

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**ERNAKULAM BENCH**

**Original Application No. 157 of 2011**

**Friday, this the 25<sup>th</sup> day of November, 2011**

**CORAM:**

**Hon'ble Mr. Justice P.R Raman, Judicial Member**  
**Hon'ble Mr. K. George Joseph, Administrative Member**

J. Rahiyanathu Beevi, Administrative Officer (Rtd.),  
TC 2/1321, Sai Krishna, Mangannoor Konam Lane, Pattom P.O.,  
Thiruvananthapuram – 695 004. .... **Applicant**

**(By Advocate – Mr. C.S.G. Nair)**

**V e r s u s**

1. Commissioner of Central Excise & Customs,  
I CE Bhavan, Press Club Road, Thiruvananthapuram – 695 001.
2. Commissioner of Central Excise & Customs,  
Central Revenue Buildings, I.S. Press Road, Cochin – 682 018.
3. Chief Commissioner of Central Excise & Customs,  
Central Revenue Buildings, I.S. Press Road, Cochin – 682 018.
4. Pay & Accounts Officer, Central Excise, I CE Bhavan,  
Press Club Road, Thiruvananthapuram – 695 001.
5. Chairman, Central Board of Excise & Customs,  
North Block, New Delhi – 110 001.
6. Union of India, represented by its Secretary, Department of Revenue,  
North Block, New Delhi – 110 001. .... **Respondents**

**(By Advocates – Mr. George Joseph)**

This application having been heard on 25.11.2011, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. Justice P.R Raman, Judicial Member -

The applicant while working as an Administrative Officer in the 1<sup>st</sup> respondent's office retired voluntarily from service on 1.8.2009 forenoon. She joined the service as LDC on 7.8.1972. Later she was promoted as UDC, Tax Assistant, DOS Level-II and DOS Level-I. In February, 1995 she was promoted as Office Superintendent and subsequently as Administrative Officer on 18.12.1997 on ad hoc basis. This ad hoc promotion was subsequently regularized as per order dated 16.10.2011. The deemed promotion as Administrative Officer was with effect from 18.12.1997. Annexure A-1 based testimony for this . The applicant was also given an option for fixation of pay under FR 22(1)(a)(i) in terms of OM dated 26.9.1981 issued by the DOP&T as is evident from Annexure A-1. The applicant had exercised her option for fixation of pay under FR 22(1)(a)(i). It is stated that Office Superintendent is a category for promotion to the post of Administrative Officer as per the recruitment rules published on 13.11.1987. Annexure A-2 is the copy of the recruitment rules. The recruitment rules for the post of Office Superintendent is Annexure A-3. The scale of pay of the Administrative Officer is Rs. 2100-2300-3200-3500/- whereas the scale of pay of the Office Superintendent is Rs. 2000-2300-3200/-. This was the scale of pay prevalent at the time of issuance of the recruitment rules. The 6<sup>th</sup> respondent informed the then Commissioner that the post of Office Superintendent has been merged to the post of Administrative Officer consequent on the restructuring of Customs and Central Excise Department. The recruitment rules were not amended



consequent to that. The applicant as stated earlier retired from the forenoon of 1.8.2009. Subsequently on the premise that fixation given at the time of promotion to the post of Administrative Officer was erroneous, the fixation benefit was sought to be actually recovered from the applicant. However, representations were made by the applicant to the higher authorities. Pending such representations applicant was paid pension provisionally. The applicant in these circumstances prays for the following relief:-

- “(i) To call for the records leading up to the issue of Annexure-A13 and quash the same;
- (ii) To declare that the applicant is entitled for fixation of her pay under FR 22 (1)(a)(i) on promotion as Administrative Officer from the post of Office Superintendent;
- (iii) To refund the amount recovered from the applicant towards the alleged excess payment due to pay fixation on promotion with interest at the rate of 12% per annum;
- (iv) To direct the respondents to grant interest on the entire gratuity amount at 12% per annum as the amount was paid after 6 months of retirement contrary to the existing orders, within a stipulated period;
- (v) To direct the respondents to take appropriate action to issue revised pension payment order within a stipulated period;
- (vi) To grant such other reliefs which this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case;

a n d

- (vii) To award the cost of these proceedings to the applicant.”

2. By Annexure A-13 dated 26<sup>th</sup> May, 2010 the Under Secretary, Government of India, informed the Commissioner of Customs & Central Excise, Thiruvananthapuram to implement the instructions F.No. A-26104/7/2001, dated 24.7.2006 and to settle the pension case of the officer duly without further delay. The subject under Annexure A-13 shown is refusal of full pension and other pensionary benefits in respect of Smt. J.



Rahiyanath Beevi, AO (Retd.) from Central Excise & Customs, Thiruvananthapuram, promoted from the cadre of Office Superintendent between 1.1.1996 to 4.6.2002 - regarding. Obviously therefore, the last drawn pay was fixed after recovery of the alleged excess payment which has a bearing on the retirement benefits of the applicant. The applicant seeks for quashing Annexure A-13 and to declare that she is entitled for fixation of her pay under FR 22(1)(a)(i) on promotion as Administrative Officer from the post of Office Superintendent and to refund the amount recovered from the applicant towards the alleged excess payment due to pay fixation on promotion with interest at the rate of 12% per annum as the amount was not paid within the stipulated time.

