

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.1631/2004

New Delhi this the 19th May, 2005

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

Aman Kumar Singh,
Joint Secretary to CM,
D-1/20, Devendra Nagar,
Raipur, Chhattisgarh-492001.

...Applicant.

(By Advocate: Shri Sunil Kumar, Sr.counsel with
Shri Atul Jha and Shri Nirmal Mittal)

Versus

1. Union of India
Through, Secretary (Revenue),
Ministry of Finance & Company Affairs,
North Block, New Delhi-110001.
2. Chairman,
Central Board of Excise & Customs
Department of Revenue,
Ministry of Finance & Company Affairs
North Block, New Delhi-110001.

... Respondents.

(By Advocate: Shri R.R.Bharti)

ORDER

By Shri S.A.Singh, Member (A)

The applicant joined on 4.1.1993, National Bank for Agriculture and Rural Development (NABARD) as Assistant Manager. He took the 1994-95 Civil Services Examination and was selected in Group 'A' of the Indian Customs & Central Excise Service (I.C.&C.E.S.), in the pay scale of Rs.2200-75-2800-100-4000/-. On being relieved from NABARD, he joined IC&CES on 8.1.1996.

2. In NABARD, the applicant was drawing Rs.8145/- (Rs.6075/- Basic Pay + Rs.2070/- DA). The total salary of the applicant including other allowances in NABARD was Rs.9,499.25.

3. In IC&CES, he was fixed at Rs.2200/- in the pay scale of Rs.2200-75-2800-100-4000/- and he received total emoluments of Rs.5876/- (Rs.2200 Basic Pay + DA Rs. 3256/-). According to the applicant, on joining IC&CES he was drawing Rs. 2369/- less than his total emoluments in NABARD.

4. The 5th CPC recommendations were implemented w.e.f. 1.1.96 and scale of Rs.2200-4000/- was revised to Rs.8000-13500/-. The applicant pay was re-fixed in the revised scale

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of Rs.8000-13500/- at Rs.8000/-, w.e.f 8.1.1996. This was made as per provisions of DoPT OM dated 7.8.1989 according to which the stage should be such that the applicant suffered a minimum loss.

5. The applicant is aggrieved by fixing his pay in the revised pay scale of Rs.8000-13500/- for the reason the respondents should have first fixed his basic pay in the old scale of Rs.2200-4000/- and then in the revised scale of Rs.8000-13500/-. He made a number of representations asking for re-fixation of pay and the respondents informed him vide their letter-dated 19.6.2003 that as the 5th CPC recommendations became effective w.e.f. 1.1.1996 his case was without merit, since he had joined IC&CES on 8.1.1996.

6. It is the averments of the applicant that the respondents overlooked the fact that in the case of Anand Kumar, who joined IC&CES on 25.8.97, his pay was fixed in the old scale and then in the revised scale recommended by the 5th CPC. The respondents have acted in a discriminatory and mala-fide manner. The applicant seeks quashing of letter dated 19.6.2003 rejecting his claim and directions to the respondents to re-fix the basic pay on the date he joined in the scale of Rs.2200-4000/- first and then in the revised scale of Rs.8000-13500/-.

7. The respondents have contested the claim. The respondents have pleaded that the pay of the applicant was fixed in the revised scale from the date he joined service (i.e. w.e.f. 8.1.1996), according to provisions of DoPT's OM dated 7.8.96 with minimum loss of Rs.145/-. His request for fixation first in the scale of Rs.2200-4000/- and then in the revised scale of Rs 8000-13500 is inadmissible as this is admissible only to those who were in service before 1.1.1996. The applicant joined service on 8.1.1996; therefore, he is not entitled. His representations have been examined in consultation with DoPT and rejected because they are without merit.

8. The respondents stated that the case of Shri Anand Kumar is being reviewed, as it was an error. The applicant cannot rely upon this because the established principle is that benefit erroneously granted in one case cannot be extended to other similar cases, as it would compound the cases.

