

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 498 of 2010

THURSDAY, this the 30th day of June, 2011.

CORAM:

**HON'BLE Mr. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Baby Padmanabhan,
Radio Technician (Retd.),
Munampel Veedu,
Chirakkadavam, Kayamkulam : 690 502

... Applicant.

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

v e r s u s

1. Union of India,
Represented by its Secretary,
Department of Revenue,
North Block, New Delhi : 110 001
2. Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018
3. Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018.
4. Commissioner, Directorate of Logistics,
Customs & Central Excise,
Lok Nayak Bhavan (4th Floor, 'A' Wing),
Khan Market, New Delhi.

... Respondents.

(By Advocate Mr. Millu Dandapani, ACGSC)

This application having been heard on 13.06.2011, the Tribunal on 30.06.11. delivered the following:

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this O.A joined service as a Radio Technician in the Telecommunication Wing of the Central Excise and Customs Department at



Ahmedabad on 05.04.1976. He was transferred to Kochi in 1981. He retired as Radio Technician on 31.05.2008 at Kochi. During 32 years of service, he did not get any promotion. But he was granted two financial upgradations under the ACP Scheme. The promotion of Radio Technician is to the post of Technical Assistant and then Senior Technical Assistant. The post of Senior Technical Assistant was merged with the post of Technical Assistant as per Annexure A-2(a) order dated 18.02.2009 with retrospective effect from 01.01.1996 making available two posts of Technical Assistants. The applicant submitted a representation for promotion as Technical Assistant with effect from a date prior to his retirement in June, 2009, which was followed by another representation dated 17.09.2009. He was not favoured with a reply. Hence this O.A. The applicant prays for a direction to the respondents to conduct a review DPC and to grant promotion to the applicant as Technical Assistant with effect from the date he became eligible for it and grant all consequential benefits.

2. The applicant submits that the right to be considered for promotion is a fundamental right. When a post of Technical Assistant became vacant with retrospective effect from 1.1.1996 as per Annexure A-2(a) dated 18.02.2009, a review DPC should have been conducted and promotion granted to the eligible employee. The V and VI Central Pay Commissions have recommended for grant of pension on the basis of at least 50% of the amount of the minimum of the pay scale in which the pensioner retired. In future also, this benefit may be available. The applicant, therefore, may get the benefit of higher pension if he is granted promotion as Technical Assistant before his superannuation. He relied on the judgement of the Hon'ble High Court of



Madras in W.P.(C) No. 12385/2004 dated 30.04.2008 and orders at Annexure A-2 and A-2(a).

3. The respondents contested the O.A. In their reply statement, they submitted that this Tribunal in O.A. No. 79/1998 and connected cases had directed them to implement the revised pay scale. The applicant has been given all the benefits accordingly. Annexure A-2(a) letter deals with financial upgradation as a result of revised pay and also in line with the V and VI CPC recommendations. The judgement of Hon'ble High Court of Madras in W.P. (C) No. 12385/2004 was to revise the pay scale with retrospective effect and fix and draw the arrears of pay which has been complied with as per Annexure A-2(a) order. Pension is related to the pay scale, in fact, the last drawn pay of the pensioner. The recommendations of the CPCs were to the effect that a pensioner should get at least 50% of the minimum of the pay scale or pay band corresponding to the pre-revised pay scale from which the pensioner retired. The pension has no relation to the post from which an employee retires. The applicant retired drawing the pay in a pay scale higher than that of Technical Assistant. Promotion as Technical Assistant will not confer any right or benefits on the applicant for drawing a higher pay or higher pension. The applicant has already retired even before the Annexure A-2(a) letter of the Board regarding grant of higher pay came into effect. Even if the DPC is convened now to promote the applicant as Technical Assistant, no financial benefits will accrue to him.

4. The applicant filed a rejoinder reiterating the contentions made in the O.A. and additional reply to rejoinder was also filed by the respondents.



5. We have heard Mr. C.S.G. Nair, the learned counsel for the applicant and Mr. Millu Dandapani, learned ACGSC appearing for the respondents and perused the records.

6. The applicant has not shown how he is entitled to get promotion with retrospective effect. Annexure A-2(a) letter of 18.02.2009 issued almost one year after the applicant retired deals with the financial upgradation. The direction of this Tribunal in O.A. No. 79/1998 and connected cases to the respondents was to implement the revised pay scale. The same has been complied with and the applicant had received all consequential benefits. There is no mention of retrospective promotion either in the order of the Hon'ble High Court or this Tribunal. The issue of retrospective promotion is made without any legal basis.

7. The applicant has retired from a pay scale higher than that of the Technical Assistant. He seeks promotion to the post of Technical Assistant on the wrong assumption that he might get benefit of higher pension if he is granted promotion to that post with retrospective effect. The applicant himself has stated that the V and VI CPCs recommended for grant of pension on the basis of at least 50% of the amount of the minimum of the pay scale of the post from which an employee retired. It is not the post but the pay scale of the employee at the time of retirement that determines the quantum of pension he is to get. The assumption of the applicant that the minimum of the pay scale of the post of Technical Assistant may become higher than the pay scale from which he retired on the recommendation of the CPCs in future and



that he would get higher pension if he is given retrospective promotion to that post now, is without any basis.

8. It is unfortunate that the applicant did not get promotion and higher designation in 32 years of service. But he has been adequately compensated with two financial upgradations. At the time of retirement, his pay scale was higher than that of Technical Assistant. He should be contented with what he got and be grateful to the Government for the same.

9. Bereft of any merit, the O.A. is dismissed with no order as to costs.

(Dated, the 30th June, 2011)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.