and this was communicated to the Commissioner of Income Tax, Shillong under Board's F.No. 26017/25/99-Ad. IX dt. 11/16<sup>th</sup> July, 2001. Wherein it was stated that the anomaly in the fixation of pay has been considered in consultation with the D.O., P & T who have opined that it is not obligatory on the part of Government in terms of the judgment to extend the benefits given to the petitioner to the other employees who are similarly placed. A copy of Board's letter dt. 11/16<sup>th</sup> July, 2001 issued to the Commissioner of Income Tax, Shillong was forwarded by the Commissioner of Income Tax, Shillong both to Shri Guru Saday Dutta Choudhury and to the Applicant under his Memo No E-20/2000-2001/Pt-II/551-552 dt. 27.7.01 which was received by this Applicant on 3.8.01 when the Applicant was lying bed ridden due to internal bleeding from a Polyp that had grown in his colon.

Copy of representation dated 26.02.2000 and reply dated 16.7.01,  
27.7.01 are enclosed herewith for perusal of the Hon'ble Tribunal as Annexure – 2~~13~~ and 3 respectively.

4.7 That it is further stated that when the respondents accepted that the applicant is similarly situated like that of Shri Shantimay Bhattacharjee, the then Inspector of Income Tax who was granted the benefit of stepping up at par with Shri B.B. Das by way of refixing the pay but the said benefit is denied to the applicant only on the ground that the applicant did not approach the learned Tribunal and failed to obtain an order like that of

Vani Gopal Var Gulyanagar

(6)

Shri Bhattacharjee, such attitude of the respondent department is highly arbitrary, unfair and illegal. Moreover, the respondent department cannot compel an employee to approach the court of law who is otherwise entitled to the benefit of stepping up of pay at par with his junior Shri B.B. Das and when such an identical issue has been approved by a competent court of law like that of learned Central Administrative Tribunal, the Government cannot deny the said benefit to a similarly situated employee and on that score alone the letter dated 11/16.07.01 is liable to be declared void.

That it may be submitted that though the Board had sent the communication to the Commissioner of Income Tax in disposing of the representation of another applicant namely Shri Guru Saday Dutta Choudhury, the Commissioner of Income Tax simply forwarded a copy of that letter to the present applicant without any reference to the representation earlier filed by the applicant before the Commissioner of Income Tax, Shillong. At that stage the applicant's representation was pending before the Commissioner and not before the Board. The Board therefore had no occasion to consider the case of the petitioner. The applicant in his representation had relied on Board's standing circular dt. 13.5.92 and clarification dt. 9.3.93 and CAT's Order dated 12.1.96 in O.A. No. 229 of 1994 which was also rendered after examining the applying the Board's Circular letter F. No. 12014/5/92/Ad IX dt. 13.5.92 and subsequent clarification of even No. dt. 9.3.93. But in the said reply nothing was stated as to why Board's own instructions could not be followed in the case of this applicant.

(7)

4.8 That the Applicant filed representation before the Central Board of Director Taxes dated 26.5.04 narrating details of the circumstances and facts leading to the anomaly in his case with respect to the cases of two of his juniors namely Shri Shantimay Bhattacharjee and B.B. Das in the grade of Inspector of Income Tax and praying for removal of the same in view of Board's own circulars mentioned above and the ratio of order passed by the Hon'ble Central Administrative Tribunal, Guwahati, Bench dt. 12.1.96 in O.A. 229 of 1994 in the case of Shri Santimay Bhattacharjee Vs. Union of India & Others by passing suitable orders on review of the whole matter stepping up the pay of the Applicant as on 5.5.70 (dt. Of promotion of Junior Shri B.B. Das) to 365 in the grade of Inspector of Income Tax and for refixation of pay in different grades thereafter and also for refixation of Pension and payment of arrears and other retirement benefits. No reply to this representation has been received yet by the applicant. Thereafter the applicant successively sent reminders dt. 18.9.04 and dt. 21.11.04 but the matter is still pending.

[ Copy of Representations dt. 26.5.04 & reminders dt. 18.9.04 and 21.11.04 are enclosed for kind perusal of Hon'ble Tribunal as Annexures  
<sup>4, 5 & 6</sup>  
<sup>5 & 6 & 7</sup> respectively]

The detailed particulars how the applicant is entitled to the benefit of stepping up of pay is given below for perusal of Hon'ble Tribunal :

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(8)

EVENTS	N.G. KAR PURKAYASTHA	S. M. BHATTACHARJEE	B. B. DAS
Date of appointment as L.D.C.	--	--	09.02.1956
Date of appointment /promotion as U.D.C.	20.06.1955, Pay Rs. 80/-	08.11.1957, Pay Rs. 80/-	30.10.1960, Pay Rs. 80/-
Date of promotion as H.C.	--	19.06.1967	04.06.1965
Date of promotion as Supervisor.	--	--	08.12.1969
Date of promotion as Inspector.	23.05.1963, Pay Rs. 210/-	11.11.1969, Pay Rs. 250/-	05.05.1970, Pay Rs. 365/-
Pay on removal of anomaly as per CAT's Order on refixation equal to pay of Shri B.B. Das on 05.05.70.	--	05.05.70 Stepped up pay Rs.365/-	
Pay of N.G. Kar Purkayastha on 11.11.69.	Rs. 290/-		
Pay of N.G. Kar Purkayastha on 05.05.1970.	Rs. 290/-		

On a mere perusal of the above particulars it is evident that the applicant is entitled to stepping up of his pay at par with his junior Shri B. B. Das and Shri S. M. Bhattacharjee. Therefore the Hon'ble Tribunal be pleased to direct the respondent to grant the benefit of stepping up of pay to the present applicant.

4.9 That it is stated that due to non-consideration of stepping up of pay of the applicant, he is incurring financial loss in each day, every month and as such denial of benefit of stepping up of pay gives rise to a continuous cause of action and as a result the applicant is incurring financial loss even in his monthly pension, therefore the application is well within the period of limitation. More so, void order dated 11/16.07.2001 has no force in the eye of law. Applicant relied on the Judgement and Order dated 21.8.95 in Civil Appeal No. 7510 of 1995. A copy of the Judgement is enclosed as Annexure - 7.

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(9)

4.10 That your applicant further begs to say that he has fulfilled all the criteria for grant of benefit of stepping up of pay as contained in the relevant circulars of Central Board of Direct Taxes.

