

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 597 of 2012

THURSDAY, this the 6th day of June, 2013

CORAM:

Hon'ble Mr. K. George Joseph, Administrative Member

M.G. Venugopalan, Member (Retd.),
Central Board of Excise & Customs,
Residing at 'Sreepadam', Mamangalam,
Cochin – 682 025.

..... **Applicant**

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

1. Union of India, represented by the Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi-110 001.
 2. Secretary to the Government of India,
Department of Pension and Pensioners' Welfare,
Lok Nayak Bhawan, New Delhi – 110 003.
 3. Pay and Accounts Officer, Department of Revenue,
RFA Barracks, Church Road, Hutment, New Delhi-110 001.
 4. Pay and Accounts Officer, Central Pension Accounting
Office, Trikot II Complex, Bhikajicama Place,
R.K. Puram, New Delhi – 110 066.
 5. The Senior Manager, Dena Bank,
Napeansea Road Branch, Swapnalok,
L.J. Marg, Mumbai-400 026.
- **Respondents**

**[By Advocates – Mr. George Joseph, ACGSC (R1-4) &
Mr. Rojo Joseph Thuruthipara (R5)]**

This application having been heard on 31.05.2013, the Tribunal on
06-06-2013 delivered the following:



ORDER**Hon'ble Mr. K. George Joseph, Administrative Member-**

The applicant retired on superannuation as Member, Central Board of Excise and Customs (CBEC) on 31.05.2003. He was drawing a basic pay of Rs. 24700/- in the pay scale of Rs. 24050-26000 at the time of his retirement. His pension was fixed as per the then existing rules and all retirement benefits were paid accordingly. His pension was refixed in terms of the recommendations of the Sixth Central Pay Commission (CPC) with effect from 01.01.2006 at Rs. 37750/- per month. The pay scale of the Member, CBEC, with effect from 01.01.2006 under the new pay structure was Rs. 75500-80000. With effect from 24.12.2008, the pay scale of the post of the Member, CBEC, was upgraded to the apex scale of Rs. 80000/- (fixed) with the rank of Special Secretary to the Government of India. The applicant sought revision of pension and family pension in the light of the order of upgradation and as per Para 4.2 of the O.M. dated 01.09.2008. However, no reply has been received so far. Aggrieved, he has filed this O.A. for the following reliefs :


“(i) To declare that the applicant is entitled to fifty percent of the pay of the Member, Central Board of Excise and Customs as pension w.e.f. 24.12.2008.

(ii) To direct the respondents to grant the applicant 50% of the pay of the Member, Central Board of Excise and Customs, as monthly pension w.e.f. 24.12.2008 and disburse all consequential arrears within a stipulated period.

(iii) To direct the 3rd and 4th respondents to issue revised PPO to the applicant specifying the pension and family pension on the basis of Annexure A3 and para 4.2 of the OM dt. 1.9.2008.

(iv) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

(v) Grant costs of this O.A. “



2. The applicant contended that he retired as a Member of CBEC and as per Annexure A-3, the pay of the Member, CBEC, has been raised to Rs. 80000/-. In view of the provision in Para 4.2 of the O.M. dated 01.09.2008, denial of this benefit to the applicant is illegal and arbitrary. The Principal Bench of this Tribunal has already quashed Annexure A-5 O.M. dated 11.02.2009 which denied the benefit of upgradation of posts subsequent to retirement, in O.A. No. 655/2010 and connected cases on 01.11.2011. As such the provisions in Para 4.2 of O.M. dated 01.09.2008 are to be implemented without any alteration. The present O.A is identical to O.A. No. 561/2006 which was allowed by this tribunal directing the respondents to grant 50% of the minimum of the revised scale of pay of post from which the applicant had retired.

3. In the reply statement filed on behalf of the respondents 1 to 4, it was submitted that the replacement scale with effect from 01.01.2006 in the pay scale of Rs. 24050-26000 was Rs. 75500-80000. The post of the Member, CBEC, was upgraded to the apex scale of Rs. 80000/- (fixed) with effect from 24.12.2008, vide order dated 01.01.2009. This had no retrospective effect beyond 24.12.2008 nor was it as a package of the recommendations of the Sixth CPC. The applicant's claim cannot be granted because the minimum guaranteed pension is @ 50% of the minimum of the revised pay scale corresponding to the pre-revised pay scale from which he retired and not with reference to the subsequent upgradation of the pay scale of the Member, CBEC. The respondents relied on the decision of the Hon'ble Supreme Court in Union of India Vs. S.R. Dhingra, 2008(2) SCC 229, which is extracted as under:



“It is well settled that when two sets of employees of the same rank retire at different points of time, one set cannot claim the benefit extended to the other set on the ground that they are similarly situated. Though they retire with the same rank, they are not of the same class or homogeneous group. Hence, Article 14 has no application. The Employer can validly fix a cut-off date for introducing any new pension/retirement scheme or for discontinuance of any existing scheme. What is discriminatory is introduction of a benefit retrospectively (or prospectively fixing a cut-off date arbitrarily thereby dividing a single homogeneous class of pensions into two groups and subjecting them to different treatment.”

