

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 151/2009

Dated this the 29th day of June, 2010

C O R A M

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

S. Ashoka Narayanan S/o N. Subramonian Potti
Superintendent of Central Excise
Audit Section, O/o the Commissioner of
Central Excise & Customs, IS Press Road,
Cochin-18
permanently residing at Thalayathumala Narayanam
KV Nagar, Peyad PO, Thiruvananthapuram.

Applicant

By Advocate Mr. Shafik M.A.

Vs.

- 1 Union of India represented by
Secretary, Department of Revenue
Ministry of Finance, New Delhi
- 2 The Chairman
Central Board of Excise & Customs
North Block, New Delhi.
- 3 The Chief Commissioner of Central Excise,
Customs & Service Tax
Kerala Zone, Central Revenue Building
I.S. Press Rod, Cochin-682 018

The Application having been heard on 9.6.2010 the Tribunal delivered the following:

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is presently working as Superintendent of Central Excise in the office of the Commissioner of Central Excise & Customs, Cochin. He entered service as an Inspector of Central Excise on 15.1.1992, was promoted as Superintendent on 30.6.2008. According to the applicant, Inspector of Central Excise was drawing the pay scale of Rs. 6500-10500 and the Superintendent was drawing the pay scale of Rs. 7500-12000. While so, the Government introduced ACP Scheme w.e.f. 9.8.1999 according to which the employees are entitled to two financial upgradations on completion of 12 and 24 years of service. Accordingly, on completion of 12 years service the applicant was granted the 1st financial upgradation under the ACP Scheme w.e.f. 1.1.2004. Consequent on the implementation of the VI CPC, Inspector was placed in the pay band 2 with a grade pay of Rs. 4200/- whereas the Superintendent of was placed in pay band 2 with a grade pay of Rs. 4800/- and on completion of a period of 4 years the grade pay is enhanced to Rs. 5400/-. As per the present hierarchy of cadres, the Superintendent is the immediate promotion post of Inspector. Based on

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A-5 resolution and A-6 clarification, on completion of 4 years in the scale of Rs. 7500-12000 w.e.f. 1.7.2009, the applicant was granted Grade pay of Rs. 5400/- (A-7) and continued to draw pay thereafter. While so, clarification (A-2) was issued directing that the grade pay of Rs. 5400/- need not be given to those who are drawing the salary of Superintendent on ACP scheme, without any notice (A-1). The applicant is challenging A-1 order and A-2 clarification, having been issued, without any notice, against the principle evolved in the ACP Scheme, without consulting the Ministry of DOPT which issued the ACP Scheme. Hence he seeks to quash Annexures A-1 and A-2 to the extent it relates to the applicant being illegal and arbitrary, to declare that he is entitled to the pay with grade pay of Rs. 5400/- as has been correctly fixed by A-7 memo.

2 The respondents submitted that the applicant joined service as Inspector on 15.1.1992 in the scale of Rs. 1640-2900 which was revised to Rs. 5500-9000 w.e.f. 1.1.1996. He was granted 1st financial upgradation to the pay scale of Rs. 6500-10,500 w.e.f. 1.1.2004 on completion of 12 years of service under the ACP Scheme. The financial upgradation under the ACP Scheme contemplates merely placement on personal basis in the higher pay scale and such upgradation shall not amount to actual functional promotion of the employee. It does not confer designation, duties and responsibilities of the higher post (Annexure R-1(a)). The applicant continued to work in the post of Inspector despite the financial upgradation granted to him. While so, he



was promoted on regular basis to the post of Superintendent in the scale of pay of Rs. 7500-12000/- with a grade pay of Rs. 4800/- He will be eligible for the grade pay of Rs. 5400 in pay band PB-2 on completion of 4 years of regular service in the post of Superintendent. They submitted that the clarification dated 11.2.2009 was issued on an issue on the implementation of 6th CPC in consultation with the Department of Expenditure which is the nodal department for implementation of CPCs and that no clarification contrary to ACP Scheme was issued by them.

3 The applicant filed rejoinder stating that the Government of India through OM dated 21.4.2004 upgraded the pay scale of Inspector from Rs. 5500-9000 to Rs. 6500-10500 and the pay scale of Superintendent from Rs. 6500-10,500 to Rs. 7500-12000. Consequent on implementation of VI CPC, the pre-revised scale of Rs. 6500-10500 was given a replacement grade pay of Rs. 4200/- in Pay Band II and the pre-revised pay scale of Rs. 7500-19500 was given a replacement grade pay of Rs. 4800/- in Pay Band II. However, the post of Superintendent of Central Excise was given a further higher grade pay of Rs. 5400/- after completion of 4 years of service in pay band II. The applicant further contended that the applicant is entitled to receive the grade pay of Rs. 5400/- after a period of 4 years from the date of grant of 1st financial upgradation under ACP Scheme.

