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JA

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.**

Date of decision: 9.8.1990

Regn. No. OA 1946 of 1988

I.J. Rao

Applicant

Vs.

Union of India

Respondents

S/Shri M. Chandrasekhar and Madhav Panikar, counsel for the applicant.

Shri P.P. Khurana, counsel for the respondents.

Regn. No. OA 2568 of 1989

S.K. Bhatnagar

Applicant

Vs.

Union of India

Respondents

Applicant in person.

Shri P.P. Khurana, counsel for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

Hon'ble Shri S.R. Sagar, Member (Judicial).

(Judgment of the Bench pronounced by the Hon'ble
Shri B.C. Mathur, Vice-Chairman.)

In both the OAs 1946/88 and 2568/89 common relief has been sought, namely, to direct the respondents to fix the scale of pay of the applicants at Rs. 7300-8000 and to direct the respondents to make this scale applicable to the applicants with effect from 1.1.1986, the date from which the Members of the Central Board of Excise and Customs have been placed in the said scale.

In OA 2568 of 1989 the applicant, Shri S.K. Bhatnagar, has made out the same prayer, but the grounds are that since two other Members of the Tribunal, namely, Shri K.L. Rekhi and Shri K.P. Anand, were given the scale of Rs. 7300-8000 per month, his pay should be refixed accordingly in the same scale.



2. The case of the applicants is that both of them were permanent Collectors of Customs and were appointed as Members (Tech.) in the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) in 1983 and 1984 respectively and their salary was fixed at Rs. 3000/- per month which the grade pay of the Additional Secretary to the Government of India and Members of the Central Board of Excise & Customs. After acceptance of the 4th Pay Commission's Report, while Members of the Board were placed in the scale of Rs. 7300-8000, the Registry of the CEGAT wrongly fixed their scale at Rs. 7300-7600. Prior to the 4th Pay Commission's Report, the Members of the CEGAT and the Members of the Central Board of Excise and Customs were enjoying parity in pay and status as officers equivalent to Additional Secretaries to the Government of India. The Report of the Indirect Taxes Enquiry Committee popularly known as Jha Committee Report had recommended that the Members of the Tribunal should have a status at least equal to that of the Members of the Central Board of Excise and Customs with a higher status for the Chairman.

Two Members, namely, Shri K.L. Rekhi and Shri K.P. Anand, were allowed the scale of Rs. 7300-8000 while other Members (Tech.) were kept in the scale of Rs. 7300-7600 which is highly discriminatory as Members are in the same Tribunal and with the same designation cannot be given a different scale of pay. Shri S.K. Bhatnagar has stated that he is a batch mate of Shri K.P. Anand having been selected along with Shri Anand and having joined as Member in the same year i.e. 1984 (Shri Bhatnagar joined earlier than Shri Anand) and as both have been exercising powers, duties and responsibilities similar in nature, there cannot be any discrimination in their scales of pay. Since Shri Rekhi and Shri Anand

had been given the scale of Rs. 7300-8000 - even though such a scale has been given to these two officers on a personal basis

- the same cannot be denied to the applicants firstly on the ground

that there cannot be two scales for Members doing the same work

and secondly because there has been parity all along between

Members (Tech.) CEGAT and Members of the Central Board of

Excise & Customs. Shri I.J. Rao is senior to both Shri Anand

and Shri Bhatnagar. He is also senior to several other officers

working as Members of the Central Board of Excise and Customs.

It was also pointed out that some Members of the Tribunal were not

considered for appointment as Members of the Board on the ground

that they were /enjoying an equal scale of pay. As such allowing

Members of the Central Board of Excise and Customs, junior to

the applicant in the cadre of the Indian Customs and Excise

Service, the scale of Rs. 7300-8000 and allowing the Members

of the Tribunal the scale of Rs. 7300-7600 would be arbitrary

and discriminatory and violative of Articles 14 and 16 of the

Constitution.

3. The respondents in their counter have stated that the

applicants while working as Collectors were selected to the ex-

cadre post of Member (Tech.) in CEGAT. At the time of the

initial constitution of the CEGAT some senior Members of the

Indian Revenue (Customs and Excise) Service like Shri K.L. Rekhi

and Shri I.J. Rao and others were appointed as Members (Tech.)

on or about 1.1.1983 or later and one of the conditions was that

unless the appointment is confirmed, the Central Government may,

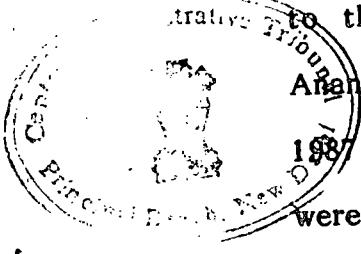
at any time, revert them to the parent cadre. Appointees could

also exercise option for reversion to the parent cadre. According

to the said terms and conditions, Shri K.L. Rekhi and Shri K.P.

