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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.624 of 2011

Cuttack this the 6<sup>th</sup> day of December, 2017

CORAM:

HON'BLE SHRI S.K.PATTNAIK, MEMBER (J)  
HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

1. All India Association of Central Excise Gazetted Executive Officers, Bhubaneswar Unit, Bhubaneswar, represented through the General Secretary, Loknath Mishra, S/o-late Babaji Mishra, aged about 55 years, Present Posting: Superintendent, Central Excise, Customs, Bhubaneswar-I Commissionerate, Bhubaneswar
2. Gouranga Ch.Roul, S/o. Padma Ch.Roul, aged about 59 years, presently working as Supdt. Of Central Excise & Customs, Bhubaneswar-I, Commissionerate, Bhubaneswar
3. Niranjana Pradha, S/o. late Ananta Pradhan, Superintendent, Central Excise & Customs, Bhubaneswar-II, Commissionerate, Bhubaneswar

...Applicants

By the Advocate(s)-M/s.D.P.Dhalasamant

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Finance and Company Affairs, Department of Revenue, North Block, New Delhi-110 001
2. Chairman, Central Board of Excise and Customs, North Block, New Delhi-110 001
3. The Chief Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar Zone, C.R. Building, Bhubaneswar-751 007

...Respondents

By the Advocate(s)-Mr.S.K.Patra  
M/s.S.Rath  
B.K.Nayak-3

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D.K.Mohanty

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant No.1 is the All India Association of Central Excise Gazetted Executive Officers, Bhubaneswar Unit, Bhubaneswar, represented through the General Secretary, Sri Loknath Mishra. The 2<sup>nd</sup> and 3<sup>rd</sup> applicants are working as Superintendent of Central Excise & Customs, Bhubaneswar-I & II Commissionerate respectively. They have filed this O.A. under Section 19 of the A.T.Act, 1985, praying for the following reliefs:

- i) The impugned order under Annexure-A/13 dtd. 06.10.2010 be quashed declaring the same as illegal in the eye of law.
- ii) The Hon'ble Tribunal be pleased to direct the respondents to grant the pay scale of Rs.8000-275-13500/- to the cadre of Supdt. Central Excise Customs w.e.f. 01.01.1996 and the pay scale of Rs.10,000-325-15200 to those Supdt. Who have been awarded 2<sup>nd</sup> Financial upgradation der ACP Scheme w.e.f. 09.08.1999 and consequently the corresponding pay sale/Grade Pay be allowed after 6<sup>th</sup> Central Pay Commission recommendations.
- iii) Apart from the above scale consequent to 6<sup>th</sup> Central Pay Commission the Supdt. Of Central Excise & Customs may be given grade pay of Rs.5400 in PB-3 w.e.f. 1.01.2006 and grade pay Rs.6600 in PB-3 w.e.f. 01.01.06 to shoes Supdt. Central Excise and Customs who have completed 4 years of service in the grade and grade pay of Rs.7600 in PB-3 w.e.f. 01.01.06 to those Supdt. Of Central Excise & Customs who have been awarded the 2<sup>nd</sup> financial upgradation in ACP Scheme.
- iv) It may be declared that the disparity in the pay scale is required to be removed from the date when such disparity arose and direction be given to the respondents to effect the appropriate higher scale of pay to the Supdt. Of Central Excise and Customs retrospectively i.e. from 01.01.1986.

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- iv) The Hon'ble Tribunal may be pleased to direct the respondents to grant all the consequential reliefs with arrear of pay and interest.
- v) Appropriate direction be given to pay the differential arrear within the time stipulated by the Hon'ble Tribunal.

2. The order dated 06.10.2010 which is under challenge in the O.A. deals with the issue of grant of pay scale to the Superintendent of Central Excise & Customs on par with their counter part in CBI/IB. For reasons of clarity and cogency, it is relevant to quote the letter in verbatim as under:

"Subject: Compliance of order dated 25.01.2010 of Hon'ble Central Administrative Tribunal, Cuttack Bench in O.A.No.181/2006 filed by the All India Federation of Central Excise Gazetted Officers, Bhubaneswar.

WHEREAS, the All India Federation of Central Excise Gazetted Officers, Bhubaneswar have filed OA No.181/2006 before Hon'ble CAT, Cuttack Bench, Cuttack with the following prayers:

- (a) This Hon'ble Tribunal may be pleased to direct the respondents to grant the pay scale of Rs.8000-275-13,500/p to the cadre of Superintendent of Central Excise and Customs w.e.f. 01.01.96 and the pay scale of Rs.10,000-325-15,200 to those Superintendent who have been awarded second financial upgradation under ACP scheme with effect from -09.08.99.
- (b) This Hon'ble Tribunal may be pleased to direct the respondents to grant all the consequential reliefs with arrear of pay and interest.
- © Appropriate direction may be given to pay the differential arrear within the time stipulated by the Hon'ble Tribunal.

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- (d) Any other appropriate order be passed or direction be made which deems just and proper.
2. The CAT vide order 25/01/2010 has observed that more often functions of two posts may appear to be the same or similar, but there may be difference in degree in the performance. The quantity of work may be the same but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the executive wing of the Government. It must be determined by expert bodies like pay commission. They would be the best judge to evaluate the nature of duties and responsibilities of posts.
3. AND WHEREAS, vide Order dated 25.01.2010 the Cuttack Bench of CAT direction was issued to the Respondent No.3 to consider and dispose of the said representation under Annexure-A/10 at this stage within a stipulated which is fixed by the end of March, 2010 and communicate the result thereof.
4. In pursuance of the aforesaid directions of the Hon'ble CAT, Cuttack Bench, Cuttack order dated 25.01.2010, in the O.A.No.181/2006 the question of retrospective revision of the pay scale of the Superintendents of Customs and Central Excise with that of Dy.S.P. of CBI w.e.f. 1.1.1996 has been considered in consultation with Department of Expenditure, taking into account the contents of Applicants' representation dated 27.04.05, the judicial pronouncements quoted therein and the observation of Hon'ble CAT in their order dated 25.01.2010.
5. The points raised by the Applicants in their representation dated 27.04.2005 in support of their claim for parity with the officers of CBI/IB and the supporting judgment relied upon have been considered carefully. It has been observed that the demand of the Superintendent for grant of higher pay scales of Rs.8000-13500/- at par with the Dy.SP of CBI has already been examined by the 6<sup>th</sup> CPC

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in para 7.15.17. These recommendations are reproduced below:

(i) "7.15.17: Higher scale of Rs.8000-13,500/- has been sought for the posts of Appraiser/Superintendents/Income Tax Officer/equivalent in CBEC and CBDT. The higher scale has been demanded on the ground that these posts are comparable with Deputy Superintendents of Police in CBI who are already in the scale of Rs.8000-13,500/-. It is observed that the Fifth Central Pay Commission had specifically noted that no relativity could be established between executive posts in Income Tax and Customs vis-à-vis those existing in CBI. Although the recommendation was made with reference to the post of Inspector, the same cannot but hold true for the next higher posts in the hierarchy of these organizations. Further, the pay scale of Rs.8000-13,500/- is the entry pay scale for a Group A posts of Assistant Commissioner/equivalent. The post of Assistant Commissioner is a promotion post for Superintendents/Appraisers/ITOs. Etc. Therefore, even otherwise, this scale cannot be granted".

(ii) Further, the retrospective revision of the pay scales of Executive post of CBEC & CBDT w.e.f. 01.01.1996 has also not been accepted by the 6<sup>th</sup> CPC in their recommendation contained in para 7.15.16 reproduced below:

"A demand has also been made for allowing the scale of Rs.6500-10,500 in case of Inspectors/equivalent and of Rs.7500-12000 in case of Appraiser/Superintendents/Income tax Officers/Equivalent retrospectively from 1.1.1996. The Commission as a general rule is

not considering demands seeking retrospective applications of some or the other Order unless a clear cut and manifest anomaly that cannot be corrected other than through such retrospective revision is made out. Such is not the case here. The demand cannot, therefore, be considered”.

Therefore, Sixth CPC have not accepted retrospective upgradation of the pay scale of the executive post CBDT/CBEC”.

3. The Respondents have relied upon the judgment of the Hon'ble Supreme Court in State of Punjab & Ors. vs. Jagjit Singh & others [(2017) 1 SCC 148], in which the Hon'ble Supreme Court has emphatically held that persons holding the same rank/designation (in different Departments) without having dissimilar powers, duties and responsibilities can be placed in different scales of pay and cannot claim the benefit of the principle of “equal pay for equal work” and that the claimants must prove that the said posts occupied by them require them to discharge equal work of equal value as the reference post.
4. After hearing the learned counsels from both the sides and perusing the documents submitted by them, we are of the view that the points of law and the facts in the present O.A. are similar to O.A.No.292 of 2011 disposed of on 02.11.2017. The relevant paras of our order of the same Bench are quoted hereunder.

“14. An analysis of the above clearly shows that there has been proper application of mind on the part of the concerned authorities and a conscious decision has been taken by the Government to avoid similar demands from

others. Certain benefits should be conferred after due deliberation with effect from a particular date. We have taken into account the case laws cited by the applicants and the respondents. We have also carefully examined the applicability of those case laws in the present case. On one hand it is the duty of the Government to correct any anomaly in the fixation of scale of pay for its employees. On the other hand it is for the Government to decide the date from which orders granting higher scales of pay have to be given effect to. The Hon'ble Supreme Court in a catena of judgment as cited in Paragraph-3 above has repeatedly stressed that the question of parity of pay and the decision of implementation of the recommendations of Pay Commission etc. are to be decided by expert bodies after taking into account various aspects such as the nature of duties and responsibilities. The overall repercussions on the Government exchequer and the comparative and competitive demands of various categories of employees are also primary considerations which the Government have to take into account while granting the benefits of fixation of pay. The Hon'ble Supreme Court in *State of West Bengal vs. Subash Kumar Chatterjee & Ors. [(2011) 1 SCC(L7S) 785]* pronounced on 17.08.2010 has cogently and vehemently summed up the position on this issue as under:

"13. This Court time and again cautioned that the court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is a matter which is best left to an expert body. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to acceptance or rejection, the Courts cannot compel the State to accept the recommendations of the Pay

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Commissions though it is an expert body. The State in its wisdom and in the furtherance of its valid policy may or may not accept the recommendations of the Pay Commission [See: Union of India v. Arun Jyoti Kundu and State of (2007) 7 SCC 472 Haryana & Anr. Vs. Haryana Civil Secretariat Personnel Staff Assn.]. It is no doubt, the constitutional courts clothed with power of judicial review have jurisdiction and the aggrieved employees have remedy only if they are unjustly treated by arbitrary State of action or inaction while fixing the pay scale for a given post.

26. Yet another question that arises for our consideration is whether a writ of mandamus lies compelling the State to act contrary to law ? The State Government having accepted the recommendations of the successive Pay Commissions gave effect to those recommendations by framing statutory rules being ROPA Rules and scales of the employees have been accordingly fixed. The respondents did not challenge the vires of the said Rules under which they were entitled to only a particular scale of pay. The State Government is under obligation to follow the statutory rules and give any such pay sales as are prescribed under the statutory provisions. Neither the Government can act contrary to the rules nor the Court can direct the Government to act contrary to rules. No Mandamus lies for issuing directions to a Government to refrain from enforcing a provision of law. No court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law. In the instant case, the impugned order of the High Court virtually compelled the State to give pay scales contrary to statutory rules

under which pay scales of the employees are fixed. The decision of the Chief Engineer being contrary to ROPA Rules, 1998, cannot be enforced even if such a decision was taken under the direction of the Administrative Tribunal. The orders of the Tribunal as well as of the High Court suffer from incurable infirmities and are liable to be set aside”.

15. Taking the above facts and case laws into consideration, we are of the view that it is for the Government to decide about the relative merits of the demands raised by various employees and their Associations and to take a conscious and reasoned decision on the scale of pay to be adopted for various employees, parity between various categories of employees and the dates from which the benefit of pay fixation is to be given. In view of the above, we hold that the order passed by the CBEC dated 9.2.2010 has considered the various aspects of the demand raised by the applicants and in the background of the history of the recommendations of different Expert Bodies, has rightly come to the conclusion that the demand raised by the applicants for retrospective implementation of parity in pay scale on par with Inspectors of CBI/IB is unreasonable and is likely to set up a wrong precedent. We, therefore do not see any reason to interfere with the impugned order dated 9.2.2010.


16. The O.A. is accordingly dismissed as devoid of merit. No order as to costs.

5. The central issue in the present O.A. is also about grant of pay scales to the Superintendent of Central Excise & Customs on par with their counter-parts in CBI/IB with retrospective effect. The ratio adopted in our order dated 02.11.2017 in O.A.No.292 of 2011 would be applicable in the present case. We

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are of the view that it is for the Government to decide the issue of parity in pay scales and the date of grant of such pay scales taking into account the nature of work and the job responsibilities of various levels of officers and employees and the Government is duty-bound to consider the broader implication of grant of different pay scales and the effective date of such sanction to its vast army of employees. Adopting the ratio followed by our order dated 02.11.2017 in O.A.No.292 of 201, we find no reason to interfere with the impugned order and to grant the relief to the applicants as prayed for.

6. Under the circumstances, the O.A. is dismissed as devoid of merit. No order as to costs.

  
(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

  
(S.K.PATTNAIK)  
MEMBER(J)

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