

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.620/2001

Dated this the 20th day of June 2003.

C O R A M

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

R.Dileep Kumar
Inspector of Central Excise
Central Excise Divisional Office
Kottayam.

Applicant

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

Versus

1. Commissioner of Central Excise & Customs
Central Revenue Buildings
I.S.Press Road
Cochin - 682 018.
2. The Additional Commissioner of Central Excise (P&V)
Central Revenue Buildings
I.S.Press Road
Cochin.
3. The Deputy Commissioner of Central Excise
Central Excise Divisional Office
Kottayam.
4. The Assistant Commissioner of Central Excise & Customs
Special Customs Preventive Division
Kozhikode.
5. Pay & Accounts Officer
Central Excise
Central Revenue Buildings
I.S.Press Road
Cochin.
6. Union of India represented by
The Secretary
Department of Revenue
Ministry of Finance
North Block
New Delhi.

Respondents.

(By advocate Mr.M.R.Suresh, ACGSC)

The application having been heard on 20th June 2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant in this case joined service on 22.6.1984 as Inspector of Central Excise. He was entitled to the benefit of

Assured Career Progression Scheme (ACP Scheme) that came into effect from 9.8.1999. He did not get any promotion in between. The order granting the first financial upgradation with effect from 9.8.99 is contained in A-1 order dated 24.1.2000 which stipulated that "the financial upgradation shall be conditional to the fact that any officer, while accepting the said benefit shall be deemed to have given his/her unqualified acceptance of regular promotion on occurrence of vacancy subsequently". (emphasis added). By A-3 order dated 4.4.2000, the applicant's pay was fixed at Rs.7900/- in the upgraded scale of Rs.6500-200-10500 w.e.f. 9.8.99. The applicant's name appears at Sl.No.10. As per A-4 order dated 12.6.2000, the 4th respondent stepped up the pay of the applicant and three other similarly placed inspectors on par with the pay of their junior one Sh.Jose Mathew, in terms of F.R.22(1)(a)(1). Subsequently, by A-7 order dated 19.3.2001, the second respondent held that since the applicant had not exercised his option within the time stipulated for grant of financial upgradation under the ACP Scheme in the cadre of inspector, he would not be eligible for stepping up of pay on par with his juniors who had opted within the stipulated time. The time stipulated under FR 22(1)(a)(1) for the purpose was one month from the date of issuance of the order. The applicant's case is that he received the A-1 orders some time towards the end of March and immediately he opted as per A-2 letter dated 5.4.2000 to get his pay fixed in accordance with the financial upgradation available under ACP in the cadre of Inspector. But his pay fixation under FR 22(1)(a)(1) was ordered as per A-3 order dated 4.4.2000 without considering any option. His pay was accordingly refixed at Rs.7900/-, according to the applicant. On a representation made by him, A-4 order

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dated 12.6.2000 followed, stepping up the pay of the applicant on par with his junior, Jose Mathew. It would appear that the pay fixation so granted by stepping up of pay on par with his junior as per A-4 was objected to by the 5th respondent on the ground that the applicant did not exercise his option within one month of the date of issuance of the A-1 ACP upgradation order. The applicant's representations were rejected leading to the issue of the impugned A-7 order. The reliefs sought for by the applicant are:

- (i) To quash Annexure A7.
- (ii) To direct the 1st respondent to issue orders for stepping up the pay of the applicant on par with his junior Sri M. Jose Mathew, as given in Annexure A-4.
- (iii) To grant such other relief or reliefs that may be urged at the time of hearing or that this Tribunal may deem fit to be just and proper.

2. In the reply statement, the respondents have opposed the OA on the ground that the applicant was obliged, under the Rules, to exercise his option within one month of the A-1 order dated 24.1.2000. The applicant did not exercise such an option. Therefore, the financial upgradation granted to him and the stepping up of pay allowed in consequence thereof on par with his junior Jose Mathew are not in order. The OA is without merit and is liable to be dismissed, the respondents would urge.

3. The applicant has filed rejoinder and the respondents have filed additional reply statement reiterating their respective stand.

