

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 973 of 2013

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Narasingo Behera, aged about 61 years, retired Income Tax Officer at present residing Qr. No. LIG-58, Stage-1, Housing Board, Neellakantha Nagar, Berhampur- 760002, Odisha and office address Ward No.3, Aayakar Bhawan, Ambapur, Berhampur-10.

.....Applicant

VERSUS

1. Union of India, represented by the Chief Commissioner of Income Tax, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007, Odisha.
2. The Joint Commissioner of Income Tax, Aayakar Bhawan, Ambapua, Berhampur-760010, Odisha.
3. The Asst. Commissioner of Income Tax, Head of Office, O/o the Joint Commissioner of Income Tax, Aayakar Bhawan, Ambapua, Berhampur-760010, Odisha.
4. The Deputy Commissioner of Income Tax (Hqrs.)(Admn.), Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007, Odisha.
5. Union of India, represented by Secretary, Ministry of Finance, North Block, New Delhi – 110001.

.....Respondents.

For the applicant : Mr.P.C.Sethi, counsel

For the respondents: Mr.J.K.Nayak, counsel

Heard & reserved on : 3.7.2019 Order on : 10.7.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

In this OA, the applicant had joined the Income Tax Department as a L.D.C. on 4.7.1975 and was promoted as Income Tax Officer (in short ITO) on 29.2.2008 vide order dated 28.2.2008 at Annexure A/1. The applicant represented on 2.4.2012 requesting for higher Grade Pay of Rs. 5400/- as per the rules on completion of 4 years as ITO. The representation was rejected vide order dated 28.5.2012. Thereafter, the applicant retired from service on 31.5.2012. He represented again and it was also rejected. The applicant filed the OA No. 469/2013 which was disposed of with direction to the respondents to consider the representation again as the point raised by the applicant was not discussed in earlier order rejecting the case. Accordingly, the respondents have considered the matter and rejected the claim of the applicant by passing

the order dated 24.9.2013 (Annexure-A/12). This order at Annexure A/12 is impugned in this OA, which is filed with the prayer for the following reliefs:-

- "(i) To hold that the order of rejection of prayer of the applicant by the respondent No.1 under Annexure A/12 is illegal.
- (ii) To direct the respondents to give the applicant the Grade pay of Rs.5400/- along with one additional increment since 1.3.2012 along with all consequential benefits arising thereon.
- (iii) To pass any other order(s) and further order(s) as deemed fit in the nature and circumstances of the case."

2. It is stated in para 4.3 of the OA that after his promotion as ITO, the seniority of the applicant as ITO was reviewed by the respondents and he was adjusted against the recruitment year 2010-11 (in place of earlier decision of 2007-08) as his recruitment year vide order dated 29.7.2011 (Annexure-A/3), but pay protection benefit as ITO was allowed to the applicant from 29.2.2008. It is stated in the impugned order dated 24.9.2013 (Annexure-A/12) that the applicant has been adjusted as ITO from the date 22.10.2010 after re-fixation of his seniority to the year 2010-11 and that since the applicant has not completed 4 years of service as ITO as on 28.2.2012, he is not entitled to the benefit of Grade Pay of Rs. 5400/-.

3. The applicant has cited the case of another similarly placed officer i.e. Sri R.N. Sethy, who had been allowed similar benefit, which has been refused to the applicant. The respondents have stated that the pay fixation of Sri R.N. Sethy was found to be erroneous and a decision has been taken to re-fix his pay after taking into account the deemed date of promotion as ITO.

4. We have heard learned counsels for both the parties. The only issue to be decided is whether the applicant is entitled for the benefit of Rs. 5400/- Grade Pay after counting his service as ITO from 29.2.2008.

5. Vide order dated 29.7.2011 (A/3), the seniority of the applicant as ITO was re-fixed to the recruitment year 2010-11 and thereafter, his deemed date of promotion to the post of ITO was taken to be 22.10.2010, which has not been disputed by the applicant. The applicant was first promoted as ITO provisionally vide order dated 28.2.2008 (Annexure-A/1) and he had joined as ITO on 29.2.2008. But when the regular DPC was held, it was found that the applicant could not be adjusted in the recruitment year 2007-08 and he was adjusted in the recruitment year 2010-11 vide order dated 29.7.2011 (Annexure-A/3) and his seniority as ITO was counted w.e.f. 22.10.2010 which has been accepted by the applicant without raising any dispute on that count. Hence, the applicant had worked as ITO on provisional basis from 29.2.2008 to 21.10.2010. The applicant's claim in the OA would effectively mean that the benefit of provisional service as ITO from 29.2.2008 to 21.10.2010 is to be made available to him and he has cited the case of Sri R.N. Sethy in support of his claim.

6. Regarding the case of Sri R.N. Sethy, the respondents have stated in Counter that decision has been taken to rectify the pay fixation of Sri Sethy who was wrongly given the benefit from the date of provisional promotion as ITO. The applicant in Rejoinder, has stated in reply to above averments that no such decision in respect of Sri Sethy was taken prior to his filing this OA and the respondents have allowed Sri R.N. Sethy to continue at higher pay. He further states that his promotion from 29.2.2008 was not erroneous and he was not reverted while adjusting him against the year 2010-11. In rely to this submission in Rejoinder, the respondents have stated that the applicant had not challenged the notional reversion and the F.R. 31-A applies to his case. The applicant contends that the submissions in para 6 of the Rejoinder has not been controverted.

7. It is noticed that the applicant has not furnished any rules or guidelines or executive instruction of the Government in support of the contention that during the period he was continuing on provisional promotion as ITO, he would be entitled for counting this period during which he was provisionally working as ITO from 29.2.2008 till regularisation on 22.10.2010 and whether this period can be counted for the purpose of higher pay scale with Grade Pay of Rs.5400/- for which completion of four years of service as ITO was required. The applicant has also not cited any case of any other employee other than the case of R.N.Sethy, in which similar benefit of Grade pay of Rs.5400/- was allowed. In the case of R.N.Sethy cited by the applicant, the respondents have stated that his pay was wrongly fixed as admitted in their counter and that decision has been taken to rectify the mistake by re-fixing his pay correctly. In view of the averment of the respondents that it has been decided to correct the mistake in the pay scale of Sri Sethy, the example of Shri R.N.Sethy will not be helpful for the applicant's case.

8. The order at Annexure A/1 promoting him as ITOP provisionally, was subject to the conditions as mentioned in para 2, 3 & 4 of the said order. From the order dated 29.7.2011 at Annexure A/3 it is seen that about three numbers of officers (other than the applicant) who were promoted as ITO provisionally earlier have been reverted back because while considering their case for regular promotion, they could not be accommodated in the vacancies considered by the DPC. The applicant's promotion was changed from the recruitment year 2007-08 to 2010-11 since he could not be adjusted within the vacancies available for the year 2007-08. Further the applicant's seniority was fixed on 22.10.2010 as ITO which has not been disputed by him. If the benefit of service for the purpose of higher Grade Pay of Rs.5400/- is counted from 29.2.2008 as claimed in the OA, it will effectively mean that the applicant's seniority as ITO is counted from 29.2.2008, which is not correct. Hence, for the purpose of the Grade Pay of Rs.5400/-, the applicant cannot claim the benefit

of service as ITO for the period he was working on provisional promotion as ITO since 29.2.2008 since no rules or authority has been cited by the applicant in support of such claim.

9. In view of the above we do not find any merit in the OA which is accordingly dismissed. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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