4.11 That your applicant is a retired government employee and as such could not approach the Hon'ble Tribunal immediately after receipt of the letter dated 11/16.07.2001 due to financial constraint and also due to his ailments, the applicant was under the impression that he would be given a fair treatment by the respondent department by granting the benefit of stepping up of pay at par with his junior Shri B.B. Das in the light of decision of this Hon'ble Tribunal dated 12.01.1996 passed in O.A. No. 229/94.

4.12 That this application is made bonafide and for the cause of justice.

5) **Grounds for relief(s) with legal provisions.**

5.1 For that, the applicant is similarly situated like Shri Santimay Bhattacharjee the then Inspector of Income Tax and as such entitled to the benefit of stepping up of pay at par with his junior Shri B.B. Das in the light of the decision rendered by this Hon'ble Tribunal on 12.01.96 passed in O.A. No. 229/94.

5.2 For that, denial of benefit of stepping up of pay to the applicant, when the same was granted to the similarly situated employee Shri Santimay Bhattacharjee, the then Inspector is highly unfair and the action of the respondents is in violation of Article 14 of the Constitution of India.

5.3 For that, non-consideration of stepping up of pay is causing irreparable financial loss to the applicant in each and every month and due to inaction of the respondents, the applicant is also getting lesser amount of pensionary benefit.

Original Appeal Writ Petition as The  
None Served in the days of the

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5.4 For that, applicant fulfilled all requirements for grant of stepping up of his pay with respect to his juniors as contained in relevant provision of F.R. 22 and the circulars of the Central Board of Direct Taxes dt. 13.5.92 and dt. 9.3.93 in this regard.

6) **Details of remedies exhausted.**

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7) **Matters not previously filed or pending with any other Court.**

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8) **Relief(s) sought for :**

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the Hon'ble Tribunal be pleased to direct the respondents to grant stepping up of pay at par with Shri B.B. Das junior to the applicant in the light of the decision rendered by this Hon'ble Tribunal dated 12.01.1996 in O.A. No. 229/94 with all consequential benefits including difference of pay and arrear monetary benefits and other retirement benefits.

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(11)

8.2 That the Hon'ble Tribunal be pleased to direct the respondents to re-fix the pay and the pensionary benefits of the applicant in terms of prayer No. 8.1.

8.3 Costs of the application.

8.4 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9) **Interim order prayed for :**

During pendency of this application, the applicant prays for the following interim relief :-

9.1 That the Hon'ble Tribunal be pleased to direct the respondents that pendency of this application shall not be a bar for granting the reliefs to the applicant prayed for.

**This application is filed through Advocates.**

11) **Particulars of the I.P.O.**

i) I.P.O. No.	:	20 G J 34565
ii) Date of Issue	:	29.6.05
iii) Issued from	:	GPO, Guwahati
iv) Payable at	:	GPO, Guwahati

**List of enclosures :**

*As given in the index.*

(12)

**VERIFICATION**

I, Shri Mani Gopal Kar Burkayastha S/O Late  
Srish Chandra Kar Burkayastha aged about  
77 years, retired Income Tax Officer, resident of Giribala Kutir,  
2<sup>nd</sup> Link Road, Silchar – 6, Cachar, Assam, do hereby verify that the  
statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge  
and those made in Paragraph 5 are true to my legal advice and I have not  
suppressed any material fact.

And I sign this verification on this the 13<sup>th</sup> day of May,  
2005.

Mani Gopal Kar Burkayastha

CE. RAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.229 of 1996

Date of Order : This the 12th Day of January, 1996.

Smti C.L. Sanglyine, Member (Administrative).

Smti Santimoy Bhattacharjee,  
retired Assistant Commissioner of Income Tax,  
son of late Upendra Chandra Bhattacharjee,  
C/O Mahesh,  
Laitumkhrah, Shillong.

Applicant.

By Advocate Smti J.L. Sarkar, M.Chanda.

- Versus -

1. Union of India,  
Through Central Board of Direct Taxes,  
(Represented by its Chairman)  
Department of Revenue,  
Ministry of Finance,  
New Delhi.

2. Commissioner of Income Tax,  
C.B.D.T.O., Diankheti,  
Shillong-793003.

3. Zonal Accounts Officer,  
Central Board of Direct Taxes,  
Diankheti, Shillong-793003.

4. Smti H.B. Das,  
Asstt. Commissioner of Income Tax,  
Madras.

Opponent.

By Advocate Smti O. Sarma, Addl.C.O.S.C.

ORDER.

O.L.SANGLYINE, MEMBER (A)

The Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes issued the Circular  
Excerpts dated 10.5.1992 which is as below :

"I am directed to refer to the Board's letter F.No.110/32/71-A/1, dttd 12.6.1975 and F.No.A-26017/173/79-A/1, IX dated 27.11.1981 on the above subject and to state that the question of removal of anomaly in the fixation of pay where a junior person on his promotion as Income Tax Inspector gets higher pay than a senior person, because of the application of FIT-22(C) on his promotion at each intermediate level, has been considered in consultation with the Department of Personnel and Training. In supersession

Intd. 2...

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for  
Advocate

of all the previous instructions issued on this subject, it has been decided that such anomaly in fixation of pay may be removed by stepping up the pay of a senior person equal to the level of junior person provided - (a) the concerned junior should have been qualified fully for the post of Inspector at the time when the senior is promoted directly as Inspector and (b) the junior should have been promoted in the intermediate grades in the intervening period.

2. You are requested to remove the anomaly in the fixation of pay in the type of cases referred to above accordingly.

3. This issues with the concurrence of Department of Personnel & Training vide their U.O. Note No. 719/92-Pay.I dated 22.4.1992."

2. On 7.8.1992, long before his superannuation on 31.7.1993, the applicant submitted to the Commissioner of Income Tax, North Eastern Region, Shillong under whom he was serving a fax representation requesting for stepping up of his pay in the grade of Inspector with reference to the pay of Sri D.B.Das (who had since been promoted to the rank of Assistant Commissioner of Income Tax) on the date of his promotion to the grade of Inspector as, according to him, he (the applicant) fulfilled the conditions laid down in the guidelines and instructions contained in the aforesaid letter dated 13.5.1992. He further prayed that consequent to such order of stepping up of his pay in the grade of Inspector of Income Tax his pay in the higher grades he occupied later on in his service career should also be revised. There was apparently no response and the applicant submitted a reminder on 23.8.1993 after his retire ment. But, in fact, it appears that the Commissioner of Income Tax, North Eastern Region, Shillong had taken up the matter with the Government of India and in the letter dated 18.11.1993, the Government of India informed him in reply to his letter dated 16.6.1993 that the

contd. 3...

