

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 561 of 2006

Tuesday, this the 24th day of July, 2007

C O R A M :

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

1. P. Padmanabhan,
Superintendent of Central Excise (Retd.),
Poozhikunnath House,
Kochuparambil Lane, Payyattil Road,
Vennala P.O., Cochin : 682 028
2. P.C. Zachariah,
Inspector of Central Excise (Retd.),
Kailath Kalatharayil House,
Kalluvarambu Road, Chengannur.
3. P.K. Prabhakaran Nair,
Inspector of Central Excise (Retd.),
Leela Bhavan, Kunnumpurath,
Thalikkotta, Thazhathangadi P.O.,
Kottayam : 686 005.

... Applicants.

(By Advocate Mr. C S G Nair)

versus

1. Union of India represented by
The Secretary,
Department of Pension & Pensioners' Welfare,
Ministry of Personnel and Training,
South Block, New Delhi.
2. Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S. Press Road, Cochin : 682 018.
3. Commissioner of Central Excise,
Hyderabad 1 Commissionerate,
Kendriya Shulk Bhavan,
Basheerbagh, Opp. Lal Bahadur Stadium,
Hyderabad : 1.
4. Chief Controller,
Central Pension Accounting Office,
Trikoot II, Bhikaji Cama Palace,
New Delhi : 110 066.

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5. Pay and Accounts Officer,
Central Excise,
Central Revenue Buildings,
I.S. Press Road, Cochin : 682 018

6. Pay and Accounts Officer,
Central Excise, Kendriya Shulk Bhavan,
Basheerbagh, Opp. Lal Bahadur Stadium,
Hyderabad : 1. Respondents.

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

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The facts as contained in the O.A. are as under :

(a) All the three applicants retired from the Central Excise Department on 28.02.83, 30.6.86 and 31.3.85 respectively. On the basis of the Fifth Central Pay Commission recommendations, their pension was fixed at Rs. 3250/-, Rs. 3022/- and Rs. 3030/- respectively. The Pay Commission had recommended as under:-

137.14 – Our recommendations. – As a follow up of our basic objective of parity, we would recommend that the pension of all the pre-1986 retirees may be updated by notional fixation of their pay as on 1.1.1986 by adopting the same formula as for the serving employees. This step would bring all the past pensioners to a common platform or on to the Fourth CPC pay scales as on 1.1.1986. Thereafter, all the pensioners who have been brought on to the Fourth CPC pay scales by notional fixation of their pay and those who have retired on or after 1.1.1986 can be treated alike in regard to consolidation of their pension as on 1.1.1986 by allowing the same fitment weightage as may be allowed to the serving employees. However, the consolidated person shall be not less than 50% of the minimum pay of the post, as revised by Fifth CPC, held by the pensioner at the time of retirement. This consolidated amount of pension should be the basis for grant of Dearness relief in future. The additions to pension as a result of our recommendations in this chapter shall not, however, qualify for any additional communication for existing pensioners.

137.25 – Demand Conceded. – As for the other part of the prayer made by the Association, we have already made in this chapter a suitable recommendation that the revised pension/family pension shall not be less than that admissible on the minimum pay of the post held by the pensioner at the time of retirement or death as the case may be, as revised by the Government on our recommendations.

(b) Thus, on 1.1.1996, the pay scale of Superintendent was revised to Rs. 6500-10500 and that of Inspector to Rs. 5500-9000. The first



applicant's pension was fixed at Rs. 3250/- i.e. 50% of the initial pay of the Superintendent and the pension other two applicants when revised were above the minimum of the initial pay of Rs. 5500/-.

(c) While so, the Government revised the pay scale of Superintendent of Central Excise from Rs. 6500-10500 to Rs. 7500-12000 and that of Inspector from Rs. 5500-9000 to Rs. 6500-10500 with effect from 21.4.2004 vide Annexure A/5 order dated 1.5.2004. As the applicants are entitled for revision of their pension as per Annexure A/5, they submitted representations vide Annexures A/6, A/7 and A/8. No reply has been received by any of the applicants.

