

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 435/2010

Friday, this the 11th day of November, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

Nandakumaran Unni,
Inspector of Central Excise,
Container Freight Station,
Aroor, Alapuzha District.Applicant

(By Advocate Mr C.S.G.Nair)

v.

1. Union of India represented by its
Secretary,
Department of Revenue,
North Block, New Delhi-110 001.
2. Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S.Press Road, Cochin-682 018.
3. Deputy Commissioner of Central Excise & Customs,
Ernakulam II Division, Central Excise Bhavan,
Kathrikadavu, Cochin-682 017.
4. Pay & Accounts Officer, Central Excise,
Central Revenue Buildings,
I.S.Press Road, Cochin-682 018.
5. Accountant General (Audit),
Kerala, Trivandrum-1.Respondents

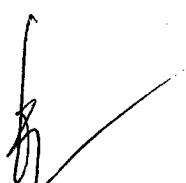
(By Advocate Mr Pradeep Krishnan, ACGSC)

This application having been finally heard on 8.11.2011, the Tribunal on 11.11.2011 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

Stepping up of pay at par with junior is the issue involved in this case.



2. The minimum facts required for this purpose are as under:

a) The applicant joined the service as Upper Division Clerk in the Pune Central Excise Commissionerate in 1987 and was promoted as Inspector in 1993. In May 1994, he joined Cochin Commissionerate on inter-Commissionerate transfer. With effect from 1.1.1996, his pay was fixed at Rs.5500/- in the pay scale of Rs.5500-9000. From 1.5.1996, however, the pay was fixed at Rs.5675/-.

b) With effect from 1.1.2006, the pay of the applicant was fixed in the Pay Band of Rs.9300-34800 with Rs.4600/- as Grade Pay, which is applicable to the post of Inspector of Customs & Central Excise.

c) One Shri Devassy joined the Shillong Commissionerate directly as Inspector of Customs & Central Excise in January 1994 and in February 1996, he took inter-Commissionerate transfer to Cochin. The pay of the said Devassy with effect from 1.1.1996, was fixed at Rs.5675/- and later on, according to the increments earned by him and revision of pay scales of Inspectors in the grade of Rs.6500-10500, as on 1.1.2006 the said Devassy was drawing Rs.7500/-. When the applicant found that his pay happened to be less than that of his junior he submitted a representation vide Annexure A-3. This was allowed.

d) The applicant came to know that the Audit authorities have objected to the stepping up of pay of the applicant at par with that of his junior Devassy. As the authorities had decided to revise the pay of the applicant and consequently to recover excess payment, the applicant filed representation dated 22.4.2010 explaining the position and requesting the authorities to drop the objections. Annexure A-6 refers. However, by Annexure A-7, the applicant's pay was reduced on the basis of audit authorities report vide Annexure A-8. Annexure A-9 is yet another order on the above subject.

3. It is against the above orders Annexures A-7, A-8 and A-9 that the applicant has preferred this O.A claiming the following reliefs:

- (i) To call for the records leading upto the issue of Annexure A-7, A-8 and A-9 and quash the same;
- (ii) To declare that the applicant is entitled for stepping up of his pay on par with his junior Shri V.P.Devassy and the pay fixation made as per



Annexure A-3 is correct.

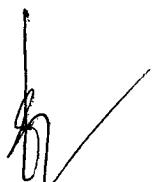
4. Respondents have contested the O.A. They have contended that the conditions for grant of stepping up of pay are specific that both the senior and the junior should be in the same cadre; that the junior should have been drawing less pay than the senior in the existing scale and that anomaly should have arisen when, the pay of the senior and junior should get fixed in the revised scale at the same stage. In the instant case, since the Commissionerates of the applicant and Shri Devassy were different prior to coming into Cochin Commissionerate, one of the conditions not being fulfilled, the applicant is not eligible for stepping up of pay.

5. Rejoinder and additional reply have been exchanged.

6. Counsel for the applicant argued that the question to be considered in such cases is whether the senior and junior belong to the same cadre which means whether they hold the same post irrespective of the Commissionerate. Secondly, the seniority aspect would come into play only in the present post (of Inspector) and at that time when there has been revisions and anomaly started. The counsel further argued that the anomaly arose at the time of fixation of pay with effect from 1.1.1996, when the junior happened to draw more pay than the senior (the applicant) while prior to such fixation, the applicant was drawing more than the said junior.

7. Counsel for the respondents argued that because of the different Commissionerates as stated above, the requisite condition is not fulfilled.

8. Arguments were heard and documents perused.

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9. Admittedly, as on 1.1.1996, the pay scales of the applicant as well as Shri Devassy underwent an upward revision. Fixation of pay of the two individuals took place accordingly. Admittedly, prior to 1.1.1996, the applicant was drawing higher pay than the said junior. It is on account of direct application of the revised pay rules which provided for certain latitudes in respect of exercise of option etc that the junior Devassy happened to draw higher pay than the applicant. It is this anomaly that was sought to be remedied.

10. Be it Inter-Commissionerate, when at the time of junior drawing more pay the two individuals are in the same cadre (Central excise Inspector as well as belong to Pune Commissionerate), if the junior is drawing more pay, then the seniors pay should be stepped up. The only condition is that the senior must be drawing higher pay earlier and the difference should have arisen on account of application of the revised pay rules. Admittedly, the above two conditions get fulfilled. When the senior is drawing more pay than the junior, that the senior was initially appointed as UDC followed by the promotion as Inspector while the junior directly joined as Inspector, the same does not matter at all. Respondents were completely right when they initially acceded to step up the pay of the applicant with effect from 1st of May 1996.

11. The Audit objection which reads as under cannot be sustained as the applicant and the junior, at the time the anomaly arose belong to the same Commissionerate:

"Sub: Stepping up of salary of Shri N.P.Padmakumar

Vide Order No.11/24/A-2/2007 Accts.I dated 17.9.07 the pay of Shri N.P.Padmakumar, Inspector was stepped up from Rs.5500 to Rs.5675 on par with that of his junior, Shri N Nandakumaran Unni, Inspector, with effect from 1.1.96. On scrutiny of the Service Book of Shri N Nandakumaran Unni, it was seen that the pay of Shri Nandakumaran Unni was stepped up to Rs.5675 from Rs.5500 vide Order dated 27.2.03 by antidation of increment from May 1996 to January 1996 on par with the pay of Shri V.P.Devassy, Inspector,



considering him as junior to Shri Nandakumaran Unni. The seniority of officials are maintained Commissioneratewise and the Commissionerate in Kerala State are considered as one unit for the purpose of seniority. Scrutiny of Service Book of Shri V.P.Devassy has revealed that he has joined as Inspector on 11.1.94 at Shillong and transferred and joined the Kerala Cadre of Kochi only on 13.2.96. Hence the stepping up of pay of Shri Nandakumaran Unni based on the pay of Shri V.P.Devassy, who was not in the Kerala cadre on 1.1.96 was not in order. As a result the stepping up of the pay of Shri N.P.Padmakumar was also not in order. The excess pay drawn by Shri Padmakumar and Shri Nandakumaran Unni may be worked out and recovered under intimation to audit.

12. In view of the above, O.A is allowed. Impugned orders Annexure A-7, A-8 and A-9 are quashed. Respondents are directed to not to truncate the pay of the applicant by way of implementation of the Audit objection.

13. Under the above circumstances, there is no order as to costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

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