

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH ::: GUWAHATI-5.

O.A. NO. 229 of 1994.  
T.A. NO.

DATE OF DECISION 12-1-1996.

Shri Santimay Bhattacharjee

(PETITIONER(S))

S/Shri J.L.Sarkar, M.Chanda.

ADVOCATE FOR THE  
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

Shri G.Sarma, Addl.C.G.S.C.

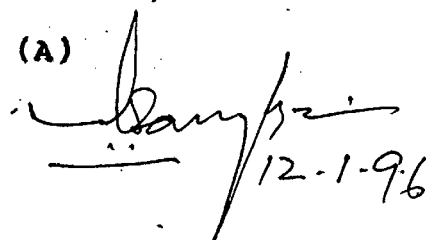
ADVOCATE FOR THE  
RESPONDENT (S)

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMINISTRATIVE)

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ? yes,
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ? } no.

Judgment delivered by Hon'ble Member (A)

  
12-1-96

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.229 of 1994.

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

Shri G.L.Sanglyine, Member (Administrative).

Shri Santimay Bhattacharjee,  
retired Assistant Commissioner of Income Tax,  
son of late Upendra Chandra Bhattacharjee,  
C/O Mahesh,  
Laitumkhrah, Shillong. . . . Applicant.

By Advocate S/Shri 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.T.D., Dhankheti,  
Shillong-793003.
3. Zonal Accounts Officer,  
Central Board of Direct Taxes,  
Dhankheti, Shillong-793003.
4. Shri B.B. Das,  
Asstt. Commissioner of Income Tax,  
Madras. . . . Respondents.

By Advocate Shri G.Sarma, Addl.C.G.S.C.

O R D E R

G.L.SANGLYINE, MEMBER (A)

The Government of India, Ministry of Finance, Department  
of Revenue, Central Board of Direct Taxes issued the Circular

~~letter~~ dated 13.5.1992 which is as below :

"I am directed to refer to the Board's  
letter F.No.110/32/71-Ad. dated 12.6.1975  
and F.No.A-26017/173/79-Ad.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 FR-22(C) on his promotion at each  
intermediate level, has been considered  
in consultation with the Department of  
Personnel and Training. In supersession

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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 compared 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 ~~xxx~~ representation requesting for stepping up of his pay in the grade of Inspector with reference to the pay of Sri B.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 refixed. There was apparently no response and the applicant submitted a reminder on 23.8.1993 after his retirement. 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

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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 maintained 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 Shri B.B.Das is not admissible. He<sup>was</sup> 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 compared 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 reliefs as mentioned therein.

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3. The learned counsel, Mr J.L.Sarkar, 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 UDC 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 roster 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~~ 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."

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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. Had 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. He also submitted that the application was submitted after the retirement of the applicant. The applicant cannot therefore agitate the issue after retirement and unsettle 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 ~~xxx~~ concluded only after his retirement. Therefore, it is only natural

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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.   | (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) 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. | (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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- (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 scrutinising the claim of the applicant further it is to be mentioned here that the Commissioner of Income Tax, North Eastern Region, Shillong 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 9.3.93 have been reproduced above and the first paragraph of the circular dated 9.3.93 reads thus :

"I am 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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points had been raised in regard to 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 ~~1~~ 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 Addl.C.G. 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 fulfil the stipulations in conditions (a) and (b) laid down in the original extent that instructions to the ~~the~~ ~~xx~~ the applicant was not promoted directly as Inspector from the cadre of UDC. 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 instruction that the clarifications were issued. But even the clarifications do not literally cover the cases such as that of the

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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 18.11.93 (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 HC, 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 affirmative.

^ 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 18.11.1993. The anomaly occurred in the pay as

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 ~~that~~ 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, Shillong who maintained the same. But in this application only


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"Commissioner of Income Tax, C.B.D.T., Dhankheti, 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 settled 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 H) and letter No.ZAO/EXP/Fin/8-3/94-95/1130 dated 20.7.94 (Annexure N) 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

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.

  
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( G.L.SANGLINE )  
MEMBER (A)