(d) **Grounds:** All the applicants are entitled for pension at 50% of the minimum pay of the scale. These applicants had more than 33 years of service and as such they are entitled for full pension, i.e. 50% of the minimum pay of the revised scale. Prescription that pension shall not be less than the minimum of the Pay Scale as on 1.1.1996 was made, as it was not envisaged that the pay scale would be revised before the next Pay Commission render its recommendation.

(e) The main reliefs sought by the applicants are as under:

- (i) To declare that the applicants are entitled for revision of pension with effect from 21.4.2004 in the minimum pay of the post held by the pensioners at the time of retirement;
- (ii) To direct the respondents to revise the pension including family pension of the applicants with effect from 21.4.2004 in the minimum pay of the post held by them at the time of retirement and grant all consequential benefits within a stipulated period.

2. The respondents have contested the O.A. Their version is as under:-

(a) The O.M. dated 17.12.98 of the DOP&PW states that "the President is now pleased to decide that with effect from 1.1.1996 pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1.1.1996 of the post last held by the pensioner".

(b) The revised pay scales of Inspectors and Superintendents were

upgraded by the CBEC with effect from 21.4.04 and the fixation as a result of the said upgradation has been regulated under F.R. 23 and F.R.22(1)(a)(2) and not under Revised Pay Rules. Hence the pay scale of present incumbents in the Department has not been revised with effect from 1.1.1996.

3. The counsel for the applicants submitted that the underlying idea in revising the pension at 50% of minimum in the pay scale attached to the post held by a Government servant is to ensure that the persons holding the particular post should get the same amount as pension as others irrespective of the date of their retirement. In the instant case, though as on 1.1.1996 the pay scale attached to the posts held by the applicant were different from the one now revised with effect 2004, yet, the applicants are entitled to the revision of pension on the basis of the revised pay scale as the person retiring on 31.4.2004 will have the pension fixed only on the basis of the revised pay scale. It is settled law that there shall be only one class of pensioner as held by Apex Court. Class within a class is not admissible. Hence the respondents are in error when they rejected the claims of the applicants.

4. On the other hand, counsel for the respondents submitted that the O.M. Dated 17.12.1998 (Annexure A/4) specifically referring to pay scales as on 1.1.1996, the applicants are not entitled to revision of their pension on the basis of further revision in the pay scales.

5. Arguments were heard and documents perused. The revision of pension is based on the recommendations of the Vth Central Pay Commission in paragraph 137.14 (already extracted). The term, "this step would bring all the past pensioners to a common platform" has to be applied for all times. The sub-heading preceding para 137.9 of the Vth Central Pay Commission Report read, "revision of pension with

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reference to minimum/maximum of the revised pay scale." The term revised pay scale cannot be restricted to pay scales as of 1.1.1996 alone, that should mean pay scale as and when revised. Normally revision of pay scales further to revision as per the Pay Commission recommendation is only in respect of a very few cases. It would not have been foreseen even by the Pay Commission that in addition to the recommendations there would be further upward revision in the pay scale. In fact, in the next Pay Commission when there would be further revision, the pensioners already retired and future pensioner would, in all probability, be having the benefit of the same formula, viz. 50% of minimum pay in the revised scale of pay or perhaps even higher, if the Pay Commission so recommends. Otherwise, all the pensioners cannot be brought within one common platform.

6. In view of the above, the O.A. is allowed. It is declared that the applicants are entitled to revision of their pension w.e.f. 21.4.2004 at 50% of the minimum of the revised pay scale attached to the posts held by them as under:-

- (a) Applicant No. 1 : 50% of the minimum in the pay scale of Rs. 7500-12000
- (b) Applicant Nos. 2 & 3: 50% of the minimum in the pay scale of Rs. 6500-10500.

7. The respondents are directed to pass suitable orders for revision of PPO accordingly and arrears of pension arising out of such revised orders should be paid to the applicants within a period of 4 months from the date of communication of this order. No costs.

(Dated, the 24th July, 2007)



Dr. K B S RAJAN
JUDICIAL MEMBER