4 We have heard learned counsel for the parties and have gone through the pleadings.

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5 The issue started with the A-6 clarification of the Department of Revenue, Central Board of Excise & Customs dated 21st November, 2008. (A-6). As per the clarification, a few field formations had sought a clarification on how the 4 year period is to be counted for the purpose of granting non-functional upgradation to Group-B officers i.e. whether the 4year period is to be counted w.e.f the date on which an officer is placed in pay scale of Rs. 7500-12000 (pre-revised) or w.e.f. 1.1.2006 i.e the date on which the recommendations of the 6th CPC came into force. The matter was referred to the Department of Expenditure.

"The Department of Expenditure have now clarified that the 4 year period is to be counted w.e.f. the date on which an officer is placed in the pay scale of Rs. 7500-12000 (pre-revised). Thus, if an officer has completed 4 years on 1.1.2006 or earlier, he will be given the non-functional upgradation w.e.f. 1.1.2006. If the officer completes 4 years on a date after 1.1.2006, he will be given non-functional upgradation from such date on which he completes 4 years in the pay scale of Rs. 7500-12000 (pre-revised)"

In the meanwhile, A-2 clarification regarding grant of non-functional upgradation to Group-B officers was circulated by the Department of Revenue, Central Board of Excise & Customs on 11.2.2009 which reads as follows:

" Thus it is clear that the officers who got the pre-revised pay scale of Rs. 7500-12000 (corresponding to grade pay of Rs. 4800/-) by virtue of financial upgradation under ACP will not be

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entitled to the benefit of further non-functional upgradation to the pre-revised pay scale of Rs 8000-13500 (corresponding to grade pay of Rs. 5400) on completion of 4 years in the pre-revised pay scale of Rs. 7500-12000)"

6 There is no dispute that the applicant who joined service as Inspector in the Central Excise Department on 15.1.1992, was granted 1st financial upgradation on 1.1.2004 to the scale of Rs. 6500-10500/- on completion of 12 years of service while he was drawing the pay scale of Rs. 5500-9000/- On 21.4.2004 as per OM dated 21.4.2004 the scale of pay of the Inspector and that of Superintendent were revised to Rs. 6500-10500 and Rs. 7500-12000/- respectively. The learned counsel for the applicant stated in his rejoinder that consequent to A-8 the applicant was placed in the pay scale of Rs. 7500-12000/- i.e the enhanced scale of the Superintendent. Consequent on the implementation of VI CPC, his pay was refixed from 1.1.2006 based on the A-6 clarification dated 21.11.2008, A-7 was issued in December, 2008 enhancing his grade pay to Rs. 5400/-. Meanwhile, A-2 clarification was received and therefore A-7 pay fixation memo was cancelled ordering recovery of excess paid amount.

7 The contention of the applicant is that he is entitled to receive the grade pay of Rs. 5400/- after a period of 4 years from the date he was drawing the grade pay of Rs. 4800/- which was granted to him vide Annexure A-7. His contention is untenable, in view of A-2 clarification, that 4 years of regular service has to be in the functionally promoted post and not on account of financial upgradation to the post due to ACP.

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Right from 3rd CPC onwards, a selection grade was created, which was granted after a particular residency period in a higher post. In the case of the applicant, he continued to be Inspector of Central Excise till 30.6.2008, when he was promoted as Superintendent. Therefore, he has to complete 4 years residency period in the functionally promoted post of Superintendent to be entitled for the grade pay of Rs 5400/-.

8 The applicant further averred that the DOPT which formulated the ACP scheme ~~was~~ was not consulted on the issue and hence the impugned clarification at A-2 issued by the Ministry of Finance and action on that basis is highly irregular and objectionable. We have gone through the pleadings and are of the view that the issue involved pertained to CCS(Revised Pay) Rules, 2008 under the Ministry of Finance, Department of Revenue and Clause (x)(e) of the RESOLUTION also, the applicant is directly coming under the Ministry of Finance, Department of Revenue and that Department is directly concerned with the implementation of recommendations of the VI CPC, we do not find any merit on the ground raised by the applicant.

9 As regards the ground raised by the applicant that no notice was given to the applicant the contention merits consideration. We are of the considered view that in all matters concerned with recovery proceedings, natural justice demands that a show cause notice is issued to the affected party to give an opportunity to place his case before his superiors for consideration. In this case, it has not been done so.


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However, in view of the decision we have taken in this matter, we do not find it feasible to remit the matter to the respondents to issue a formal show cause notice to the applicant before the recovery is effected at this distance of time. The Department is duty bound to correct a mistake and recover any over payment.

10 Accordingly, we dismiss the O.A. as devoid of merit. The interim stay granted on 6.3.2009 is vacated. No costs.

Dated 29th June, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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