CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 718 of 2003
Original Application No. 534 of 2004

Jabalpur, this the 17th day of May, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

1. Original Application No. 718 of 2003 -

Bikram Dutt, S/o. Late Shri A.C. Dutt. ... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

Union of India & Anr. ... Respondents

(By Advocate - Shri P. Shankaran on behalf of Shri B.da.Silva)

2. Original Application No. 534 of 2004 -

Income Tax Appellate Tribunal, Registry Officers Association & Ors. ... Applicants

(By Advocate - Shri S. Paul)

V e r s u s

Union of India & Anr. ... Respondents

(By Advocate - Shri P. Shankaran on behalf of Shri B.da.Silva)

O R D E R (Common)

By M.P. Singh, Vice Chairman -

As the issue involved in both the cases is common and facts and grounds raised are identical, for the sake of convenience we are disposing of these Original Application by this common order.

2. In OA No. 718 of 2003 the applicant has claimed the following main reliefs :

"9.1 the pay scales of the Assistant Registrar upto 31.12.1995 was higher than the Sr. P.S. From 1.1.96 the pay scale of Sr. P.S. Assistant Registrar, Superintendent were merged in one pay scale with a rider that the promotional post shall be given higher pay scales in the particular pay scale. The Assistant Registrars were in higher pay scale and shall be allowed to draw the higher pay scale than the Sr. P.S.

9.2 alternatively the Assistant Registrar of the Income Tax Tribunal should be given the same pay scale as other Assistant Registrars posted in SAT, CAT, TMR,

CLB, RCT and other Tribunals who are drawing the higher pay scales of 10,000-13,500/-."

3. In OA No. 534 of 2004 the applicant No. 1 is Income Tax Appellate Tribunal, Registry Officers Association through its Vice President Denesh Kumar Khanna, applicant No. 2 is Shri J.S. Chhilar, working as Registrar, Income Tax Appellate Tribunal, New Delhi, applicant No. 3 is Shri D.K. Khanna, working as Dy. Registrar, Income Tax Appellate Tribunal, New Delhi and applicant No. 4 is Shri K.K. Singh, working as Assistant Registrar, Income Tax Appellate Tribunal, New Delhi. The following main reliefs are claimed by the applicants in this OA :

"(A) allow this Original Application of the applicants with costs,

(C)(i) directing the respondents to revise the pay scales of the Assistant Registrar of the ITAT, from Rs. 8000-275-13,500 to Rs. 10,000-325-15,200/- retrospectively w.e.f. 1.1.1996 with arrears of pay & other consequential benefits arising thereto,

(ii) direct the respondents to revise the pay scale of the Deputy Registrars of the ITAT from Rs. 10,000-325-15,200 to Rs. 14,300-400-18,300, retrospectively w.e.f. 1.1.1996, with arrears of pay and other consequential benefits arising thereto,

(iii) direct the respondents to revise the pay scale of the Registrar of the ITAT, from Rs. 12,000-375-16,500/- to Rs. 18,400-500-22,400, retrospectively w.e.f 1.1.1996, with arrears of pay and other consequential benefits arising thereto."

4. The brief facts of the case in OA No. 718 of 2003 are that the applicant was appointed as Assistant Registrar in Income Tax Appellate Tribunal (in short ITAT) on 11.3.1996 and is presently posted as Assistant Registrar, ITAT, Jabalpur. The Stenographers of ITAT earlier called as Sr. PA and now as Sr. PS, whose sole function is to take dictation and type orders, and whose basic qualification is mere Matriculation and are being given a higher pay scale than the Assistant Registrars who are graduates and hold a degree in law and are the Head of the offices, controlling officers and the drawing and disbursing officers. According to the applicant, the Vth Pay Commission had clearly

stated that the erstwhile pay scale of Rs. 2000-3200/- and Rs. 2000-3500/- were to be clubbed intd a single pay scale of Rs. 6500-10500/- but with a rider that administrative officers having greater responsibilities should be kept at a higher scale of pay vis-a-vis the others. But it is just the reverse in ITAT where the Assistant Registrars in the erstwhile higher pay scale of Rs. 2000-3500/- are now kept in a lower pay scale of Rs. 6500-10500/- than the Sr. PA who were in the earlier lower pay scale of Rs. 2000-3200/- and are now kept in the scale of Rs. 7500/- to 12000/-. According to the applicant Sr. PA was the feeder post from which they were promoted as Assistant Registrars, implying thereby that the post of Assistant Registrar was superior to the post of Sr. PA and hence enjoyed a higher pay scale. Now the higher post is being paid lower emoluments, which is illegal, void and without any justification and contrary to the principle of equality and justice. On the other hand, the feeder post of the Sr. PA is in the higher scale of pay. The Stenographers in ITAT were placed in the pay scale of Rs. 210-425 in 1971. They were redesignated as Sr. Stenographers in 1973 and their pay scale was revised to Rs. 425-700/-. Then they were redesignated as Personal Assistant in 1977 and their pay scale was upgraded to Rs. 425-800/- which was again revised to Rs. 550-900/- w.e.f. 1.2.1979. Their pay scale was again revised to Rs. 1640-2900/- in 1986. Thereafter, they were redesignated as Sr. Personal Assistant in 1987 and their pay scale was upgraded to Rs. 2000-3200/- retrospectively w.e.f. 1.1.1986. The Vth Pay Commission revised their pay scale to Rs. 6500-10500/- w.e.f. 1.1.1996 and now they have been redesignated as Sr. PS and their pay scale is revised to Rs. 7500-12000/- w.e.f. 11.4.2001. It is also stated that the qualification, duties and responsibilites of Sr. PAs have all along remained the same and only their name and their pay scales have been increased. The main grievance of the applicant is that the pay of Sr. PA/PS, which was a

feeder grade post for promotion to the post of Assistant Registrar, was revised to Rs. 7500-12000/-, whereas the post of Assistant Registrar, which is a promotional post for Sr. PA/PS and was in the higher scale has been given the pay scale of Rs. 6500-10500/-. Hence, this Original Application is filed.

5. In OA No. 534/2004, the brief facts are that representations from several registry officers of the ITAT for removal of anomaly and upgradation of their pay scales retrospectively w.e.f. 1st January, 1996 i.e. the date of implementation of the recommendation of the Vth Central Commission were received and same were forwarded to the Ministry of Law & Justice vide letter dated 14th June, 2002. Thereafter the integrated finance of the Ministry of Law & Justice pointed out that removing of an anomaly in respect of Assistant Registrar was in all probability likely to cause anomaly in respect of the higher post of Deputy Registrar and therefore, suggested for a full cadre review to remove all possibilities of anomalies at whatever level they might arise and then to come up with a consolidated proposal vide letter dated 24th September, 2002. Thereafter the Registrar, ITAT forwarded a detailed proposal in this regard on 25th February, 2003 for removal of anomaly in the pay scale of Assistant Registrar so as to bring the pay scale of all the registry officers of the ITAT at par with the similarly placed registry officers of the other Tribunals. After obtaining the approval of the Department of Expenditure the Ministry of Law & Justice vide letter dated 2nd April, 2004, revised the pay scale of Assistant Registrar from Rs. 6500-10500/- to the pay scale of Rs. 8000-13500/- prospectively w.e.f. 2.4.2004. But the main request of the Registry Officers of the ITAT for the upgradation of their pay scales so as to bring them at par with the pay scales of registry officers of other Tribunals have been denied, though the nature of duties and responsibilities of the registry officers of the ITAT with those of registry officers of other Tribunals were duly evaluated as similar

and identical. The comparative statement of the duties, powers and responsibilities and the appointment criteria for the posts of registry officers of the ITAT vis-a-vis those posts with whom parallel has been drawn has since been compared after collecting the requisite material from the concerned Tribunals and the same has been tabulated in paragraph 4.14 of the Original Application. It is further submitted that the proposed revision of the pay scale of the Assistant Registrars of ITAT from Rs. 8,000-13500/- to Rs. 10000-325-15200/- is based on the analogy of the pay scales of the posts of Assistant Registrar in the DRT. It is also submitted that the Assistant Registrars of the Tribunal after being given the pay scale of Rs. 10000-15200/- be made eligible for promotion to the pay scale of Rs. 14300-18300/- because as per the recruitmenr rules, the Assistant Registrars of the Tribunal are eligible for promotion to the next higher post of Deputy Registrar, only after seven years regular service in the grade of Assistant Registrar. According to the applicants the proposal for upgradation of the pay scale of the post of Registrar of the ITAT so as to bring the same at par with the pay scale of the Registrars of the CATs and the RCTs is more than a decade old. It is proposed that the Deputy Registrars of the Tribunal after being given the pay scale of Rs. 14,300-18,300/- be made eligible for promotion to the post of Registrar, carrying the scale of pay of Rs. 18,400-22,400/- after a qualifying service of three years because as per the recruitment rules, the Deputy Registrars of the Tribunal are eligible for promotion to the post of Registrar, only after three years regular service in the grade of Deputy Registrar. It is further stated that the denial of the pay scales to the Registry officers of the ITAT equal to the pay scales granted to the registry officers of other Tribunals created by the Union of India vide letter dated 2nd April, 2004 is rendered wholly arbitrary, irrational and discriminatory. Hence, this

Original Application is filed.

