

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.201/2011

Jodhpur this the 11th day of December, 2014

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial),
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Sharma
Veni Gopal s/o Late Shri Chandan Lal Sharma, aged about 52 years, resident of 46-G Sector-5, Gandhi Nagar, Chittorgarh (Raj), at present employed on the post of Superintendent, Central Excise Division, 168-172, Sector-4, Gandhi Nagar, Chittorgarh.

....Applicant

For Advocate: Mr J.K.Mishra

Versus

1. Union of India through Secretary to Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chief Commissioner, Central Excise Jaipur Zone, N C R Building, Statue Circle, B.D. Road, Jaipur
3. The Deputy Commissioner, Central Excise Division, Bhilwara, 10 Azad Nagar, Bhilwara.
4. The Assistant Commissioner, Central Excise Division, 168-172, Sector 4 Gandhi Nagar, Chittorgarh.

.....Respondents

By Advocate : Ms. K.Parveen

ORDER (Oral)

In this OA filed u/s 19 of the Administrative Tribunals Act, the applicant has prayed for the following reliefs:-

- (i) *That impugned order dt. 12.1.2011 (Annexure A-1), order dated 17.2.2011 communicated vide letter dated 9.3.2011 (Annexure A/2) and order dated 14.3.2011 may be declared illegal and the same may be quashed.*
- (ii) *The respondents may be directed to grant the Non-functional upgradation in the grade pay of Rs. 5400 in PB-2 w.e.f. 1.1.2006 as per rules in force and he may be allowed with all consequential benefits including the arrears of difference of Grade pay and allowances thereof."*

2. Brief facts of the case, as stated by the applicant, are that the applicant was initially appointed as Inspector in Central Excise Department on 21.2.1983 as direct recruit. He was granted first financial upgradation in the pay scale of Rs.

7500-12000 under ACP Scheme w.e.f. 09.08.1999 and also got promotion as Superintendent on 29.09.2000 on ad hoc basis and regular promotion w.e.f. 31.10.2000 in the pay scale of Rs. 7500-12000. His name in the seniority list as on 01.02.2011 reflects at Sl.No.87. The applicant has further stated that he completed 24 years of service on 21.2.2007 and became due for grant of 2nd financial upgradation in the pay scale of Rs. 8000-13500 (ACT/JTS scale) under ACP Scheme. However, the said benefit was withheld due to pendency of criminal case. Two criminal cases No.5/2003 and 10/2005 have been instituted before SPE CBI, Jodhpur and the same are pending at the stage of framing of charges. A department proceeding has also been initiated on the same set of facts, which is pending. The applicant was granted grade pay of Rs.5400/- on non-functional upgradation on completion of four years' service in the pay scale of Rs. 7500-12000 w.e.f. 1.1.2008 vide pay fixation order dated 17.2.2009, which was done as per clarification issued vide letter dated 21.11.2008. The applicant was in fact due for the same w.e.f. 01.01.2006. The applicant has averred that as per provisions contain in Part-C (First Schedule) of CCS (RP) Rules, 2008 in section 11, at S.No9 under the heading Ministry of Finance, Department of Revenue, it is mentioned that Superintendent, Customs and Central Excise (who is in the pre revised scale of Rs. 7500-12000 shall be granted grade pay of Rs. 5400 in PB-2 (corresponding to pre-revised scale of Rs. 8000-13500) after 4 years of service in in the Section I(I), it has been mentioned that the initial fixation as on 1.1.2006 will be done in accordance with Note-2 below Rule-7 of this Notification. Vide Ministry's clarification dated 21.11.2008 (Ann.A/6), it has been clarified that 4 years period is to be counted w.e.f. the date on which an officer is placed in the pay scale of Rs. 7500-12000 (pre-revised). Thus, if an officer has completed years on 1.1.2006 or earlier, he will be given non-functional upgradation w.e.f. 1.1.2006 and the



applicant has completed 4 years service on 31.10.2004 after regular promotion in pre-revised pay scale of Rs.7500-12000. Thus, he became entitled to grant of pay fixation in non-functional upgradation in the grade pay of Rs.5400/- in PB-2 w.e.f. 1.1.2006. But instead of granting the grade pay of Rs.5400/- from 1.1.2006, the 3rd respondent vide pay fixation order dated 12.1.2011 revised the pay fixation by withdrawing his grade pay of Rs.5400/- granted to him for non-functional upgradation on rendering 4 years of service in pre-revised scale of Rs.7500-12000 and the said order has been passed without any hearing or show-cause notice to the applicant and ordered recovery from the applicant. Thereafter the applicant submitted representation dated 21.1.2011 (Ann.A/7) but the same was rejected vide letter dated 17.2.2011 making reference to CBEC letters dated 21.11.2008, 11.2.2009 and 16.9.2009 and taking the ground that he was not clear from vigilance angle. The applicant has averred that once there is no element of promotion involved and the matter relates to only revision of grade pay, there is no requirement of vigilance clearance. The grade pay of Rs. 5400/- was stopped and not paid to the applicant from 1.1.2011 and for the earlier period 1.1.2009 to 31.12.2010, the applicant was issued letter dated 14.3.2011 (Ann.A/3) and asked to deposit an amount of Rs.46,584/- failing which the amount will be recovered from monthly pay. It is further stated that the 3rd respondents has started recovering the amount of Rs.1500/- from the monthly pay of the applicant for the month of March and onwards and he has not been issued with any specific order in this respect. Therefore, aggrieved with the action of the respondents, the applicant has filed this OA praying for the reliefs as extracted above.

3. By way of filing reply to the OA, the respondents have submitted that the applicant was granted 1st financial upgradation to the pay scale equivalent to that of Superintendent Group-B (i.e. Rs.6500-10500 revised as Rs. 7500-1200 w.e.f.

21.4.2004 further revised as Rs. 9300-34800 with grade pay of Rs. 4800 in PB-2 w.e.f. 1.1.2006) under the old ACP scheme w.e.f. 9.8.1999 after completion of 12 years of regular service in the grade of Inspector. The applicant was promoted to the grade of Superintendent Group-B on regular basis on 31.10.2000 in the above referred scale now revised to Rs.9300-34800 with grade pay of Rs. 4800/- in PB-2. Since a charge sheet was issued to the applicant on 30.01.2003 and the CBI had filed two challans in court on 19.8.2002 and 31.5.2005 in two criminal cases against the applicant, therefore, the applicant was not allowed the 2nd financial upgradation to the pay scale equivalent to that of Assistant Commissioner, Group-A i.e Rs.8000-13500 (revised Rs. 15600-39100 with grade pay of Rs. 5400 in PB-3) after completion of 24 years of regular service under the ACP scheme. The respondents have further submitted that as per letter dated 21.11.2008 of the Ministry of Finance, Department of Revenue, CBEC, New Delhi Group-B officers of the department of Posts, Revenue etc. will be granted grade pay of Rs. 5400/- in PB-2 on non-functional basis after 4 years of regular service in the grade pay of Rs.4800/- in PB-2. The Ministry vide letter dated 11.2.2009 in para 3 has clarified the matter as under:-

"Non-functional upgradation to the grade pay of Rs. 5400 in the pay band PB-2 can be given on completion of 4 years of regular service in the grade pay of Rs. 4800 in PB-2 (pre-revised scale of Rs. 7500-12000) after regular promotion and not on account of financial upgradation due to ACP. "

Similarly the Ministry vide letter dated 16.9.2009 has also clarified with respect to letter dated 21.11.2008 and vide letter dated 17/23.12.2009 clarified that the benefit of one increment @ 3% is permissible at the time of fixation of pay of Group-B officer in the pay band-2 on non-functional basis with grade pay of Rs. 5400/-. The respondents have also referred letter dated 21.12.2009 of the Commissioner of Customs and Central Excise, Hyderabad to the Ministry of Finance for certain clarification on the subject and the clarifications received in this behalf. The

respondents have further submitted that in pursuance of the Ministry's letter dated 21.11.2008, 11.2.2009 and 16.9.2009, 176 Superintendents Group-B who had completed 4 years regular service after regular promotion in the grade of Superintendent Group-D and were cleared from vigilance angle on the crucial date i.e. 1.1.2006 or the date when they were due for grant of the said scale, have been granted the higher grade pay of Rs. 5400 in PB-2 on non-functional basis vide order dated 15.12.2009. Further, a charge sheet was issued to the applicant on 30.1.2003 and the CBI had filed two challans in the court in two criminal cases against the applicant, which are still pending. In terms of Department of Expenditure, New Delhi notification dated 29.8.2008 read with CBEC clarification dated 21.11.2008, the applicant was erroneously granted non-functional upgradation to the grade pay of Rs.5400/- in PB-2 w.e.f. 1.1.2009 without obtaining vigilance clearance vide pay fixation order dated 17.2.2009 issued by the Central Excise Division, Chittorgarh. The said pay fixation was revised by the Central Excise Division, Bhilwara, vide order dated 12.1.2011. The respondents have also cited some authorities of the Hon'ble Apex Court in this regard and submitted that in view of above, the officers including the applicant who are not clear from the vigilance angle, are not eligible for grant of non-functional upgradation to the grade pay of Rs. 5400/- in PB-2 even on completion of 4 years in the grade of Superintendent Group-B.

4. In rejoinder, the applicant reiterated the same facts as averred in the OA.

5. Heard both the parties. Counsel for the applicant contended that the applicant completed four years regular service in the pay band of Rs.9300-34800 with the grade pay of Rs.4800/- and he was granted the financial upgradation of Rs.5400/- w.e.f. 01.01.2009 instead of 01.01.2006 and later on vide order dated 21.01.2011 this financial upgradation was withdrawn by Annexure-A/1 and it was ordered that the

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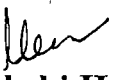
excess payment made to the applicant may be recovered. Counsel for the applicant contended that before passing of the impugned order at Annexure-A/1 no show cause notice was served upon the applicant and further no opportunity of hearing was provided to the applicant and it is the fundamental rule of the natural justice that against whom the order is passed should be heard before passing of any adverse order. Counsel for the applicant further contended that although there are other grounds also, but this ground has been considered by us.

6. Per contra, counsel for the respondents contended that after passing of the impugned order at Annexure-A/1, the applicant filed a representation, which was also rejected by the competent authority vide Annexure-A/2 and prays that the OA may be dismissed.

7. Considered the rival contentions of both the parties and perused the record. Looking to the entire facts and circumstances of the case we are of the considered view that the order at Annexure-A/1 was passed without giving any opportunity of hearing to the applicant or without serving any prior show cause notice to the applicant and therefore the order at Annexure-A/1 is against the natural justice and is required to be quashed. Therefore, we are intending to dispose of this OA with certain directions:

- (i) The impugned order at Annexure-A/1 is quashed and further the order at Annexure-A/3 by which the recovery has been ordered is also quashed.
- (ii) The respondent department shall serve a show cause notice upon the applicant for the withdrawal of his upgradation and recovery of the amount paid to the applicant.
- (iii) The applicant is directed to submit his reply to the show cause notice within one month from the date of receipt of such notice and the respondent department shall consider the same within two months from the date of receipt of reply.

- (iv) It is also made clear that the representation Annexure-A/7, filed by the applicant and its rejection order at Annexure-A/2 shall not come in way for considering the reply to the show cause notice to be filed by the applicant.
- (v) Till the disposal of the reply to the show cause notice, no recovery shall be made from the applicant.
8. Accordingly the OA is disposed as stated above with no order as to costs.


[Meenakshi Hooja]
Administrative Member


[Justice K.C. Joshi]
Judicial Member

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