

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/795/2013

Date of Reserve: 13.05.2019

Date of Order: 02.08.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)  
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Tapan Kumar Pattnayak, aged about 52 years, S/o. Late Dhanjaya Pattnayak, At-Ward No.23, Tulasichoura, Near Acharya Mess, Baripada-757 001, Dist-Mayurbhanj, at present working as ITO Ward No. 1, Balasore, Station Square I.B.Road, Balasore.

...Applicant

By the Advocate (s)-M/s.J.M.Pattnaik  
C.Panigrahi

-VERSUS-

Union of India represented through:

1. The Secretary (Revenue), Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110 001.
2. The Chairperson, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001.
3. The Chief Commissioner of Income Tax, Odisha Region, Ayakar Bhawan, Bhubaneswar, Dist-Khurda.
4. The Commissioner of Income Tax, Aayakar Bhawan, Shelter Chhak, Tulasipur, Cuttack.
5. The Joint Commissioner of Income Tax, Balasore Range, Balasore.
6. The Deputy Commissioner of Income Tax (Hqrs.) (Admn.), Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007.

...Respondents

By the Advocate(s)-Mr.S.Behera  
ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as Income Tax Officer under the Respondent-Department. His grievance is directed against the communication dated 6.9.2013 (A/2) whereby his request for removal of pay anomaly and thus, stepping up pay at par with his junior Shri H.K.Sethy has been turned

down by the Respondents. Hence, in this Original Application under Section 19 of the A.T.Act, 1985, he has sought for the following reliefs:

- i) To quash the letter of rejection dated 6<sup>th</sup> September, 2013 in Annexure-A/2.
- ii) To direct the Respondents to step up of the pay of the applicant at par with his junior and pay be all consequential differential arrears pay retrospectively with 12% interest.
- iii) To pass any other order/orders as deemed fit and proper.

2. Brief facts of the matter are that the applicant joined as Lower Division Clerk (in short LDC) in the Income Tax Department on 18.01.1983. He was subsequently promoted as U.D.C., T.A., Sr.T.A., I.I.T. and I.T.O. in the years, 1993, 2001, 2005 and 2009, respectively. According to him, as on 30.06.2013, he was drawing the pay at Rs.18,020 with Grade Pay of Rs.4800/- in PB-2 (Rs.9300-34800) in the grade of I.T.O., whereas his junior Shri H.K.Sethy, ITO was granted pay at Rs.18,890/- with Grade Pay of Rs.4800/- as on 30.06.2013. In this respect, the detailed pay particulars received by him in various grades vis-a-vis Shri H.K.Sethy as furnished by the applicant are as follows:

Sl.No.	Grade	Date of Promotion	Pay (Rs.)
1.	L.D.C.	13.01.1983	260/-(Pre-revised scale)
2.	UDC	26.02.1988	1200/-
3.	T.A.	26.11.1993	1480/-
4.	Sr.T.A.	23.07.2001	5450/-
5.	I.I.T.	29.04.2005	6500/-
6.	ITO	04.08.2009	15640 +(Grade Pay 4800/-)
7.	ITO	01.07.2012	18020 +(Grade Pay 4800/-)

H.K.Sethy

Sl.No.	Grade	Date of Promotion	Pay (Rs.)
1.	L.D.C.	08.10.1986	950/-
2.	UDC	26.11.1993	1200/-
3.	T.A.	18.07.1997	1410/-
4.	Sr.T.A.	20.07.2001	5300/-
5.	I.I.T.	29.04.2002	5500/-
6.	ITO	03.08.2011	17710 +(Grade Pay 4800/-)
7.	ITO	01.07.2012	18890 +(Grade Pay 4800/-)

3. It is the case of the applicant that since the anomaly in pay is directly attributable to the provisions of FR 22(I)(a)(1), the respondents should have stepped up his pay at par with his junior Shri H.K.Sethy and therefore, the rejection letter dated 6.9.2013 (A/2) as communicated by the respondents is an outcome of total non-application of mind.

4. Respondents have filed their counter opposing the prayer of the applicant. According to respondents, Shri H.K.Sethy is not junior to the applicant, he having been promoted as Inspector of Income Tax in the year 2002, whereas the applicant was promoted to the same grade on 29.04.2005. Therefore, being junior, applicant is not entitled to stepping up pay at par with the said Shri Sethy, who is senior to the applicant in the grade of IIT. Respondents have pointed out that the plea of the applicant that his pay on promotion as IIT with effect from 29.04.2005 was fixed at Rs.6500/- whereas the pay of Shri Sethy on his promotion to IIT with effect from 29.04.2002 was fixed at Rs.5500/- is the distortion of fact inasmuch as the pay scale of IIT stood revised from Rs.5500-9000/- to Rs.6500-10,500/- with effect from 21.04.2004. Resultantly, the pay of the applicant and Shri Sethy on their promotion to IIT was fixed at the minimum of the revised pay scales applicable to them at the time of their promotion. In other words, the respondents have stated that the pay scale of the applicant was fixed at the minimum of revised scale at Rs.6500/- with effect from 29.04.2005 on his promotion to IIT whereas the pay of Shri Sethy had already been fixed at the minimum of scale of Rs.6500/- with effect from 21.04.2004. However, the respondents have submitted that the difference in pay as pointed out by the applicant has arisen due to grant of two advance increments to Shri Sethy on account of his passing the Departmental Examination for ITOs and as per FR-22(23)(2f) where a

junior gets more pay due to additional increments on acquiring the higher qualification, in such a case, stepping up pay will not be admissible to the senior. They have also pointed out that Audit Instruction-5 states that no stepping up pay be done in case of passing the incentive examination by a junior officer with effect from 01.01.1996. Therefore, it is the case of the respondents that anomaly in pay as claimed by the applicant not being as a result of direct application of FR-22-C/FR-22(I)(a)(1), the claim laid by the applicant merits no consideration.

5. Applicant has filed a rejoinder to the counter in which it has been stated that Shri Sethy became Inspector of Income Tax on 29.4.2002 and his pay was fixed at Rs.5500/- which was subsequently fixed at Rs.6500/- in the grade of IIT with effect from 21.4.2004. According to applicant, he became IIT on 29.04.2005 and his pay was fixed at Rs.6500. Thereafter, the applicant became ITO on 4.8.2009 and his pay was fixed at Rs.15640/- with GP Rs.4800/- whereas the pay of Shri Sethi, who became ITO on 3.8.2011, i.e., after two years, was fixed at Rs.17710/- with GP Rs.4800/- and as such, it cannot be said that Shri Sethy being senior to him has been drawing higher pay than the applicant.

6. We have heard the learned counsels for both the sides and perused the records. The short point that revolves round for consideration is whether the pay anomaly as claimed by the applicant arises out of direct application of FR-22(I)(a)(1). In this connection, the relevant provision of FR-22(I)(a)(1) as quoted at Page-88 of Swamy's Fundamental Rules reads as follows:

"(5) No stepping up of pay in the case of passing Incentive Examination by a Junior S.A. after 1.1.1996 – A reference is invited to this Office Circular No. 10 of 1998 No.768-Exam/27-88, dated 9.8.1988 read with circular No.59-Exam. 27-88 dated 26.2.1990 [CAG's Decision No.(2) below FR 27] regarding Incentive Examination for Senior

Auditors/Senior Accountants under which candidates securing fifty per cent marks and above are granted one advance increment in the scale of Senior Auditor/Senior Accountant with effect from first of the month in which the examination is held. Consequent upon implementation of recommendations of Fifth Central Pay Commission, anomalies in pay have arisen in some cases in the cadre of Senior Auditors/Senior Accountants as a result of passing the Incentive Examination by a senior before 1.1.1996 and a junior after 1.1.1996. The matter was referred to Government for considering rectification of such anomalies.

Ministry of Finance, after consultation with DoP&T have held that such type of anomalies have not arisen due to direct application of FR 22-C [Now FR 22(I)(a)(1)]. In such cases, anomaly has arisen due to grant of increment at a higher rate to the junior. In this connection, Government have drawn attention to various orders relating to stepping up of pay, issued right from 4.2.1996. Para (c) of these orders provides that anomaly should be as a result of application of FR-22C and in case where a junior is drawing higher pay than a senior by virtue of grant of advance increment, no benefit of stepping up of pay will be allowed to the Senior Officer. In the past, DOP&T have been agreeing to step up pay in such cases in relaxation of normal rules. However, after judgment of Hon'ble Supreme Court of India in the case of R.Swaminathan and others, Dept. Of Per. & Trg. Have been taking a consistent stand not to allow benefit of stepping up of pay of senior in cases where anomaly is not due to direct application of FR 22(C) [Now FR 22(I)(a)(1)]".

7. It is not in dispute that Shri H.K.Sethy, on passing the departmental examination for IIT had been granted two advance increments. He was promoted to IIT with effect from 29.04.2002 whereas the applicant was so promoted on 29.04.2005. The pay scale of Rs.5500-9000/- granted to IIT stood revised to Rs.6500-10500/- as a result of which the pay Shri Sethy was fixed at Rs.6500/- with effect from 21.04.2004. The applicant having been promoted to IIT one year after the promotion of Shri Sethy, his pay was fixed at Rs.6500/-with effect from 29.04.2005. Thus, it goes without saying that Shri Sethy was in receipt of higher pay than the applicant as on 21.04.2004 which no doubt due to grant of two advance increments followed by his

earlier promotion to IIT. It further reveals from the record that while the applicant was in receipt of pay at Rs.5450/- as on 23.07.2001 in the grade of Sr.T.A., Shri Sethi was in receipt of pay at Rs.5300/- on the date of his promotion as Sr.T.A. on 20.7.2001. Since Shri Sethy got earlier promotion to IIT on 29.04.2002, his pay was fixed at the minimum of pay at Rs.5500/- in the scale of Rs.5500-9000/-, which subsequently stood revised to Rs.6500-10500/- with effect from 21.04.2004. This benefit of revision, the applicant could avail only when he was promoted to IIT on 29.04.2005. There being a diversification in the matter of promotion to IIT between the applicant vis-a-vis Shri Sethy, by no stretch of imagination it could be said that the pay anomaly, as claimed by the applicant, arises out of direct application of FR-22(I)(a)(1). Consequently, the pay of the applicant and Shri Sethy on their subsequent promotion to ITO with effect from 04.08.2009 and 03.08.2011 respectively was fixed on the basis of pay already drawn by them in the former post held by them. This being the position, we are not inclined to accept the contention of the applicant that he being senior to Shri H.K.Sethy is drawing less pay than the latter.

8. For the reasons discussed above, the O.A. is held to be without any merit and the same is dismissed with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

(GOKUL CHANDRA PATI)  
MEMBER(A)

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