- 3 -

case of the applicant was fully covered by the instructions issued vide . . . letter dated 13.5.1992" aforesaid and he was requested to remove the anomaly in terms of the said letter in consultation with the Zonal Accounts Officer (ZAO for short). In the meantime clarifications dated 9.3.1993 were issued with reference to the instructions dated 13.5.1992. The ZAO examined these two instructions with reference to the facts of the applicant and came to his conclusion on 13.2.1994 that the claim of the applicant is not admissible but without assigning any reason in support of his conclusion. The Commissioner of Income Tax sought a clarification from the ZAO and in reply the latter stated that the applicant is not entitled to the benefit of stepping up of his pay as he was not directly promoted to Inspector from the post of UDC and for this, apparently, he relied on point (c) and (d) of the clarification dated 9.3.1993 aforesaid. The Commissioner pointed out to him that these point (c) and (d) of the instructions are not relevant to the case of the applicant and they are only hypothetical situations cited in the instructions. He intimated that the case of the applicant is fully covered by the instructions dated 13.5.1992 and requested the ZAO to examine the matter afresh. The ZAO was however firm in his view that since the applicant was not promoted to Inspector from UDC, his claim for stepping up of his pay in the grade of Inspector with reference to the pay of Smti N.R.Das is not admissible. He was also of the view that the instructions dated 13.5.1992 were subjected to the clarifications dated 9.3.93. Further he intimated the Commissioner that the fact that the complainant junior belongs to SC community may be kept in mind. The applicant was informed of the final position. Hence this application under section 19 of the Administrative Tribunals Act 1985 was submitted by the applicant seeking the relief as mentioned therein.

contd. 4...

3. The learned counsel, Mr J.L. Sarker, appearing for the applicant submitted that the Respondent No.3, the ZAO, had taken mistaken views in rejecting the claim of the applicant. Firstly, he submitted that the instructions in clause (c) and clause (d) of the clarifications dated 9.3.1993 are not applicable to the case of the applicant. Secondly, the ZAO was wrong in holding the view that the applicant was junior to his compared junior in the grade of Head Clerk. On the other hand, the applicant who was senior in UDS grade was also senior as Head Clerk though promoted later to that grade than the compared junior because of the fact that Shri B.B. Das, the junior got accelerated promotion to the post of Head Clerk as a reserved candidate. In support of his contention that the applicant is senior to Shri B.B. Das in the grade of Head Clerk he placed reliance on (1990) 12 ATC 26, Kameshwar Sharma and others vs. Union of India & Ors. and on (1987) 4 ATC 685, Vir Pal Singh Chauhan & Ors. vs. Union of India & Ors. He pointed out that when there was such accelerated promotion it was held in the first mentioned thus /

"No doubt, in the matter of promotion also the doctrine of reservation can be applied, but persons who get such accelerated promotion cannot claim seniority and consequential promotion to the next higher grade in the general category, when in that grade the quota for the Scheduled Castes and Scheduled Tribes is already full."

and that in the second case cited above it was held :

"The promotion on the basis of seniority can only be termed as fortuitous and not in the normal course and a person who was junior and got promoted to the next grade on the basis of queue breaking by virtue of the special provisions made in this regard cannot claim protection of seniority against his erstwhile senior who was waiting for his chance but could not be promoted because of the reservation. He should get back his seniority and be fixed in the proper place in the grade of to which both of them now belong."

contd. 5....

Further Mr. Sarkar contended that the ZAO cannot take up the question of juniority of the applicant to his compared junior in the grade of Head Clerk in the written statement when this issue was never considered by him during the course of his making decision regarding the claim of the applicant as would be evident from the various letters enclosed as annexures to the application and the written statement. If he stated before the Commissioner that the applicant was junior to Sri B.B.Das in the grade of Head Clerk, the applicant would have got the opportunity to agitate the issue or perhaps the Commissioner could have clarified the position of seniority to the ZAO. According to the learned counsel the applicant fulfilled the conditions laid down in the instructions dated 13.5.1992 and therefore denial of the benefit of stepping up of pay as prayed for would not be justified.

4. The learned Addl.C.G.S.C Mr. G.Sarma, supported the contentions recorded in the written statement. Further, he submitted that the clarifications dated 9.3.93 form part of the instructions dated 13.5.92 and the respondents can apply them. In the case of the applicant, they had been considered and found that they are not applicable to the case of the applicant on the ground already given above. It also submitted that the application was submitted after the retirement of the applicant. The applicant cannot therefore agitate the issue after retirement and unsettled the settled matter. This last contention of the learned Addl.C.G.S.C cannot however be entertained. Prior to his retirement the applicant had prayed for stepping up his pay as aforesaid but the process of decision on his prayer was ~~was~~ concluded only after his retirement. Therefore, it is only natural

contd. 6....

- 6 -

that the applicant could agitate only after his retirement. There is also no question of unsettling settled things for clause (a) of the clarifications itself allows removal of anomaly from the date on which such anomaly arose and by removing such anomaly in the manner as permitted, such order would not have disturbed the position of any other person.

5. The issue for determination in this application is whether in the facts of the case of the applicant he is entitled to the stepping up of his pay with reference to the pay of his compared junior in the grade of Inspector of Income Tax within the purview of the instructions dated 13.5.92 and its subsequent clarifications dated 9.3.1993. The instruction dated 13.5.1992 has been reproduced above. It is necessary now to reproduce below the extracts from clarification dated 9.3.1993 given by the Government of India in respect of certain queries raised before them in regard to implementation of order contained in the instruction dated 13.5.1992.

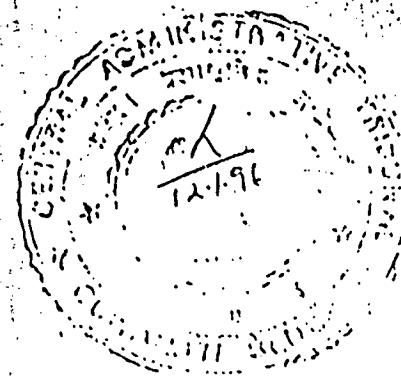
"(a) Whether on removal of pay anomaly in the respective cases the pay benefits would be allowed w.e.f. the date from which the anomaly arose or w.e.f. the date of issue of the relevant circular dated 13.5.92.

