

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 93 OF 2010

Friday, this the 23rd day of September, 2011

CORAM:

**HON'BLE Dr.K.B.S RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

1. N.Vimalan
Inspector of Central Excise
Alathur Range,
Palakkad
2. K.S Aneesh
Inspector of Central Excise
Palakkad II Division
Palakkad

Applicants

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

Versus

- 1 Union of India represented by its Secretary
Department of Revenue
North Block
New Delhi – 110 001
2. The Chief Commissioner of Central Excise & Customs
Central Revenue Buildings
I.S Press Road, Cochin
3. The Commissioner of Central Excise & Customs
Cochin Commissionerate
Central Revenue Buildings
I.S Press Road, Cochin – 18
4. The Commissioner of Central Excise & Customs
Calicut Commissionerate
Central Revenue Buildings
Mananchira, Calicut – 673 001



5. The Deputy Commissioner of Central Excise
Palakkad II Division, Mettupalayam Road
Palakkad

6. The Principal Accountant General
(Civil & Commercial Audit)
New Building, Near Vidhan Soudha
Bangalore, Karnataka

Respondents

(By advocate – Mr.Sunil Jacob Jose, SCGSC)

The application having been heard on 23.09.2011, the Tribunal on the same day delivered the following:

ORDER

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

1. The applicants in this Original Application were aspirants for certain posts for which they had appeared in the recruitment tests for Section Officer in Indian Audit and Accounts Department on the one hand and Inspector of Central Excise on the other hand. They could be selected as Section Officer in the Indian Audit and Accounts Department, which posts they assumed in Jun 2006. After their joining the said posts, they were called for physical test for selection as Inspector of Central Excise and accordingly they had sought permission from the Indian Audit and Accounts Department and No Objection Certificate for participating in the test. After obtaining such N.O.C, the applicants participated in the physical test and were also successful in getting their appointments as Inspector of Central Excise which they assumed in October 2006, after submitting technical resignation to the Indian Audit and Accounts Department.

2. At the time of joining the Indian Audit and Accounts Department the applicants enjoyed the pay scale as per the 5th CPC recommendations and incidently it is the same pay scale which was applicable to Inspectors of Central Excise as well. Thus, on shifting from Indian Audit and Accounts Department to Central Excise, the applicants did not suffer any monetary loss. However when the revised pay rules 2008 came into force and were implemented with retrospective effect from 01.01.2006, the applicants found that the grade pay in respect of Section Officers in the Indian Audit and Accounts Department was Rs.4800/- whereas the same in the Central Excise Department for Inspectors was only Rs.4600/- Telescopically the difference in pay of the two posts was worked out to be Rs.1010/-.

3. The applicants represented to the respondents that their case be considered in accordance with the provisions of O.M dated 17.06.1965 under FR 27, which provides protection of pay in the new post treating the resignation as a technical formality. However, their claim was rejected vide Annexure A-14 order dated 17.06.2009. The applicant has challenged the same and prayed for the following:-

ii. To declare that the applicants are entitled for fixation of their pay in the cadre of Inspector of Central Excise under FR 27 and consequential benefits, taking into account their service as Section Officer in the Indian Audit and Accounts Department.

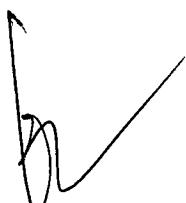
iii. To direct the respondents to fix the pay of the applicants in the cadre of Inspector of Central Excise under FR 27 and grant all consequential benefits within a stipulated period.



iv. To direct the 6th respondent to grant arrears of pay of the applicants as per the Revised Pay Rules 2008 within a stipulated period.

4. Respondents have contested the Original Application. According to them, the DOPT O.M dated 10.07.1998 (Government of India decision No.30 under FR 22) would apply to the facts of the case. They also referred to the fact that the applicants rendered just 3 month's service as Section Officer in the Indian Audit and Accounts Department which service cannot be taken into consideration for fixation of pay.
5. The applicants have filed their rejoinder reiterating their stand taken in the main O.A.
6. In their additional reply statement, the respondents have stated that the applicants had not completed their probation period in the earlier job as Section Officers. As such, their claim is baseless.
7. Counsel for the applicants had taken us to the order dated 17.06.1965 which read as under:-

"Condonation of resignation for purposes of fixation of pay – The question whether the benefit of past service for purposes of fixation of pay can be given to a Government servant who resigns his post before taking up appointment in the new post in the same or another Department, has been under the consideration of the Government of India. Normally, the benefit of past service is given only in those cases where such service has not been terminated by resignation/dismissal. The President is, however, pleased to decide that in cases where Government servants apply for posts in

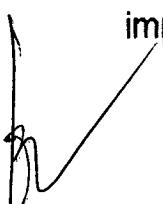


the same or other Departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a 'technical formality'. The pay in such cases may be fixed under FR 27."

8. Counsel for the respondents has referred to the fact that the applicants had not even completed their probation in their previous department. He has also referred to certain Government of India decisions under FR 27 to support that.

9. Arguments were heard and documents perused.

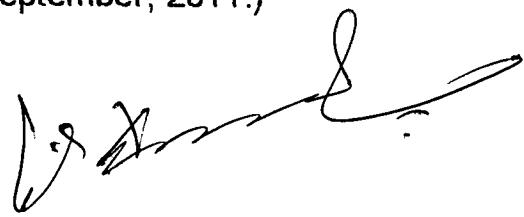
10. Pay protection can be considered if the applicants are holding the post of Section Officers on regular basis. In our opinion, only if the applicants were eligible for retaining their lien in the previous department, where they could come back for any reason before their confirmation in the Central Excise Department that they could be treated as eligible for pay protection. The character of employment during the probation period is only volatile in that, at short notice, applicant either could leave the department or, for valid reasons, the probation might not be extended nor terminated and their service could be dispensed with. As such, when a person is under probation he does not crystallise any right for pay protection etc. Under these circumstances, pay protection when the applicants moved to the other department, is impermissible.



11. The applicants could not thus make out a case. Consequently this Original Application is rejected. No costs.

(Dated, this the 23rd day of September, 2011.)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


DR.K.B.S RAJAN
JUDICIAL MEMBER

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