The applicant has not challenged any order of the respondents. The applicant had stated in his letter dated 31.03.2011 (Annexure A-6) that his pension was revised in terms of the formula contained in Department of Pension's OM dated 14.10.2008. The pay of the post of Member, CBEC was upgraded with effect from 24.12.2008 to the apex scale of Rs. 80000/- (fixed) with the status of Special Secretary to the Government of India. The applicant never worked as Member, CBEC, in the apex scale of Rs. 80000/- (fixed) with the status of Special Secretary to the Government of India. Therefore, he is not entitled to the benefit of consequential upgradation of pension. His pension was rightly fixed at Rs. 37750/- per month in terms of the formula stated earlier. All the officers who retired prior to 24.12.2008 were placed in the scale of Rs. 75500-80000 and their pension was also calculated on the basis of pay actually drawn and not based on the upgraded scale of pay of Rs. 80000/-. The CAT, Principal Bench, in O.A. No. 655/2010 only examined the issue as to how the minimum of pay in a particular Pay Band is to be reckoned. Since the upgraded pay scale is not in any Pay Band, the order dated 01.11.2011 in O.A. No.655/2010 is not at all relevant to the present case. The CBEC (Chairman and Members) Recruitment



(Amendment) rules, 2008 came into force with effect from 24.12.2008. It had no retrospective effect beyond 24.12.2008. It specifically indicates that existing entries in Column (4) and (12) of the principal rules were being substituted. All persons who retired prior to 24.12.2008 were to be granted pension with reference to the pay scale of Rs. 75500-80000, which was the replacement scale of the pre-revised scale of Rs. 24050-26000. Hence the allegation of the applicant that denial of the benefit to him as illegal and arbitrary is totally baseless. Quashing of O.Ms dated 03.10.2008, 14.10.2008 and 11.02.2009 by the CAT, Principal Bench, has no relevance in the matter of fixation of revised pension of the applicant. The order passed by this Tribunal in O.A. No. 61/2006 is stayed by the Hon'ble High Court of Kerala.

4. In the rejoinder statement filed by the applicant it was submitted that a proposal for upgradation of the post of Member, CBEC, to the rank of Special Secretary to the Government of India was there even before the VI CPC. The Members of the CBEC who retired prior to 24.12.2008 and retired thereafter do not fall under two different classes as their administrative and statutory responsibilities remained the same. The Sixth CPC had suggested placement of the Members of CBEC in the apex scale of Rs. 80000/- (fixed) with the rank of Special Secretary to the Government of India. As the applicant had retired as Member, CBEC, he is entitled to Rs. 40000/- as monthly pension as per Para 4.2 of O.M dated 01.09.2008.

5. I have heard Mr. C.S.G. Nair, learned counsel for the applicant and Mr. George Joseph, learned ACGSC appearing for the respondents No. 1 to 4




and perused the records.

6. The applicant retired as Member, CBEC on 31.05.2003 from the pay scale of Rs. 24050-26000. He had already been granted pension of Rs. 37750/- at the rate of 50% of the minimum of the pay in the Pay Band Rs. 75500-80000 plus Grade Pay corresponding to the aforesaid pre-revised pay scale in accordance with the recommendations of the Sixth CPC accepted by the Government of India, with effect from 01.01.2006. As the pay of the Member, CBEC has been raised to Rs. 80000/- with effect from 24.12.2008, the applicant claims that he is entitled for the pension of Rs. 40000/- as he retired as Member, CBEC, on the basis of Para 4.2 of O.M dated 01.09.2008, which is reproduced as under :

“4.2. The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay band plus the Grade Pay corresponding to the pre revised pay scale from which the pensioner had retired. In the case of HAG+ and above scales, this will be fifty percent of the revised pay scale.”

As per the aforesaid Para 4.2 of O.M, he has already been given Rs. 37750/- as minimum pension which is not disputed. Para 4.2 is implemented correctly as he retired from the pay scale of Rs. 24050-26000 (pre-revised). Since he did not retire from the apex scale of Rs. 26000/- (fixed), the corresponding apex scale of Rs. 80000/- (fixed) has no application as far his pension is concerned in terms of Para 4.2 of O.M above. It is not the post from which one retires but the pay actually drawn at the time of retirement that matters in the fixation of pension.



7. For the sake of convenience, Annexure A-3 order dated 01.01.2009 upgrading the post of Member, CBEC, is reproduced as under:

“F. No. 50/37/2008-Ad.I
Government of India
Ministry of Finance
Department of Revenue

Dated : January 1, 2009

SANCTION ORDER NO. 01/2009

Subject: Up-gradation of the rank and pay of the post of Members in the Central Board of Excise & Customs (CBEC) and the Central Board of Direct Taxes (CBDT) – Sanction regarding.

The president is pleased to sanction the up gradation of the pay scale of the post of Member in the Central Board of Excise & Customs (CBEC) and the Central Board of Direct Taxes (CBDT) from HAG+Scale of Rs. 75,500-80,000/- (pre-revised scale of Rs. 24050-650-26,000) to the apex scale of Rs. 80,000 (fixed) with rank of Special Secretary to the Govt. of India with effect from 24.12.2008.

2. The Expenditure involved shall be met out of the budget grant of the Ministry of Finance, Department of Revenue-Grant No. 41.

3. This issues with concurrence of the Department of Expenditure vide their ID Note F 2623/JS(Per) dated 01.10.2008 and IFU's Diary No. 1506/2008-IFU-III.

(V. Sreekumar)
Under Secretary to the Govt. of India”

8. The pay scale of the post of Member, CBEC is upgraded from Rs. 75500-80000 to the apex scale of Rs. 80000/- (fixed) with rank of Special Secretary to the Government of India with effect from 24.12.2008. There is nothing in the order to show that the upgradation was in any way related to the implementation the recommendations of the Sixth CPC. The retrospective effect of the order dated 01.01.2009 is only from 24.12.2008, the date on which the CBEC (Chairman and Members) Recruitment (Amendment) Rules,



2008, came into effect. The applicant worked and retired as a Member, CBEC, with the rank of Additional Secretary from the pay scale of Rs. 24050-26000, corresponding to the revised PB of Rs. 75500-80000 and was governed by the pre-amended Recruitment Rules. With effect from 24.12.2008, there is a distinct class of a of Members of CBEC with the apex scale of Rs. 80000/- (fixed) and with rank of Special Secretary to the Government of India. Hence, there can be two sets of retired Members of CBEC. Those who had the rank and pay of Additional Secretary and those who had the rank and pay of Special Secretary to the Government of India. They do not constitute a homogeneous group or class covered by the same Recruitment Rules. The CBEC (Chairman and Members) Recruitment (Amendment) Rules, 2008, provides an intelligible differentia between the two classes of the Members of CBEC. Hence the applicant cannot be placed at par with the Members of the CBEC who retired with the apex scale and with the rank of Special Secretary. The applicant has accepted the validity of the cut off date of 24.12.2008 by not challenging it; if it were arbitrary according to him, he should have challenged it.

9. In O.A No. 655/2010, the Principal Bench of this Tribunal examined the issue of how to reckon the minimum pay in a particular Pay Band. The upgraded pay scale of the Member, CBEC, not being in any Pay Band, i.e. stand alone fixed/apex scale, the question of reckoning the minimum of pay does not arise. Therefore, as rightly contended by the respondents, the decision of the Principal Bench in O.A. No. 655/2010 is not relevant and, therefore, not applicable to the present case.



10. O.A. No. 561/2006 pertains to revision of pension consequent upon revision of pay scale of specified Groups 'B' and 'C' posts. The present O.A deals with revision of pension on account of upgradation of the post of Member, CBEC, with higher rank and pay from the date of amendment of the relevant Recruitment Rules, independent of the recommendations of the Sixth CPC. The term upgradation implies increase in pay and rank. The term revision implies examination and correction or change which may be upwards or downwards without necessarily implying rank. As the present O.A is distinguishable from O.A. No. 561/2006 on the above counts, the extension of principle contained in the order therein to the case on hand does not arise.

11. Annexure A-3 order and Para 4.2 of O.M. dated 01.09.2008 and the decisions of the Principal Bench and this Tribunal are of no assistance to the applicant to substantiate his claim for 50% of the pay of the Member, CBEC, as pension with effect from 24.12.2008. Hence the O.A fails.

12. The O.A is dismissed accordingly with no order as to costs.

(Dated, the 06th June, 2013)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

cvr.