(c) A person may be promoted to the post of ITI through the intermediary post of TA and HC. If the junior person is promoted to the post of ITI via the post of TA and HC, whether the benefit as awarded vide order dated 13.5.92 be applicable to the senior persons who was promoted to ITI direct from the post of UDC.

(a) The anomaly may be removed from the date on which it arose, subject to fulfilment of all the relevant conditions and not from the date of the circular dated 13.5.92.

(c) The anomaly may be removed in case where a junior person, who is, promoted to the grade of ITI after getting promotion in the intermediary grades, gets higher pay than a senior person on his promotion directly from the grade of UDC to the grade of ITI, provided the two conditions laid down in the letter dated 13.5.92 are fulfilled.

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12-1-96

(d) If both the junior and senior UDCs are promoted to the post of TA, then the senior was promoted directly to the post of ITI and junior is promoted to the post of ITI vide the post of HC, whether the instruction dated 13.5.92 would also be applicable.

(d) Such cases may be regulated as clarified in (c) above."

Next, the facts pertaining to the applicant and his compared junior are set out below for convenience and appreciation of the same.

<u>Events</u>	<u>Applicant</u>	<u>Compared Junior</u>
1. Date of appointment as LDC.	-	9.2.56
2. Date of appointment/ promotion as UDC	8.11.57	30.10.60
3. Date of promotion as Head Clerk	19-6-67	4.6.65
4. Date of promotion as Supervisor.	-	8.12.69
5. Date of promotion as Inspector	11.11.69	5.5.70

6. Before scrutinizing the claim of the applicant further it is to be mentioned here that the Commissioner of Income Tax, North Eastern Region, Biflong has not been made a respondent in this application. This is evident from the particulars of the respondents mentioned in the application itself.

7. The view of the ZAO that the Circular dated 13.5.1992 which laid down the conditions of stepping up of pay of Inspectors of Income Tax is subjected to the clarifications dated 9.3.93 is imaginary. Clauses (c) and (d) of the clarifications dated 7.3.93 have been reproduced above and the first paragraph of the circular dated 9.3.93 reads that it is directed to refer to Board's letter of even number dated 13.5.1992 on the above subject and to state that certain

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- 20 -

points had been raised in regard to the implementation of orders contained therein. The matter has been considered in consultation with the DOP&T and the following clarifications are issued for guidance of all the charges."

It concludes at para 2 -

"It is requested that pending cases may be decided in the light of the above clarification."

Nowhere therefore it is found in the clarifications dated 9.3.93 that the instructions contained in the circular dated 13.5.1992 have been subjected to the circular dated 9.3.93. Unless otherwise clearly provided in the aforesaid subsequent clarifications it would be incorrect to accept the view of the ZAO that the clarifications have prevailed upon the substantive instructions dated 13.5.1992. Clauses (c) and (d) above clearly deal with certain hypothetical examples or illustrations mentioned therein. The facts pertaining to the applicant and those of his compared junior do not fit into those illustrations as they are framed. The learned A.M.C.C. S.C fairly submitted that the subsequent clarifications are forming part of the original instructions. This is reasonable. Now therefore the clarifications are to be read together with the original instruction. The facts of the applicant and his compared junior as indicated above do not fulfill the stipulations in conditions (a) and (b) laid down in the original extent that instructions to the ~~xx~~ the applicant was not promoted directly as Inspector from the cadre of UIC. At the time when the senior (the applicant) was promoted to the post of Inspector both of them were occupying the intermediary post of Head Clerk. It was perhaps because of such instances of difficulties in the implementation of the original instructions that the clarifications were issued. But even the clarifications do not literally cover the cases such as that of the

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- 9 -

applicant. It was for this reason perhaps that clarifications and approval were sought by the Commissioner of Income Tax, North Eastern Region, Shillong from Respondent No.1 and a clarification dated 10.11.93 (Annexure-E) was issued by the latter to the effect that the anomaly in the case of the applicant was fully covered by the instructions dated 13.5.92 with an instruction to remove the anomaly in consultation with the ZAO. The ZAO cannot be blamed for literally interpreting the contents of clauses (c) and (d) above in arriving at his conclusion that the applicant is not entitled to stepping up of his pay as prayed because he had not been promoted directly from the post of UDC. But the spirit behind the clarifications would show that the applicant has a case in his favour. This can be found in clause (d) itself. Firstly, the second word 'senior' occurring in clause (d) refers to the position of seniority in the cadre of UDC as it flows from the terms "Junior and Senior UDCs" occurring in the opening of the clause. Secondly, if clause (d) is recast with reference to the facts pertaining to the applicant and those of his compared junior it would read as below -

"If both the Junior and Senior UDCs are promoted to the post of IC, then the Senior was promoted directly to the post of ITI and the Junior was promoted to the post of ITI via the post of Supervisor, whether the instruction dated 13.5.92 would also be applicable."

This would exactly fit in the facts of the applicant and his compared junior and it may be possible that the Respondent No.1 would give a reply in the affidavit. In fact it cannot be assumed that Respondent No.1 was not aware of these facts placed by the Commissioner of Income Tax, North Eastern Region, Shillong in his letter dated 16.6.93 in issuing the approval dated 10.11.1993. The anomaly occurred in the pay as

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- 10 -

Inspector because Sri B.B.Das, who was junior to the applicant as UDC, drew more pay on his promotion as Inspector than the applicant as Sri Das got promotion via the intermediary post of Supervisor while the applicant got the promotion via the intermediary post of Head Clerk. When in clause (d) of the clarification it is no longer stipulated that a person should only be promoted to Inspector directly from the post of UDC but that he can be promoted from an intermediary post, the ZAO is not right in rejecting the claim of the applicant on the ground that the applicant was not promoted to the post of Inspector of Income Tax directly from the post of UDC. Further, clause (d) referred to above is concerned with the seniority position in UDC grade and not with seniority position in an intermediary grade as already pointed out earlier. Therefore the contention of the ZAO that the applicant was junior to Sri B.B.Das in the grade of Head Clerk so as to justify his rejection of the claim of the applicant is not relevant in determining the admissibility of the claim. This is equally applicable to the claim of the applicant that the he was entitled to the benefit of stepping up of pay as he was senior to Sri B.B.Das even in the grade of Head Clerk. As such, the above mentioned contentions of the learned counsel of the applicant during the course of hearing in support of this particular claim of the applicant are not necessary to be considered for the purpose of determining the admissibility of the benefit of stepping up of his pay and for disposal of this original application. Besides, the position of juniority or seniority of the applicant vis-a-vis Sri B.B.Das in the grade of Head Clerk would be best known to the Commissioner of Income Tax, North Eastern Region, Dibrugarh who maintained the same. But in this application only

Contd. II...

"Commissioner of Income Tax, C.B.D.T., Shillong" has been made a respondent and not the Commissioner of Income Tax, North Eastern Region, Shillong. Their seniority position in the grade of Head Clerk must have been a notified position since long ago and no finding in this regard can therefore be made without the Commissioner of Income Tax, North Eastern Region, Shillong having been made a party to this application. Moreover no seniority list has been impugned in this application.

8. In the light of the foregoing discussions and findings, it is hereby held that the conclusion arrived at by the Respondent No.3, the ZAO, that stepping up of pay of the applicant in the grade of Inspector of Income Tax is not admissible within the purview of the circular dated 13.5.1992 and the clarification dated 9.3.1993 aforesaid as the applicant was not directly promoted to the post of Inspector from the post of UDC is not justified and that, on the other hand, the case of the applicant finds support in the view taken by the Respondent No.1 and the Commissioner of Income Tax, N.E. Region, Shillong, which is the correct view, that the benefit of stepping up of pay of the applicant in the grade is admissible under the aforesaid instructions and clarifications. Accordingly, the orders as contained in the impugned letter No. ZAO/EXP/8-3/93-94/279 dated 20.4.94 (Annexure II) and letter No. ZAO/EXP/Fin/8-3/94-95/1130 dated 20.7.94 (Annexure II) rejecting the claim of the applicant for stepping up of his pay are set aside and quashed. The Respondent No.3, the Zonal Accounts Officer, Central Board of Direct Taxes, Shillong is directed to issue fresh order in the light of the findings mentioned herein above within one

- 12 - 196

- 12 -

month from the date of his receipt of this order and communicate the fresh order forthwith.

The application is allowed. No order as to costs.

SD/- MEMBER (ADMIN)

## TRUE COPY

প্রতিপিণি

W. C. M. C. M. C.  
SD/- MEMBER (ADMIN)  
11/4/96

SD/- MEMBER (ADMIN)  
Central Administrative Tribunal  
কেন্দ্ৰীয় প্ৰযোৗ বৰ্তমান  
Guwahati Bench, Guwahati  
প্ৰযোগ বৰ্তমান, পৰিবেশ  
11/4

Certified to be  
true copy  
Advocate

To  
The Commissioner of Income Tax,  
Shillong.

Sir,

Sub : Anomaly in fixation of pay resulting in juniors drawing higher pay than their senior on promotion to the grade of Inspector in the case of Shri N.G. Kar Purkayastha - Removal of

*I have the honour to state as follows :-*

While serving in the grade of Inspector in C.I.T's charge, North Eastern Region, I was senior to Shri B.B. Das and Shri S.M. Bhattacharjee.

- 2) Shri B.B. Das on promotion to the grade of Inspector on 5.5.70 was drawing pay @ Rs. 365/- per month which was much higher than the pay @ Rs. 290/- per month which I was drawing on that date.
- 3) Shri S.M. Bhattacharjee became entitled to stepping up of his pay @ Rs. 365/- per month equal to the pay of his junior Shri B.B. Das on removal of anomaly as on 5.5.70 ( the date of promotion of Shri B.B. Das to the grade of Inspector ) as per the decision and order of the Central Administrative Tribunal, Gauhati Bench dated 12.1.96 in his case as accepted by the I.T. Department ( Copy enclosed ).
- 4) I am furnishing all the relevant particulars in my case vis-à-vis the cases of Shri B.B. Das and Shri S.M. Bhattacharjee as per Annexure attached hereto from which it will be evident that my juniors mentioned above were drawing pay much higher than the pay which I was drawing on fixation/refixation in the respective two cases with effect from 5.5.70. This anomaly in my case with respect to the cases of the said two juniors arose initially as a result of application of F.R. 22C in the fixation of Pay of the junior Shri B.B. Das on his promotion to the grade of Inspector

*certified to be  
true copy.*

*Arvind  
Advocate*

(2)

after getting promotions in the intermediary grades of Head Clerk and Supervisor. The same anomaly having arisen in the case of Shri S.M. Bhattacharjee with respect to the case of Shri B.B.Das was removed in his case in view of Board's F.No. B-12014/5/92/Ad. IX dated 13.5.92 and subsequent clarification of even Number dated 9.3.93 and also in view of the decision and order dt. 12.1.96 of the Central Administrative Tribunal, Gauhati Bench in the case S.M. Bhattacharjee V Union of India ~~of~~ others ( original Application No. 229 of 1994 ) which was accepted by the I.T. Deptt. As my case is fully covered by Boards instructions contained in the letters quoted above and also in view of the ratio of the decision and order of the Hon'ble Central Administrative Tribunal, Gauhati Bench mentioned above, I am entitled to removal of the anomaly in pay pointed out herein above.

5)

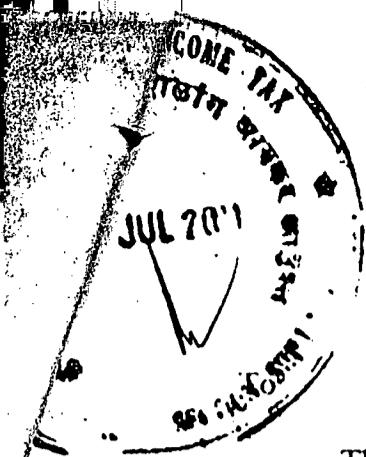
In the above circumstances I request you kindly to take necessary actions (i) for stepping up of my pay as on 5.5.70 at Rs. 365/- in the grade of Inspector with respect to the pay/stepped up pay of my respective juniors mentioned herein above as on that date and (ii) for refixation of my pay at different grades thereafter and also (iii) for consequent refixation of my pension and other retirement benefits, and consequently for arranging payment of arrears of pay, pension and other retirement benefits as becomes due to me; and for this kindness of yours, I shall remain grateful. I beg to be excused for not moving this application concerning old matters ~~earlier~~ and thereby causing unintended inconveniences to you as I became aware of Board's relevant instructions and C.A.T's decision and order mentioned above only recently and therefore could not have the occasion to move the application earlier.

Yours faithfully,

Dated, Silchar  
The 26/2 Feb, '2000.

*S/aff*  
(N. G. KAR PURKAYASTHA )

Retd. Income Tax  
Officers Group A  
GIRIBALA KUTIR,  
2<sup>ND</sup> LINK ROAD ( MAIN )  
Silchar - 788 006.



- 27 -

F. No. A-26017/25/99-Ad-LX  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes

Annexure-3

New Delhi, the 11th July, 2001

16<sup>th</sup>

The Commissioner of Income Tax  
Shillong

Subject : Removal of anomaly in fixation of pay in the grade of III- in the case of  
Shri G.S. Dutta Choudhury, ITO (Retd.).

Sir,

I am directed to refer to your letter F. No. E-29/2000-2001/CT/pt-II/10790 dated 27.10.2000 on the subject mentioned above and to say that the matter has been considered in consultation with the D.O.P&T, who have opined that it is not obligatory on the part of Government in terms of the judgment to extend the benefits given to the petitioner to other employees who are similarly placed. Therefore the request of Shri G.S. Dutta Choudhury for stepping up of his pay equal to his Junior Shri S.M. Bhattacharjee, whose pay in turn was stepped up to that of his Junior Shri B.B. Dass under CAT orders, is not acceded to.

Yours faithfully,

( Prakash Chand )

Deputy Secretary to the Govt. of India

Tel. No. 336 0670

Memo. No. E-29/2000-2001/CT/pt-II/551-552

Dated 27.07.01.

Copy forwarded to Shri G.S. Dutta Choudhury, ITO (Retd)  
Gauri Niwas, Kench's Plaza, Shillong - 793004 and Shri K.G.  
Koti Pukashastha, ACIT (Retd), "GIRIBALA" KUTIR, 2nd Link Road (Main)  
Silchar - 788006 for information.

( R.L. Dkhar )  
Income Tax Officer, HAVIS  
For Commissioner of Income Tax  
Shillong.

Certified to be  
true copy  
R.L.  
Advocate

From: Shri. N.G.Kar.Purkayastha  
Retd. I.T.O. ( Group A )  
Giri Bala Kutir,  
2nd Link Road. ( Main )  
Silchar 788006.

To:

The Secretary  
Central Board of Direct Taxes  
Govt. of India, Ministry of Finance, Department of Revenue  
New Delhi - 110001.

Sir

( Through the C.I.T. North Eastern Region Shillong. )

Sub: Removal of anomaly in fixation of Pay in the grade of I.T.I. in the case of  
Shri N.G. Kar Purkayastha I.T.O. ( Retd. )

I have the honour to state that I am a Retired Income Tax Officer ( Group A ) I served under the charge of the Commissioner of Income Tax, North Eastern Region, Shillong and retired on 1st February 1986. On superanuation

2. While serving in the grade of Inspector of Income Tax in C.I.T.'s Charge, North Eastern Range Shillong I was Senior to Shri B.B.Das and Shri S.M. Bhattacharjee. Shri B.B.Das on promotion to the grade of Inspector of Income Tax on 5.5.70. was drawing pay of Rs. 365/- per month which was much higher than the pay of Rs. 280/- per month which was drawing on that day.

3. Shri S.M. Bhattacharjee, became entitled to stepping up of his pay to Rs. 365/- per month on removal of anomaly as on 5.5.70. ( the date of promotion of Shri B.B. Das to the grade of Inspector. ) as per the <sup>order, 1/2/70, C.C. 12.1.88.</sup> tribunal, Guwahati Bench dt. 12.1.88. in his case, as accepted by the I.T. Department ( enclosed as Annexure - II. )

4. I am furnishing the relevant particulars as per Annexure - I in my case vis-à-vis the cases of Shri. B.B. Das, Shri S.M. Bhattacharjee from which it will be evident that my juniors mentioned above were drawing pay much higher than the pay which I was drawing with effect from 5.5.70. This anomaly in my case with respect to the case of the said two juniors arose as a result of application of F.R. 22 ( C ) in the fixation of pay of the junior Shri B.B. Das on his promotion in the ~~other~~ grades of Inspector after getting promotion in the intermediary grade of T.A. and Headclerk and Supervisor. The said anomaly having arisen in the case of Shri S.M. Bhattacharjee with respect to the case of Shri B.B. Das was removed in his case in view of Board's F. No. B 12014/5/82/Ad.IX. Dt. 13.5.82. and subsequent clarification of even No. dated

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Advocate

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9. 3.93. and also as per the decision and order dt. 12.1.98. of the Central Administrative Tribunal, Guwahati Bench in the case of Shri S.M. Bhattacharjee V union of India & others (original Application No. 229 of 1994.) As my case is fully covered by the Board's instruction dt.13.5.92. and subsequent clarification dt.9.3.93. and also by the ratio of the Honble Central Administrative Tribunal, Guwahati Bench mentioned above, I am entitled to removal of anomaly in pay pointed out herein above .

5. Shri G.S. Dutta Choudhury, another similar person Submitted his grievances to the Baord through the C.I.T. North Eastern Region, Shillong. But his case was turn down by the board. I submitted an application to the C.I.T. Shillong on 26.2.2000. Praying for stepping up of my pay and other consequential benefits.

Meanwhile the board decided the application of Shri G.S. Dutta Choudhury against him and this was communicated to the C.I.T. Shillong by the board. The C.I.T. in turn forwarded a copy of Board letter in this regard to Shri G.S. Dutta Choudhury and my self as per his memo No. E - 29/2000-2001/PT-11/551-552 dt. 27.07.01. Which was received by me on 3.8.01. When I was bed -ridden due to internal bleeding from a polyp Which had grown in the colon. This letter of the C.I.T. read as follows :

F. No. 4 - 28017/25/99 Ad- IX  
government of India  
Ministry of Finance, Department of Revenue, Central Board of  
Direct Taxes.  
New Delhi. The 16th July 2001

The Commissioner of Income Tax  
Shillong

Subject:- Removal of anomaly in fixation of pay in the grade of I.T.I. in the case of  
Shri G.S. Dutta Choudhury I.T.O. (Retd.)

Sir,

I am directed to refer to your letter F. No. 29/2000-2001/CT/PT II/10790 dt. 27.10.2000. on the subject mentioned above and to say that the matter has been considered in consultation with the D.O. P & T. who have opined that it is not obligatory on the part of government in term of the judgement to extend the benefits given to the petitioner to other employees who are similarly placed. Therefore the request of Shri G.S. Dutta Choudhury for stepping up of his pay equal to his junior Shri S.M. Bhattacharjee whose pay in turn was stepped up to that of his junior Shri B.B. Das under CAT order is not acceded to.

Yours faithfully  
Sd/- Prakash Chawla  
Deputy Secretary to the Govt. of India.

Memo No. E-29/2000-2001/CT/PT-11/551-552. Dt. 27.7.01.

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copy forwarded to Shri G.S. Dutta Choudhury I.T.O. ( Retd ), Gouri Niwas, Kenches Trace, Shillong 792004, and Shri N.G. Kar Purkayastha , Giri Bala Kutir, 2nd Link Road ( Main ) Silchar 788008. For information .

Ministry of

Department of

sd/-

Income Tax Officer, Hd. Qr.

for Commisioner of Income Tax  
Shillong "

6. In the above Communication, there is no mention of my case nor there is any indication that my case was considered, there is not even any reference to my case, there is also no mention why the ratio of the decision of CAT; order in a similar case could not be followed. more ever, I am not relying on CAT's order alone but I have been relying on Board's standing Instructions and there is no mention why those instructions could not be followed.

7. In the above circumstances I request that necessary order may kindly be passed on review of the whole matter stepping up my pay as on 5.5.70. (date of promotion of my junior Shri B.B. Das ) to 365/- in the grade of Inspector and for refixation of my pay in different grade there after and also consequent refixation of my Penson and other retirement benefits and for early payment of the arrears that my become due to me, and for this kindness of yours I shall remain grateful

Yours faithfully

*N.G. Purkayastha*  
26.5.04.  
Shri N.G. Kar Purkayastha  
Retd. I.T.O. ( Group A. )

Certified to be  
true copy

*Adv.*  
Advocate

From : Shri N.G.Kar Purkayastha  
Rtd. I.T.O. (Group A)  
Giri Bala Kutir,  
Second Link Road (Main)  
P.O. Silchar - 788006, Dist.: Cachar, Assam.

To

Rtd. I.T.O.  
The Secretary,  
Central Board of Direct Taxes,  
Govt. of India,  
Ministry of Finance  
Department of Revenue,  
New Delhi - 110001

Sir

Sub : Removal of anomaly in fixation of Pay in the grade of I.T.I.  
in the case Shri N.G. Kar Purkayastha I.T.O.(Rtd)-Regarding.

Kindly refer to my representation dated 26.05.2004 on the above subject which was submitted through the C.I.T. Shillong who in turn forwarded the same to you under his memo No. E-24/2004-05/CIT/SHG/2489 dt. 03.08.04 for necessary action as per intimation received by me.

2. It may be mentioned that I have been passing my days in great troubles and hardship in my retired life with broken health following a medical operation for removal of a bleeding polyp which had grown in the colon. In the circumstances I am anxiously waiting for Board's kind orders on the said representation at a very early date.

3. As enough time has elapsed since the representation was submitted, I request that the Board would be kind enough to pass necessary orders thereon as early as possible.

Thanking you.

Yours faithfully

(N.G. Kar Purkayastha)

Dated,  
Silchar  
The 18<sup>th</sup> September, 2004

Certified to be  
true copy.

Advocate

From : Shri N.G Kar Purkayastha  
Rtd. I.T.O. (Group A)  
Giri Bala Kutir,  
Second Link Road (Main)  
P.O. Silchar -788006, Dist.:Cachar, Assam.

To

The Secretary,  
Central Board of Direct Taxes,  
Govt. of India,  
Ministry of Finance  
Department of Revenue,  
New Delhi - 110001

Sir,

Sub : Removal of anomaly in fixation of Pay in the grade of I.T.I.  
In the case of Shri N.G. Kar Purkayastha I.T.O.(Rtd)-  
Regarding.

Kindly refer to my representation dated 26.05.2004 on the above subject which was submitted through the C.I.T. Shillong who in turn forwarded the same to you under his memo No. E-24/2004-05/CIT/SHG/2489 dt. 03.08.04 for necessary action as per intimation received by me.

2. As no reply was received from you after awaiting for a long time, I submitted a reminder to you as per my letter dated 18.09.2004. After issuance of this reminder also more than 2 months have elapsed but I have not been favoured with a reply.

3. As mentioned in my said reminder dt. 18.09.2004, I have been passing my days in great hardship and troubles with broken health following a medical operation.

4. In the circumstances I once again remind the Board of my problem and difficulties and request that the Board could be kind enough to communicate its decision on the representation as early as possible as I am anxiously waiting for the same. This letter is the second and last reminder and if I do not receive a reply to my representation within 20 days here after, I shall be compelled to approach the C.A.T. for redress of my grievances.

Thanking you.

Yours faithfully

(N.G. Kar Purkayastha)

Dated, Silchar  
the 21st November 2004

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true copy

*[Signature]*  
Advocate

prepared by the Public Service Commission or the Selection Committee when the appointments are made and the vacancies are filled up according to the roster, necessarily and inevitably the reserved candidates though less meritorious in the order of merit maintained by the Public Service Commission would occupy the respective places assigned in the roster. Thereby they steal a march over some of the general candidates and get seniority over the general candidates. This scheme is, therefore, constitutional, valid and is not arbitrary.

5. The Chief Secretary in his letter obviously was in error in directing to maintain in the roster the same inter se seniority maintained by the Public Service Commission or Selection Committee. If that is given effect to, the roster points would remain unfilled and rotation therein get disturbed. It is obvious that the interpretation of the Rule by the Chief Secretary which found favour with the Division Bench was strongly relied upon by the appellant. The order of merit indicated in the second proviso would be applicable only inter se to the general candidates or reserved candidates but gets changed when vacancies are filled up as per roster and appointments are made thereunder. The High Court, therefore, was right in holding that the second proviso to Rule 13 is inapplicable to the facts and was also right in its finding that when appointments are made to fill up the vacancies in the order of roster, the order of merit prepared by the Selection Committee gets changed. In these circumstances, the appeal is dismissed but without costs.

(1995) 5 Supreme Court Cases 628

(BEFORE J.S. VERMA AND K. VENKATASWAMI, JJ.)

M.R. GUPTA

Appellant;

Versus

Respondents.

UNION OF INDIA AND OTHERS

Civil Appeal No. 7510 of 1995<sup>†</sup>, decided on August 21, 1995

Service Law — Pay — Fixation of pay — Limitation for seeking relief — government employee joining a higher service in the Railways — About eleven long years later filing an application before the CAT for proper fixation of his pay as on the date of joining the Railway Service on the ground that the same had not been done in accordance with rules — Representation to the same effect having already been rejected before coming into force of the Administrative Tribunals Act, 1985 — Such a grievance, held, a continuing wrong giving rise to a recurring cause of action every month on the occasion of payment of salary — Such application to the extent of proper pay fixation, held, not time barred although the applicant's claim to consequential arrears would be subject to the Jaw of limitation — Pay — Arrears of pay — Limitation for claiming — Administrative Tribunals Act, 1985, S. 21 — Indian

<sup>†</sup> From the Judgment and Order dated 22-5-1992 of the Delhi High Court in O.A. No. 1809 of 1989

Railway Establishment Code, Vol. II, Rule 2018 (old)/Rule 1314 (1990 Edn. N.R.S.N. 6447) — FR 22-C (since omitted) (Paras 5 to 7)

*Thota China Subba Rao v. Matapalli Raju*, AIR 1950 FC 1 : 1949 FCR 484 : 50 Bom LR 181 : (1950) 1 MLJ 752, referred to.

*S.S. Rathore v. State of M.P.*, (1989) 4 SCC 582 : 1990 SCC (L&S) 50 : (1989) 11 ATC 913 : 1989 Supp (1) SCR 43, distinguished.

H-M/14838/CLA

Appeal allowed.

Advocates who appeared in this case:

A.K. Sikri and Ms Madhu Sikri, Advocates, for the Appellant;  
K. Lahiri, Senior Advocate (A.K. Sharma and P. Narasimha, Advocates, with him) for the Respondents.

The Judgment of the Court was delivered by

VERMA, J. — Leave granted.

2. The only question for decision is: Whether the impugned judgment of the Tribunal dismissing as time barred the application made by the appellant for proper fixation of his pay is contrary to law? Only a few facts are material for deciding this point.

3. The appellant joined the service of the State of Punjab as Demonstrator in the Government Polytechnic in 1967. Thereafter, he joined service in the Railways in 1978. The appellant claimed that the fixation of his pay on his joining service in the Railways was incorrect and that he was entitled to fixation of his pay after adding one increment to the pay which he would have drawn on 1-8-1978 in accordance with Rule No. 2018 (N.R.S.N. 6447) equivalent to Fundamental Rule 22-C. The representation of the appellant to this effect was rejected before coming into force of the Administrative Tribunals Act, 1985. The appellant then filed an application on 4-9-1989 before the Tribunal praying inter alia for proper fixation of his initial pay with effect from 1-8-1978 and certain consequential benefits. The application was contested by the respondents on the ground that it was time barred since the cause of action had arisen at the time of the initial fixation of his pay in 1978 or latest on rejection of his representation before coming into force of the Administrative Tribunals Act, 1985. The subsequent representations made by the appellant for proper fixation of his pay were alleged to be immaterial for this purpose.

4. The Tribunal has upheld the respondents' objection based on the ground of limitation. It has been held that the appellant had been expressly told by the order dated 12-8-1985 and by another letter dated 7-3-1987 that his pay had been correctly fixed so that he should have assailed that order at that time "which was one time action". The Tribunal held that the raising of this matter after lapse of 11 years since the initial pay fixation in 1978 was hopelessly barred by time. Accordingly, the application was dismissed as time barred without going into the merits of the appellant's claim for proper pay fixation.

5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the

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Advocate

assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

6. The Tribunal misdirected itself when it treated the appellant's claim as "one time action" meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China Subba Rao v. Mattapalli Raju*<sup>1</sup>).

7. Learned counsel for the respondents placed strong reliance on the decision of this Court in *S.S. Rathore v. State of M.P.*<sup>2</sup> That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case.

8. For the aforesaid reasons, this appeal has to be allowed. We make it clear that the merits of the appellant's claim have to be examined and the

only point concluded by this decision is the one decided above. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on merits in accordance with law. No costs.

MOOL CHAND AND OTHERS

Appellants;

Versus

DY. DIRECTOR, CONSOLIDATION  
AND OTHERS

Respondents.

Civil Appeals No. 10214 of 1983<sup>†</sup> with No. 2635 of 1980<sup>‡</sup>,  
decided on August 16, 1995

A. Tenancy and Land Laws — U.P. Consolidation of Holdings Act, 1953 (5 of 1954) — S. 5(2) — Abatement of pending suits or proceedings under S. 5(2) on publication of notification under S. 4(2) — Where preliminary decree passed in a partition suit [under S. 2(2) r/w Or. 20 R. 18(2) & Or. 26 R. 14 CPC or under S. 176 of U.P. ZA & LR Act r/w Rr. 156 and 157 of Rules made thereunder] and no appeal filed against it pending when notification under S. 4(2) issued, the notification would not abate the preliminary decree which must be given effect to in consolidation proceedings — But where appeal against final decree pending without any appeal against the preliminary decree, the notification would abate the final decree only — Hence where a preliminary decree has already been passed and only the proceedings relating to the preparation of final decree are pending in any court, either at the original stage or at the appellate or revisional stage, it cannot be said that proceedings relating to "declaration or determination of rights in the land" within the meaning of Section 5(2) of the Act are pending — U.P. Zamindari Abolition and Land Reforms Act, 1950, Ss. 176, 179, 180, 181 and 182-B — U.P. Zamindari Abolition and Land Reforms Rules, 1952, Rr. 156 & 157 — Civil Procedure Code, 1908, Ss. 2(2), 97 and Or. 20 R. 18 & Or. 26 Rr. 13, 14

B. Civil Procedure Code, 1908 — S. 2(2) and Or. 20 R. 18(2) & Or. 26 R. 14 — Preliminary and final decrees in partition suit — Preliminary decree finalises matters relating to declaration of rights and interests — Final decree works out those rights — Partition

C. Civil Procedure Code, 1908 — S. 97 — Failure to appeal against preliminary decree would operate as a bar to raising any objection to it in appeal filed against final decree

D. Tenancy and Land Laws — U.P. Zamindari Abolition and Land Reforms Act, 1950 — Ss. 176, 178, 179, 180, 181 & 182-B — U.P. Zamindari

<sup>†</sup> From the Judgment and Order dated 24-8-1983 of the Allahabad High Court in C.M.W.P. No. 6911 of 1973

<sup>‡</sup> From the Judgment and Order dated 8-4-1980 of the Allahabad High Court in C.M.W.P. No. 2864 of 1971