9. The applicant has contested the averment of the respondents pointing out that the date on which the applicant joined IC&CES (8.1.96) he was drawing salary in the pre-revised scale of the Rs.2200-4000/-. In October 1997, revised pay scale was notified retrospectively applicable from 1.1.1996. According to DoPT's OM dated 7.8.1989 the initial pay of the

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applicant has to be fixed at the stage in the scale attached to the post he is joining in IC&CES at a stage that will protect the pay and DA he was drawing in NABARD. He is entitled to be fixed in the scale of Rs.2200-4000/- and then subsequently in the revised pay scale. His case is not barred by the date of 1.1.1996 as he was already working in a government organization- namely NABARD. The other limb of applicant's argument is that the result of the 1994 Civil services Examination was declared in June 1995. For reasons best known to DoPT, all services other than those selected for IC&CES, reported for foundation training in the month of September. In the case of 1995 examination candidates of IC&CES appointment letters were issued on 28th December 1995 i.e. about four months after the other civil services. This delay on the part of the respondents has resulted in this anomaly. However, it needs to be kept in view that not with standing joining of IC&CES in the month of January 1996 the date of increment of the officers of 1995 batch, including the applicant, has been brought forward to September 1995. In addition, for appointment to senior time scale four years service is taken from 1.9.1999. If the date of joining was the criteria, the applicant and other officers of 1995 batch should have been appointed to senior time scale w.e.f. 1.1.2000 and the date of annual increment would have been remained 1st January and not 1st September. In view of this fact it is clear that cut off date of 1.1.1996 is artificial and in no way affects the claim of the applicant.

10. We have heard the counsel for the parties and gone through the documents brought on record. The basic facts are not in controversy.

11. It is a fact that the applicant joined IC&CES on 8.1.1996 and was fixed in the pre-revised scale of Rs.2200-4000/- since on 8.1.1996 5th CPC scale had not been notified. They were made known only in October 1996 and come retrospectively into effect from 01.01.1996. When the recommendations were implemented in October 1996 the applicant was not first fixed in the pre-revised scale of Rs.2200-4000/- and thereafter in the revised scale because he was not on the strength of IC&CES on 01.01.1996. He was directly fixed in the revised scale of Rs.8000-13500, although in reality he had been fixed in the scale of Rs.2200-4000/- on 8.1.1996.

12. The short question before the Tribunal is whether the applicant should be first fixed in pre-revised scale Rs. 2200-4000/- and only thereafter in the revised scale of Rs 8000-13500.

The applicant would have been fixed directly in the scale of Rs.8000-13500 on his joining

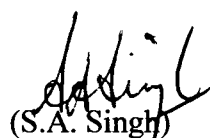



IC&CES if the 5th CPC recommendations had been available on 8.1.1996. They were only available in October 1996. However, on 1.1.96 the applicant was employed in NABARD, which entitled him to pay and DA protection in IC&CES. The factual position is that on 8.1.1996, the 5th pay commission recommendations were not available and the pay fixation of the applicant was made based on pre-revised scales. In October 1996, when 5th CPC recommendations were implemented the respondents were required to implement the recommendations of 5th CPC keeping the provisions of DoPT's OM dated 7.8.89 in view. The only equitable manner for implementing the provisions of the OM dated 7.8.89 would be to consider like with like i.e. either take pre-revised scales of NABARD and IC&CES or the revised scales of both. It would not be equitable to use the pre-revised scales of NABARD and the revised scales of IC&CES for fixing the pay of the applicant in the revised 5th CPC scales. OM dated 7.8.89 asserts that government will protect the pay and DA already drawn in their parent organization. The applicant was drawing, in NABARD, pay and DA in NABARD's existing scales. The fixation in the 5th CPC will then have to be based on the applicant's fixation in the pre revised scale on his joining IC&CES for the reason if this is not done than the applicant would have to get his pay re-fixed in NABARD in the new scales and then seek re-fixation in IC&CES. This is clearly impractical.

13. The applicant has also pointed out that though he joined IC&CES in January 1996, however, for all practical purposes, September 1995 has been taken to be the date of joining because date of increment is 1st of September and completion of 4 years period eligibility requirement for promotion to senior time scale also has been taken from 1.9.1995.

14. In view of the above, we find that the applicant would be entitled to the relief prayed for. The respondents are directed to first re-fix the basic pay of the applicant on the date of his joining IC&CES, in the pre revised scale of Rs.2200-4000 and thereafter in the revised scale of Rs.8000-13500/-. The Respondents should implement these directions, within four months from the date of receipt of this order.

15. With these directions, the OA is allowed. No order as to costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

Patwal/