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4. We have considered the material placed on record and have heard Sh.C.S.G.Nair, the learned counsel of the applicant and Sh.M.R.Suresh, the learned ACGSC for the respondents.

5. The learned counsel for the applicant pointed out that the upgradation order A-1 was served on him only towards the end of March and as such he could not have exercised the option within one month of the relevant order since the time was already over as on the date of receipt of the order by him. Thereafter his pay was stepped up on par with that of his junior Jose Mathew as per A-4. According to him, the impugned order was passed purely on the basis of the objections raised by the Pay & Accounts Officer, the 5th respondent. The learned counsel would invite our attention to the condition No.10 in R2 ACP Scheme as well as to the last para in A-1 order granting the financial upgradation and would contend that the expression "while accepting the said benefit" in condition 10 of R-2 would mean that the applicant should get an opportunity to accept the benefit in the first place. This acceptance itself could be made only on receipt of the order and not necessarily on the date of issuance of the order from the office of the issuing authority. Since there was no occasion to accept the benefit before the receipt of the order, there was no possibility of exercising the option before that. The bonafide act of the Administration in pursuance of the option exercised by him could not, therefore, be reversed by narrow interpretation of the stipulation regarding the exercise of option within one month from the date of the order as it occurs under FR 22(1)(a)(1). Sh.M.R.Suresh, the learned ACGSC, on the other hand, would state that even going by the applicant's pleadings, it is clear that the failure to exercise the option

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was only due to his ignorance of the rules regarding the stipulation on exercise of option within one month of the relevant order. It is submitted by the ACGSC that such ignorance cannot be advanced as an excuse and that, therefore, the reversal of the wrong order passed by the 4th respondent could not be faulted. In this case, the ACP order was issued on 24.1.2000. As per R3 office note, orders were issued to ensure that the A-1 orders should be forwarded through controlling officers. As per the order sheet entry dated 17.2.2000 (R3), the orders were issued for the purpose of forwarding the relevant A-1 orders to all the officials through their controlling officers. Thus the respondents had issued the orders in time but the applicant had failed to comply with the requirement of exercising his option within the stipulated time, the learned ACGSC maintains.

6. On a consideration of the relevant facts and the material placed on record with particular reference to the arguments put forward by the learned counsel on either side, we find that the applicant had exercised his option by A-2 dated 5.4.2000 and that even a day previous to that i.e. 4.4.2000, the applicant's pay was fixed in accordance with the ACP Scheme. Apparently this was even before the receipt of any formal option. However, it is a matter of record that the option was exercised on 5.4.2000. The question is whether the applicant could have exercised the option within one month of the date shown in A-1 order. It is idle to contend that a person could act upon an order within one month of the issue thereof unless it was served on him. No doubt, in this case, the applicant has not been able to show on what date exactly he received the order. However, the records speak for themselves. The authorities concerned in a bonafide manner had

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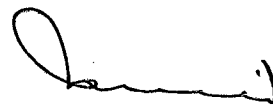
allowed the applicant the financial upgradation as per A-3 dated 4.4.2000 in the first place and thereafter his pay was fixed in pursuance thereof as per A-4 to allow the benefit of stepping up on the basis of A-2. We see no reason to fault this order. Having acted in a bonafide manner, presumably on the basis of available material on record, in a simple matter like granting financial upgradation to an official who was stagnating, it would be unsustainable in law and harsh in practical terms to withdraw the same simply on the basis of some objections raised by the PAO. In our considered view, the bonafide action of the Administration as reflected in A-4 cannot be invalidated on the technical ground that the option was not exercised within one month of the date of issuance of the order. The date of issuance of the order should be taken as the date of service thereof on the applicant. Since that date is not proved by either party, the positive act on the part of the Administration has to be taken as an indication.

7. In the light of what is stated above, we hold that the impugned order A-7 is unsustainable. Accordingly, the same is set aside. The respondents are directed to follow up the pay fixation order A-4 except for any clerical or arithmetical error in it. The applicant is entitled to the consequential benefits flowing from the A-4 pay fixation/Stepping up order. The OA is allowed as above. No order as to costs.

Dated 20th June 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER