

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.508/2011

Jodhpur, this the 3rd day of January, 2014

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Arun Bhatnagar s/o Shri R.S.Bhatnagar aged about 45 years r/o Rudraksh F-33, Sector 14, Hiran Magri, Udaipur, Rajasthan, presently working on the post of Inspector in the office of Deputy Commissioner Central Excise, Udaipur, Rajasthan.

.....Applicant
By Advocate : Mr. S.K.Malik

Vs.

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, New Delhi.
2. Joint Commissioner (P&V) (CCU), Office of the Chief Commissioner, Central Excise, Jaipur Zone, New Central Revenue Building, Statute Circle, 'C' Scheme, Jaipur (Raj.)
3. The Deputy Commissioner, Central Excise and Service Tax Division, 142 B, Sector 11, Hiram Magi, Udaipur 313002 (Raj.)

.....Respondents

By Advocate : Ms. K.Parveen for resp. No1. and Mr. M.Prajapat, proxy counsel for Mr. Ravi Bhansali, for resp.Nos. 2 and 3

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The present application has been filed by the applicant against the impugned order dated 1.5/6.2011 (Ann.A/1) whereby

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representation of the applicant has been rejected for grant of financial upgradation in the grade pay of Rs. 4800 and Rs. 5400, as has been granted to other similarly situated persons.

2. Brief facts of the case, as stated by the applicant, are that the applicant was initially appointed w.e.f. 13.2.2009 on the post of District Savings Officer in the scale of Rs. 1400-2600 in Rajasthan Regional National Saving Organization and posted at Barmer vide order dated 16.3.1990. After recommendations of the 5th Pay Commission, pay of the applicant was fixed in the pay scale of Rs. 5500-9000 w.e.f. 1.1.1996 and after completion of 12 years of service he was granted first financial upgradation in the scale of Rs. 6500-10500 w.e.f. 13.2.2002 vide order dated 23.9.2002. The applicant was declared surplus on 18.4.2002 and after opting for redeployment, he was appointed on the post of Sub Inspector in CBI vide order dated 13.4.2005 in the pay scale of Rs. 5500-9000 w.e.f. 1.4.2005. It has been further stated that the DOP&T issued OM dated 28.3.2007 wherein it has been decided that those surplus employees holding the post in the pay scale of Rs. 5500-9000 and on the surplus roll of the department, who, inspite of their eligibility could not be redeployed against the post before 21.4.2004 i.e. the date of upward revision of the scale of the post of Inspector, Income Tax/Central Excise from Rs. 5500-9000 to 6500-10500 may also be considered for redeployment against the available vacancies in the post of Inspector Income Tax/Central Excise. The applicant made a representation for considering his case for the post of Inspector,

Income Tax/Central Excise and the DOP&T has considered case and allocated the post of Inspector, Income Tax/Central Excise under respondent No.2 vide letter dated 3.1.2008. Accordingly, respondent No.2 issued offer of appointment and the applicant was relieved from the CBI office vide order dated 29.2.2008 to join his new post in Central Excise, Jaipur and the applicant joined on 12.3.2008.

After joining the Central Excise, applicant's pay was fixed in the pay scale of Rs. 6500-10500, which is the initial pay scale of Inspector, Income Tax/Central Excise, though applicant was already granted the 1st ACP w.e.f. 13.2.2002 on completion of 12 years of service and his pay should have been fixed in the new higher grade with grade pay of Rs.4800/. Aggrieved of the action of the respondents, the applicant made a representation dated 4.2.2009 and upon receipt of no reply, he made another representation dated 3.8.2009 but when no reply was received, he further made representations dated 26.2.2010 and 12.8.2010. Thereafter the respondent No.3 vide order dated 20.10.2010 granted 2nd ACP to the applicant w.e.f. 13.2.2010 in the grade pay of Rs. 4800 instead of Rs. 5400.

The applicant has further stated that he was absorbed on the post of Inspector, Central Excise in the pay scale of Rs. 6500-10500 w.e.f 12.3.2008 and at that time he was already getting 1st ACP so his pay was required to be fixed in the next pay scale with grade pay of Rs. 4800 and further, he was granted 2nd MACP after completion of 20 years of service w.e.f. 13.2.2010 in the grade pay of Rs. 4800/- instead of Rs. 5400. Hence, the action of the respondents not

granting the grade pay of Rs. 4800 on 1st ACP and Rs. 5400 on 2nd ACP is illegal, arbitrary and discriminatory and therefore, the present OA has been filed by the applicant claiming for the following reliefs:-

- (a) By an appropriate writ order or direction impugned orders dated 1-05/06-11 at Annx.A/1 be declared illegal and be quashed and set aside as if the same was never passed against the applicant.
- (b) By an order or direction respondents may be directed to refix the pay of applicant in PB 2 Rs. 9300-34800 with Grade Pay Rs. 4800/- w.e.f. March 2008 and thereafter on completion of 20 years service he should be granted 2nd MACP with Grade Pay of Rs. 5400 w.e.f. 13.2.2010 with all consequential benefits including arrears of pay and allowances.
- (c) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

3. The respondents have filed reply to the OA denying the right of the applicant. It has been submitted that 4 surplus employees including the applicant, who were allocated the Customs and Central Excise, Jaipur zone were appointed as Inspector, Central Excise in the pre-revised pay scale of Rs. 6500-10500 (revised as Rs. 9300-34800 with grade pay of Rs. 4600) vide office memorandum dated 11.2.2008 and all these 4 surplus employees joined as Inspectors in Customs and Central Excise, Jaipur Zone on 3.3.2008. The pay scales and basic pay of these surplus employees which were getting in their parent department due to promotions/ACP i.e. before joining as Inspector, were protected. It is further submitted that the applicant had completed 12 years of regular service as on 13.2.2002 in the grade of District Saving Officer, Group-C in the pay scale of Rs. 5500-9000 in his parent department and as on 13.2.2002, his next

higher cadre in the existing hierarchy was Dy. Regional Director in the pay scale of Rs. 6500-10500, therefore, he was allowed the first financial upgradation to the pay scale of Dy. Regional Director, i.e. Rs. 6500-10500 w.e.f. 13.2.2002 by his parent department. The said pay scale of District Savings Officer and Dy. Regional Director were not increased/revised. In terms of OM dated 9.8.1999, clarification on point numbers 36,41,52, 55 of OM dated 18.7.2001, the applicant is not entitled for grant of pre-revised pay scale of Rs. 7500-12000 (revised ass Rs. 9300-34800 + grade pay of Rs. 4800) in PB-2 in place of Rs. 6500-10500 w.e.f. 3.3.2008 when he joined as Inspector in the Customs and Central Excise. It is further stated that as per para-7 of OM dated 9.8.1999 the financial upgradation under the ACPS was given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. The respondents have further submitted that the representation dated 3.1.2011 of the applicant for grant of grade pay of Rs. 4800 w.e.f. 3.3.2008 on joining the post of Inspector and grade pay of Rs. 5400 in PB-2 w.e.f. 13.2.2010 (after 20 years of service) was examined in the light of the DOPT/Ministry's instruction on the subject and was disposed of vide office letter dated 1.6.2011, therefore, the applicant is not entitled to any relief.

4. The applicant has filed rejoinder reiterating the submissions made in the OA.

5. Heard both the parties. Counsel for the applicant contended that applicant has sought the reliefs - (a) to declare Annexure-A/1 i.e. the rejection order of the representation of the applicant, as illegal and, (b) to direct the respondents to refix the pay of the applicant in PB-2 Rs.9300-34800 with grade pay of Rs.4800 w.e.f. March, 2008 and thereafter on completion of 20 years service, the respondents be directed to grant 2nd MACP with a grade pay of Rs.5400/- w.e.f. 13.02.2010 with all consequential benefits including arrear of pay and allowances. Counsel for the applicant further contended that in the similarly situated circumstance in Delhi and Cochin Zones, persons appointed with the applicant on the same posts have been granted the grade pay of Rs.5400 w.e.f. the date of completion of 20 years of service. Counsel for the applicant further contended that the respondents in para No 4.17 of the reply admitted that in Delhi Zone the Commissioner, Central Excise Delhi (i.e. the cadre controlling authority of Delhi Zone) granted the benefits of grade pay of Rs.5400/- to the similarly situated persons w.e.f. the date of the completion of 20 years of service (Ann.R/15), but in his rejoinder, counsel for the applicant submitted that two more orders at Annexure-A/17 and A/18 which were issued by the office of the Commissioner of Central Excise, Customs and Service Tax, Cochin, in respect of two persons, the benefit of the grade pay of Rs.5400/- has been passed after completion of 20 years service. Counsel for the applicant further contended that before joining the respondent department, the applicant was getting the benefit of grade pay of Rs.4600/- and he has been appointed w.e.f. March, 2008 vide Annexure-A/9 and A/10 and his pay ought to have been fixed in the grade pay of Rs.4800/- and after completion of 20 years of service, the applicant ought to have been granted the benefit of grade pay of Rs.5400/-. The counsel for the applicant further contended that it is not fair on the part of

the respondents to discriminate on the ground of different zones of service because it cannot be accepted that while in Delhi and Cochin zones, the similarly situated persons were granted the benefit of grade pay of Rs.5400/- w.e.f. the date of completion of 20 years service, the applicant should be deprived of the same. Counsel for the applicant further contended that the rejection order of the representation at Annexure-A/1 passed by the competent authority is not legal one and therefore it requires to be set aside and certain directions be given to the respondent department for re-fix the pay of the applicant as per rules.

6. Per contra, counsel for the respondents contended that the order at Annexure-A/1 is legal one and they further contended that in Delhi and Cochin Zones, the different orders have been passed by the cadre controlling authority, no such similarly situated employees have been fixed in grade pay of Rs.5400/- w.e.f the date of completion of 20 years of service.

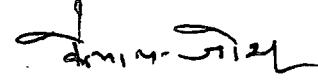
7. Considered the rival contentions of both the parties and also perused the relevant record and in particular Annexure-R/15, A/17 and A/18. Annexure-R/15 shows granting of benefit of the grade pay of Rs.5400/- after completion of 20 years of service to the similarly situated employees, and Annexure-A/17 & A/18 also clearly show that the benefit of the grade pay of Rs.5400/- (PB 2) were sanctioned w.e.f. the date of completion of 20 years of service. The order at Annexure-A/1 passed by the competent authority does not show any reasonable cause to deny the benefit of the grade pay of Rs.5400/- (PB 2) when the other zones i.e. Delhi and Cochin have already extended the benefit of grade pay of Rs.5400/- to similarly situated persons. It is an admitted fact that the

applicant earlier to joining the present department was getting the benefit of the grade pay of Rs.4600/- and he ought to have been granted the grade pay of Rs. 4800/- w.e.f. March, 2008 i.e. the date of joining in the present department and further after completion of 20 years of service, he is entitled to get the benefit of grade pay of Rs.5400/. Therefore, in our considered view, Annexure-A/1 is not sustainable in the eyes of law and the same requires to be quashed.

8. In view of the discussion made hereinabove, Annexure-A/1 is quashed and the respondents are directed to refix the pay of the applicant in accordance with rules, i.e. grade pay of Rs.4800/- w.e.f. the date of joining in the present department and further grant the benefit of 2nd MACP from the date of completion of 20 years of service with grade pay of Rs.5400/- with all consequential benefits including arrear of pay and allowances. The respondents are further directed to comply this order within four months from the date of receipt of a copy of this order.

9. The OA stands allowed in the above terms with no order as to costs.


(Meenakshi Hooja)
Administrative Member


(Justice K.C. Joshi)
Judicial Member

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