

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 454 / 2006Wednesday, this the 25th day of June, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

K.R.Krishnakumar,
Investigator,
National Sample Survey Organisation(FOD),
Ministry of Statistics & Programme Implementation,
3rd Floor, Block C-I,
Kendriya Bhavan,
Kakkanad, Cochin-37.Applicant

(By Advocate Mr N Unnikrishnan)

v.

1. Union of India rep. by
the Secretary to Government,
Ministry of Statistics & Programme Implementation,
Sardar Patel Bhavan,
New Delhi-110 001.
2. The Deputy Director General,
National Sample Survey Organisation (FOD),
East Block-6, Level 6-7,
R.K.Puram, New Delhi-110 066.
3. The Director,
National Sample Survey Organisation (FOD),
CGO Complex, Vellayani P.O.
Trivandrum-695 522.Respondents

(By Advocate Mr P.S.Biju, ACGSC)

This application having been finally heard on 25.6.2008, the Tribunal on the same day delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant in this Original Application has sought a declaration that he is entitled to get his pay stepped up, with effect from 9.9.1996 at par with

respondents 4 & 5 who are his juniors.

2. The brief facts of the case are that in the Competitive Examination for selection of candidates for appointment to the post of Investigator in the National Sample Survey (NSO for short) held in 1996 by the Staff Selection Commission, Bangalore, the applicant came out successful in the category of OBC candidates and he secured the 19th rank. As on 9.9.1996, there were altogether 16 vacancies including 5 vacancies earmarked for OBC candidates. Against those OBC vacancies, the respondents have issued offers of appointment to 4 candidates having their positions in the rank list at Sl.No.18, 20, 21 and 22. One post meant for the applicant was kept vacant. The reason for not issuing appointment letter to him along with other 4 OBC candidates on 9.9.1996 was that there was delay in verifying his community certificate. Finally, the Commission cleared his candidature and nominated him to the NSO on 17.9.1996. However, according to the NSO, the vacancy position underwent a change with effect from 20.9.1996 and they have decided not till up the remaining two unfilled vacancies including the one OBC vacancy kept vacant for the applicant. He has, therefore, approached this Tribunal vide O.A.No.307/2007 and this Tribunal vide Annexure A-1 order dated 4.6.1997 directed the third respondent to appoint him on a post of Investigator effective from the date on which the person just below him under the OBC category was appointed and to fix his seniority in accordance with the position in the panel, if he is not otherwise disqualified for such appointment. Thereafter, the respondents issued him the Annexure A-2 memorandum dated 2.7.1997 offering the post of Investigator to him and he finally joined on 16.7.1997. The respondents, in compliance of the said orders of this Tribunal, placed the applicant at the appropriate slot in Annexure A-3 provisional seniority list of Investigator in respect of Kerala State as on 31.12.1999 above the person who



was just below him under the OBC category in the panel. However, since the OBC candidate below him in the rank list could join on 19.9.1996, he has been getting the periodical annual increments earlier than the applicant taking into consideration of their respective date of joining. The applicant produced the Annexure A-4 letter dated 1.7.2005 showing that he was granted the increment raising his basic pay from Rs.6050/- to Rs.6200/- only with effect from 1.7.2006. However, Smt. Vinishya and Shri K.V. Sebastian who were juniors to him in the rank list were already getting the basic pay of Rs.6200/- as on 1.9.2005 and the same has been raised to Rs.6350/- (Annexure A-5) with effect from 1.9.2006.

3. The applicant, has, therefore, made the Annexure A-8 representation requesting the respondents to fix his pay at par with his juniors Smt. Vinishya and Shri K.V. Sebastian etc. with retrospective effect. In the said representation he has relied upon the order of this Tribunal dated 22.7.2004 in O.A.291/2002 **P.V.Narayanan v. Union of India & others** (Annexure A-7). The applicant in the said O.A. has participated in the selection process for appointment to the post of Inspector of Central Excise and Customs and qualified in the written examination. However, his candidature was subsequently cancelled by the SSC on the ground that he was not entitled to age relaxation. He challenged the aforesaid action before the Principal Bench of this Tribunal in O.A.456/1996 and the same was allowed vide order dated 28.5.1997 and set aside the order cancelling his candidature and directed the respondents to hold a supplementary interview for him for the post advertised in July 1994 and to grant him resultant benefits, if he had qualified. In terms of the aforesaid order, the SSC conducted a special interview and placed the applicant at Rank No.1 in the merit list and the Commissioner of Central Excise & Customs, Cochin Commissionerate issued the order dated 17.1.2000 appointing him as Inspector of Central Excise placing him above one Shri S Padmakumar, the then rank No.1 in the selection held in



the year 1994. The grievance of the applicant in O.A.291/2002 was that though he was appointed with the seniority over Padmakumar, his pay has been fixed only at the beginning of the scale from the date of his actual joining of duty and he was not given notional fixation of pay on par with Padmakumar. The respondents contended that the applicant was not entitled to fixation of pay on par with Padmakumar as he was appointed only in the year 2000. However, this Tribunal held that the applicant was entitled to have his pay fixed notionally with effect from the date of appointment of Padmakumar.

4. The contention of the respondents in the impugned Annexure A-9 letter dated 8.3.2006 in the present O.A is that no such directions as contained in O.A.291/2002 (supra) was there in the order dated 4.6.1997 in O.A.307/1997 earlier filed by the applicant and he was not a party in that O.A. filed by the employees of the Central Excise & Customs.

5. We have heard Shri Unnikrishnan, counsel for applicant and Shri P.S.Biju, ACGSC for respondents. As stated above, the reasons for denying the notional fixation of pay of the applicant by the respondents at par with his juniors is that there was no such direction to them by this Tribunal in the earlier O.A.307/1997 filed by him and decided on 4.6.1997 and that he is not a party in O.A.291/2002 filed by Shri P.V.Narayanan, Inspector of Central Excise & Customs which was decided on 22.7.2004. In our considered view, such a stand of the respondents is absolutely untenable. No way, the applicant could have been a party in O.A.291/2002 filed by Shri P.V.Narayanan who was an employee of the Central Excise & Customs. However, it cannot be denied that both the cases are identical. Secondly, just because there was no direction from this Tribunal for the notional fixation of pay of the applicant in the earlier O.A.307/1997 filed by him and decided on 4.6.1997, nothing would have

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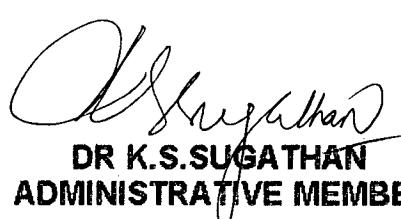
prevented the respondents to accede to his request for such notional fixation of pay following the order of the Tribunal in O.A.291/2002 decided on 22.7.2004 and relied upon by the applicant in his representation. In our considered view, the aforesaid order of this Tribunal in O.A.291/2002 (Annexure A-7) squarely covers the case of the applicant also. As already held by this Tribunal, it was not due to any fault of the applicant that he could not get his appointment along with his juniors on 9.9.1996. Among the OBC candidates, the applicant was at rank No.19. The other OBC candidates at rank No.20, 21 and 22 were appointed on 19.9.1996. Had the applicant been appointed along with them, he also would have joined the respondent-Department on the same date and earned his periodical increments along with them. It was only the delay on the part of the respondents which has resulted in postponing his date of his appointment and the resultant loss of service as well as financial benefits. Restoring his service notionally at par with his juniors alone would not off set the loss being suffered by the applicant. Unless the applicant is also granted notional fixation of pay from the date his juniors have been appointed, the applicant would suffer financial loss perennially.

6. In the above facts and circumstances, we set aside the Annexure A-9 letter dated 9.3.2006 and allow this O.A. We declare that applicant is entitled to be treated as appointed as Investigator in the NSO notionally with effect from 9.9.1996 and to get his pay notionally fixed with effect from the same date. Respondents shall issue necessary orders assigning notional appointment to the applicant as Inspector with effect from 9.9.1996 and also fix his pay from the same date. In other words, the applicant is entitled to draw his first increment with effect from 1.9.1997, and the next periodical increments as on the 1st of September of every subsequent years, if otherwise eligible. The respondents shall fix his pay granting to him the periodical increments, accordingly. The

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arrears arising out of such fixation of pay shall also be paid to the applicant with effect from 1.9.1997 onwards within a period of two months from the date of receipt of this order. There shall be no order as to costs.

Dated, the 25th June, 2008.



DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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