Anand, opted for reversion to their parent cadre. Around November

1983 both Shri Rekhi and Shri Anand, both Members of the CEGAT, were allowed the pay revision and were placed in the scale of



Rs. 7300-8000 as they had specifically opted for reversion to their original cadre and the Govt. of India had accepted their option.

The Central Government at the relevant point of time had decided not to transfer them from the CEGAT on grounds of administrative

exigencies. As the two officers had opted for their reversion

to their parent cadre and had not desired confirmation in the

post of Member, CEGAT, Government allowed them the scale of

Rs. 7300-8000 admissible to Members of the Central Board of

Excise & Customs as pay personal to them. It has been stated

that if their option for reversion to the parent cadre had been accepted

by the Govt., they would have been eligible for appointment as

Member of the Central Board of Excise and Customs carrying

the scale of pay of Rs. 7300-8000. It has been stated by the

respondents that the 4th Pay Commission had recommended scale

of pay of Rs. 7300-7600 to Members of all Tribunals, including

the Central Administrative Tribunal and the CEGAT. As such,

there is no case for equating the Members of the CEGAT and

Central Board of Excise and Customs in the matter of pay scale.

The 4th Pay Commission recommended a higher pay scale in favour

of the Members of the Board and equating the Members of the

CEGAT with Members of the Board would be against the conscious

policy of the Government based upon the recommendations of the

4th Pay Commission. In the rejoinder it has been disputed that

the pay allowed to Shri Rekhi and Shri Anand was personal pay.

The impugned order clearly shows that both Shri Rekhi and Shri

Anand were given the scale till they continued to be the Members

of the Tribunal. The pay scale of Rs. 7300-8000 could not be

personal and it is not relevant that on reversion Shri Rekhi and

Shri Anand would have been eligible as Members of the Central

Board of Excise and Customs. At the time the pay scales were

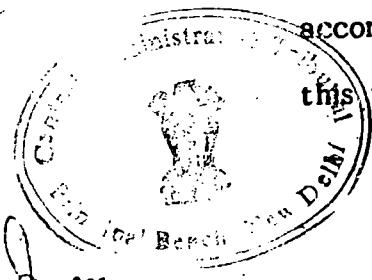
fixed the applicants had not been confirmed as Members of the

Tribunal, but orders were passed confirming them retrospectively

but even that does not deny them the scale of Rs. 7300-8000

allowed to Members of the Central Board of Excise and Customs.

We have gone through the pleadings and heard the learned counsel and Shri S.K. Bhatnagar. It is not in dispute that both the Members of the Central Board of Excise and Customs as well as Members (Tech) CEGAT were enjoying the same pay of Rs. 3000/- before Government accepted the recommendations of the Fourth Pay Commission. It appears that the Fourth Pay Commission has not made any specific recommendation for the Members of CEGAT as mentioned in para 6.2 (viii) of the reply filed by the respondents in OA No. 1946 of 1988, but the Members of the CEGAT were given the normal replacement scale of Rs. 7300/- to 7600. We do not want to go into the question whether it was correct to allow two Members - Shri Rekhi and Shri Anand - a higher scale than other Members even though it was made personal, but there is need for a proper examination of the whole matter by the competent authority. Normally, courts do not go into the question of parity between two sets of posts and the pay scale that should be admissible to them. These are normally left to like Pay Commission expert bodies and Government to decide. We feel that since the representation of the applicants has not been replied by Government, they may examine the whole question regarding the pay scale of the Members of the CEGAT taking into consideration the recommendations of the Jha Committee and Rules 14 and 18 of the Customs, Excise and Gold (Control) Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1987. We order accordingly and refer the matter to Respondent No. 1 to re-examine the whole question of pay scales of Members of the CEGAT and finalise the same within six months. The pay scale of the applicants may also be fixed according to the decision which may be taken by Government in this matter keeping in view the above observations. The applications



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are disposed of accordingly and there will be no orders as to cost.

~~(S.R. SACAR)~~
MEMBER (JUDICIAL)

(B.C. MATHUR)
VICE-CHAIRMAN

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Dated.....

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