6. In OA No. 718 of 2003 no reply has been filed on behalf of the respondent No. 1 i.e. the Ministry of Law Justice and Company affairs. However, the respondent No. 2 where the applicants are at present working i.e. the Income Tax Appellate Tribunal has filed the reply and in this reply it is mentioned that the matter relating to the revision of the pay scale of the Assistant Registrars from Rs. 6500-10500/- to Rs. 10000-15200/- has been referred to the Ministry of Law and Justice and the matter is under consideration with the Department of Expenditure, Ministry of Finance for upgrading the pay scale of Assistant Registrar and other registry officers. It is further stated in the reply that prior to the Vth Pay Commission report the pay scale of the Assistant Registrar was Rs. 2000-3500/- and that of Sr. PA was Rs. 2000-3200/- but due to redesignation of Sr. PA as Sr. PS the pay scale of Sr. PS was revised to Rs. 7500-12000/- [illegible] whereas the pay of the Assistant Registrar remained at Rs. 6500-10500/-.

7. In OA No. 534 of 2004 the reply has been filed by the respondent No. 1. In this reply it is mentioned that the pay scale of Assistant Registrar in ITAT has been upgraded from Rs. 6500-10500 to Rs. 8000-13500/- with prospective effect especially as one of it's feeder post (that of Sr. PA) was in the higher pay scale of Rs. 7500-12000. Upgradation of other posts of Deputy Registrar and Registrar in ITAT was not really warranted as the posts of Registrar in DRT as also in the Customs, Excise and Service Tax Appellate Tribunal also exist in the comparable scale of Rs. 12750-16500/-. According to the respondents the applicants have made comparison with Registry of the Railway Claims Tribunal and Trade Marks Registry but not with the Registry of the Custom, Excise & Gold (Control) Appellate Tribunal now known as Custom, Excise and Service Tax Appellate Tribunal (in short CESTAT). A comparison of the

different posts, their pay scales, qualifications, etc. in the registry of the ITAT, CESTAT and DRT is annexed at Annexure R-1. It may be seen from the annexure that even though the posts of Assistant Registrars in the DRT carry a pay scale of Rs. 10000-15200/- but the qualifications for appointment to the said post are totally different from those for the posts of Assistant Registrars in the ITAT and CESTAT. It is further mentioned that any meaningful comparison of the status is possible only in the case of ITAT & CESTAT because the CESTAT is the equivalent of the ITAT in status. While the ITAT deals with appeals under the direct taxes, CESTAT deals with appeals under indirect taxes. The comparison of any other Tribunal with the ITAT would be totally meaningless. On the basis of the comparative evaluation, the upgradation of the pay scale of Registrar ITAT from Rs. 12000-16500/- to the pay scale of Rs. 18400-22400/- was not really warranted. For the same reasons the upgradation of pay scale of Deputy Registrar from Rs. 10000-15200/- to Rs. 12000-16500/- is also not warranted as the post of Deputy Registrar is feeder post of Registrar, ITAT. With the implementation of the Vth Central Pay Commission's recommendations, the posts of Assistant Registrars, Hindi Officers and Superintendents in the ITAT had been given similar pay scales of Rs. 6500-10500/-. The posts of Superintendent are feeder cadres for filling up the posts of Assistant Registrar. Also the pay scale of Senior Personnel Assistants erstwhile Senior Stenographer in the ITAT who have to work under the administrative control of Assistant Registrars and also makes the feeder grade of Assistant Registrar had been revised from Rs. 6500-10500/- to Rs. 7500-12000/- w.e.f. 11.4.2001. The said anomaly had been removed by upgrading the pay scale of Assistant Registrars from Rs. 6500-10500/- to Rs. 8000-13500/-. In view of the fact that the pay scale of the Assistant Registrars have been upgraded without touching the pay scales of Deputy

Registrars and Registrars and without creating any anomaly in their pay structure, the claim for upgradation of pay of the Deputy Registrars and Registrar of ITAT is not tenable.

7.1 It is further stated by the respondents in their reply that it is very clear from the recruitment rules of the registry officers of DRT that the hierarchy of the registry of the DRT and the ITAT are not the same. The ITAT has the post of Deputy Registrar in the pay scale of Rs. 10000-15200/- whereas DRT has no post of Deputy Registrar in the same scale but has the post of Assistant Registrar in the scale of Rs. 10000-15200/-. Hence, on the basis of this, the contention of the applicants that the pay scale of Assistant Registrar may be upgraded to link up that with the post of Assistant Registrar in the DRT, merely based on its nomenclature is not tenable. As regards the other Tribunals in the Government of India, it is submitted by the respondents that there are different Tribunals in the Government of India functioning under the administrative control of different Departments/ Ministries. They have been established for achieving different goals and for performing different jobs. They have different sets of their conditions of service & recruitment rules are framed on the basis of their requirements. It is further stated that degree in Law of a recognized University is necessary for proper functioning and for achieving the goals of a particular Tribunal but the said requirement may not be necessary for some other Tribunal. Hence, on the basis of this, no comparison may be made for claim for upgradation of the pay scales.

8. Heard the learned counsel for the parties and carefully perused the pleadings and records.

9. We have carefully considered the written submissions submitted by the learned counsel for the applicants and have gone through the ruling relied upon by him.

10. We have given careful consideration to the rival contentions made on behalf of the parties and we find that the main grievance of the applicants is that the post of Sr. PA and Superintendent which were in the lower scale of Rs. 2000-3200/- (pre-revised) and also the feeder posts for promotion to the post of Assistant Registrar, have now been placed at par with the post of Assistant Registrar with regard to the pay scale. Earlier the pay scale of the feeder post of Sr. PA was Rs. 2000-3200/-, whereas the pay scale of the Assistant Registrar was Rs. 2000-3500/-. Even the post of Sr. PA has been re-designated as Senior PS and has been given the pay scale of Rs. 7500-12000/- i.e. in the higher scale of pay as compared to the pay scale of the Assistant Registrar which is a promotional post. This upgradation has been done from 11th April, 2001 prospectively. The matter has been taken up with the Ministry of Law which is administratively concerned with the ITAT. The Ministry of Law and Justice after obtaining approval of the Department of Expenditure has upgraded the pay scale of the Assistant Registrar from Rs. 6500-10500/- to the pay scale of Rs. 8000-13500/- prospectively w.e.f. 2.4.2004. The applicants have made comparison with the pay scales of the officers of the registry of other Tribunals like CAT, DRT, TMR etc. and have demanded for higher pay scales for the posts of Assistant Registrars from Rs. 8000-13500/- to Rs. 10000-15200/-, Deputy Registrars from Rs. 10000-15200/- to Rs. 14300-18300/- and Registrars from Rs. 12000-16500/- to Rs. 18400-22400/-. They have made comparison of their pay scales with those officers of the RCT and other Tribunals which are functioning under administrative control of different Ministries.

11. On the other hand, the respondents in their reply have stated that these comparisons of the pay scales with the officers of the Railway Claims Tribunals and Trade

Marks Registry is not correct and have pointed out that comparison of pay scales is required to be made with the officers of the registry of the Custom, Excise & Gold (Control) Appellate Tribunal now known as Custom, Excise and Service Tax Appellate Tribunal and the registry of the Debt Recovery Tribunal. The respondents have also stated that there are different Tribunals in the Government of India functioning under the administrative control of different Departments/Ministries. They are established for achieving different goals and for performing different jobs. All have different sets of their conditions of service and recruitment rules are framed on the basis of their requirements. Therefore, it is not proper to make comparison with the pay scales of the officers of different Tribunals.

12. It is a well settled legal position that the Courts or Tribunal are not the appropriate authority to fix the pay scale of a particular post in a particular department. The fixation of the pay scale of a particular post depends on various factors including the cadre strength of the post, promotional avenues, jobs and responsibilities attached to the post, educational qualification and experience required for the post etc. The Courts or Tribunal are not equipped to evaluate these facts and decide the pay scale of a particular post. It is the job of the expert committee like the Pay Commission who is well equipped to do this detailed exercise. The Vth Central Pay Commission has already looked into the pay scales of Assistant Registrar, Deputy Registrar and Registrar and have not recommended for upgradation or for grant of higher pay scale. However, with the upgradation of the post of Sr. PA to Sr. PS, some anomaly had taken place and the matter was taken up by the Ministry of Law and Justice with the Department of Expenditure and this anomaly has now been rectified by upgrading the pay scales of the Assistant Registrars

from Rs. 6500-10500/- to Rs. 8000-13500/-.

13. The Hon'ble Supreme Court in the case of Union of India & Anr. Vs. P.V. Hariharan & Anr., 1997 SCC (L&S) 838 has made the following observations :

> "Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of 'equal pay for equal work' is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales."

14. In the present cases the applicants have failed to make out a case of hostile discrimination. In view of the aforesaid discussions made above, we are of the considered opinion that these Original Applications are liable to be dismissed as having no merits. Accordingly, both the Original Applications are dismissed. No costs.

15. The Registry is directed to supply the copy of memo of parties to the concerned parties, while issuing the certified copies of this order.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"