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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00944 of 2017

Tuesday, this the 11th day of February, 2020

CORAM

Hon'ble Mr.Ashish Kalia, Judicial Member

E.Sreedhar

S/o.M.K.Unnikrishna Panicker, aged 51 years

Superintendent of Central Excise

Office of the Chief Commissioner of Central Tax,

Central Excise & Customs, Central Revenue Buildings

I.S Press Road, Cochin – 682 018

... Applicant

(By Advocate Mr.C.S.G Nair)

Versus

1. Union of India
Represented by its Secretary
Department of Personnel & Training
Lok Nayak Bhavan, Khan Market
New Delhi – 110 003
2. The Registrar
Customs Excise & Service Tax Appellate Tribunal
(Principal Bench)
West Block No.2, R.K.Puram, New Delhi – 110 066
3. The Assistant Registrar
Customs Excise & Service Tax Appellate Tribunal
South Zonal Bench, PKCCI-WTC Building
K.G.Road, Bengaluru – 560 009

.2.

4. Respondent no.4 deleted vide order in
M.A 925/18 dated 28.8.2018.

..... Respondents

(By Advocate, Mr.T.C.Krishna, Sr.PCGC)

This application having been heard on 10th February, 2020, the Tribunal
on 11.2.2020. delivered the following :

O R D E R

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

The reliefs prayed for in the Original Application are as follows:

“(i) To declare that the applicant is entitled for deputation duty allowance for the period he worked as Technical Officer in CESTAT w.e.f 18.11.2013 to 17.11.2016 @ 10% of the basic pay plus grade pay upto 31.12.2015 and then @ Rs.4000 per month w.e.f 1.1.2016 to 17.11.2016.

(ii) To direct the respondents to grant deputation duty allowance for the period he worked as Technical Officer in CESTAT w.e.f 18.11.2013 to 17.11.2016 @ 10% of the basic pay plus grade pay upto 31.12.2015 and then @ Rs.4000 per month w.e.f 1.1.2016 to 17.11.2016 and pay the arrears within a stipulated period with interest @ 12% per annum.

(iii) To grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case. “

2. The applicant while working as Superintendent of Central Excise under the 4th respondent had applied for a deputation to the 3rd respondent's office as Technical Officer as he fulfills the eligibility criteria. The pay of the applicant was in Pay Band 2, Rs.9300-34800 with a Grade Pay of Rs.4800/- as per the Revised Pay Rules, 2008 w.e.f 1.1.2006. The applicant was

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selected to the post of Technical Officer on deputation basis in CESTAT. On joining in the said post, an option was called for from the applicant with regard to the pay fixation. The applicant had submitted the option by requesting the same pay which he was drawing at Cochin in addition to the deputation duty allowance and special pay of Rs.300/-. The option was forwarded to the 2nd respondent by the 3rd respondent for necessary action. But the applicant was paid only the pay which he was drawing at his parent department. The applicant was expecting that he would be paid deputation duty allowance as he had opted for it. The representations submitted by the applicant were rejected by the respondents.

3. Notice issued to the respondents. The respondents put appearance through their counsel Mr.T.C.Krishna,Sr.PCGC and filed a detailed reply statement. It is submitted therein that the present claim of the applicant is barred by time. It is further stated that a person in a higher Grade Pay/Scale of pay shall not be appointed on deputation to a post of lower Grade Pay/Scale of Pay if the deputation is from Central Government to Central Government and also in cases where the scale of pay and dearness allowance in the parent cadre post and ex-cadre post are similar. The applicant's Grade Pay was Rs.5,400/- whereas the Grade Pay of the deputation post (Technical Officer, CESTAT) is Rs.4600/-. As such, the applicant was not eligible to be appointed on deputation even if the Recruitment Rules of the post of Technical Officer says otherwise. The Recruitment Rule is a general rule and the special rules concerning deputation overrides the general rule. When the

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special rule concerning deputation does not allow person of higher Grade Pay/Scale of pay to be appointed on deputation, the rule need not further specify the pay fixation of such persons. In other words, the deputation allowance is applicable to persons who are appointed from the post in the parent department drawing lesser Grade Pay/Scale of Pay than the Grade Pay/Scale of Pay in the deputation post. Though the applicant was not eligible to be appointed on deputation and since he is not eligible for deputation allowance, his pay as drawn in the parent department was protected correctly as per the rules. The representation submitted by the applicant was devoid of merits. The applicant has also cited one example of Shri.K.O.Paul who has been granted the similar benefit in the higher pay scale. In reply to this, it is submitted by learned counsel for the respondents that there is no such precedence to follow in the case of the applicant. Even if it is granted to such an Officer, a wrong precedent cannot be followed. Respondents have also cited O.M dated 17.6.2010 (Annexure A-7) wherein it is stated as follows:

“A person in a higher Grade Pay/Scale of Pay shall not be appointed on deputation to a post in lower Grade Pay/Scale of pay, if the deputation is from Central Government to Central Government and also in cases where the scale of pay and dearness allowance in the parent cadre post and ex-cadre post are similar.”

O.M dated 13.9.2008 (Annexure R1-A) reads as follows:

“In case a Government servant goes on deputation to a post carrying a lower grade pay, his pay in the pay band would continue unchanged, but he will be granted

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the grade pay of the lower post for the entire duration of the deputation. “

4. Heard Mr.C.S.G Nair, learned counsel for the applicant and Mr.T.C.Krishna,Sr.PCGC, learned counsel for the respondents at length. Perused the records.

5. The claim of the applicant for getting deputation allowance after retirement is contested by the respondents as it is highly barred by time. The applicant should have either not joined the post carrying a low pay scale rather applicant was not eligible for lower deputation post. Despite this, he had accepted the same. Hope against law is ill founded because the rules and regulations are the key factors for granting pay on deputation post, which is contrary to the claim of the applicant.

6. Even if on merit also, the applicant is not able to show what legal right he is having to claim such deputation allowance on lower pay scale. The rules are very clear. The applicant having worked on the higher position, i.e, the Superintendent of Central Excise, he ought to have had knowledge about the said rule. The borrowing department CESTAT had protected his existing pay scale and the applicant continued there for five years. Now after his retirement, he has raised the claim of deputation allowance, which is hit by the law of limitation.

7. The point that the similarly placed person had been granted the same

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benefit, cannot be made the basis to get the same relief to the applicant. Even if somebody has been granted the benefits against law, the same cannot be extended to the applicant or he cannot claim parity on this count.

8. This Tribunal, after considering all relevant factors, finds that this Original Application has no merit and the same is dismissed. No costs.

(ASHISH KALIA)

JUDICIAL MEMBER

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List of Annexures

Annexure A1 - True copy of the offer of appoint f.No.27(23) DEP.TO/CESTAT/Admn.2007 dated 7.10.2013 issued by the 3rd respondent

Annexure A2 - True copy of the letter F.No.27(23)DEP.TO/CESTAT/Admhn.2007 dated 30.10.2013 issued by the 3rd respondent

Annexure A3 - True copy of the Relief Report

Annexure A4 - True copy of the Office Order dated 27.11.2013.

Annexure A5 - True copy of the forwarding letter F.No.01/CESTAT/Bang/ES dated 5.12.2013

Annexure A6 - True copy of the option submitted on 5.12.2013

Annexure A7 - True copy of the OM No.6/8/2009 (Estt.) (Pay II) Dated 17.6.2010

Annexure A8 - True copy of the Order dated 26.12.2013

Annexure A9 - True copy of the representation dated 28.1.2014

Annexure A10 - True copy of the representation dated 4.3.2014

Annexure A11 - True copy of the letter No.27(23) DEP.T.O/CESTAT/Admn./2007 dated 11.4.2014 issued by the 2nd respondent

Annexure A12 - True copy of the note sheet initiated on 10.3.2014

Annexure A13 - True copy of the representation dated 8.5.2014

Annexure A14 - True copy of the Pay Slip of Shri.K.P.Paul, for the month of April 2014

Annexure A15 - True copy of the reply to RTI question bearing No.33/(340) RTI/Misc/CESTAT-ND/Admn.2015 dated 28.10.2015

Annexure A16 - True copy of the representation dt:21.1.2016

Annexure A17 - True copy of the representation addressed to the Deputy Registrar(Admn.), CESTAT, New Delhi.

Annexure A18 - True copy of the representation dt.14.6.2016

Annexure A19 - True copy of the Order F.No.27(23)DEP-

.8.

TO/CESTAT/Admn/2007 dt.22.7.2016

Annexure A20: - True copy of the representation dt.26.12.2016

Annexure R1A - True copy of the OM dated 13.9.2008.

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