3. In the reply statement filed by the respondents they have stated in paragraph 2 as follows:-

"2. With regard to the contention raised in ground no. A of the OA, it is submitted that the pension papers of Smt. Rahiyanathu Beevi, Administrative Officer, voluntarily retired on 1.8.2009 were processed and submitted to Pay and Accounts Office, Trivandrum for authorization of Pensionary benefits on 22.7.2009. Pay and Accounts Officer, Trivandrum had returned the Pension papers on 22.9.2009 with the following remarks: "As per CBEC (Ad.II.A) letter dated 24<sup>th</sup> July 2006, since the pay scale of the Office Superintendent and Administrative Officer were merged into one pay scale the benefit of pay fixation under FR 22 (I)(a)(i) cannot be granted. Hence, the pay fixation granted to Smt. Rahiyanathu Beevi on her promotion to the post of Administrative Officer between 1.1.96 to 4.6.2006 is not correct. As such the pay of Smt. Rahiyanathu Beevi has been refixed wrongly with effect from 18.12.97 resulting in over payment of pay and allowances. Hence the pay of Smt. Rahiyanathu Beevi may please be refixed and the overpaid pay and allowances recovered. The pension papers may be resubmitted to the 1<sup>st</sup> respondent's office after revising the pensionary benefits." True copy of the letter sent by Pay and accounts officer, Central Excise and Customs, ICE Bhavan, Press Club Road, Trivandrum bearing No. PAO/CE/TVM/Pen/2009-10 dt. 22.09.2009 to the Joint Commissioner (P&V) Central Excise and Customs, Trivandrum is produced here with and marked as Annexure



R1. Accordingly pay has been refixed and settled the pensionary benefits."

4. The applicant retired voluntarily from service on 1.8.2009 on the forenoon. Pension papers of the applicant were processed and was submitted to the Pay & Accounts Office for authorization of pensionary benefits. The pension papers were returned with the following remarks "As per CBEC (Ad.II.A) letter dated 24<sup>th</sup> July 2006, since the pay scale of the Office Superintendent and Administrative Officer were merged into one pay scale the benefit of pay fixation under FR 22 (I)(a)(i) cannot be granted. Hence, the pay fixation granted to Smt. Rahiyanathu Beevi on her promotion to the post of Administrative Officer between 1.1.96 to 4.6.2006 is not correct. As such the pay of Smt. Rahiyanathu Beevi has been refixed wrongly with effect from 18.12.97 resulting in over payment of pay and allowances. Hence the pay of Smt. Rahiyanathu Beevi may please be refixed and the overpaid pay and allowances recovered. The pension papers may be resubmitted to the 1<sup>st</sup> respondent's office after revising the pensionary benefits". Accordingly the pay has been re-fixed and settled the pensionary benefits. The applicant was promoted as Administrative Officer during 1.1.1996 to 4.6.2006 and hence the grievance of the applicant cannot be decided at their office but only by the CBEC. Therefore, a representation has been made to the Ministry in this regard and in order to avoid much delay in payment of the pensionary entitlements, the pay has been re-fixed without waiting for further clarification from the Ministry. With regard to the contention raised in ground No. E in the OA it is stated that in view of the Ministry's letter dated 26.5.2010 Pay and Accounts Office, Trivandrum



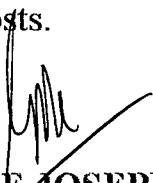
has been requested to deal with the issue in Rule 59(I)(b)(iii) of the CCS (Pension) Rules and paragraph 7.3.2 of Civil Accounts Manual. According to the respondents the benefit of fixation under FR 22(1)(a)(i) is applicable to only to those who are promoted from Group-C to Group-B and accordingly, the applicant was given fixation benefit on her promotion from the cadre of Office Superintendent to Administrative Officer earlier. Only due to PAO's instructions with regard to boards letter dated 24.7.2006, the pay fixed has been revised.

5. We have heard both sides.

6. The issue as to whether the applicant is entitled to have the pay fixed when she was promoted from the post of Office Superintendent to that of Administrative Officer is no longer res integra between the parties. Annexure A-15 is copy of the judgment rendered by this Tribunal in a batch of cases in OA No. 278 of 2010 and connected matters. Identically were the circumstances as could be seen from the judgment. After elaborate consideration of the rival submissions between the parties this Tribunal quashed the impugned order and declared that the applicants are entitled for fixation of their pay under FR 22(1)(a)(i) on promotion. Accordingly, the respondents were directed to refund the amount if any recovered from the applicants. Pension payment order of the applicant in OA No. 278 of 2010 on the basis of revised pay band in the higher grade with effect from 1.1.2006 taking into account the increments drawn thereafter was also directed to be issued within a period of 60 days failing which it would entail payment of interest at the rate of 9%.



7. In view of the above pronouncement there is no doubt that the entitlement of the applicant for fixation under FR22(1)(a)(i) was rightly made but subsequently withdrawn at the instance of the Principal Accounts Officer. This resulted in Annexure A-15. As a matter of fact once the said decision has become final the respondents ought to have adopted the same and granted the relief to the applicant without she being filing a separate application before this Tribunal. Hence, in the light of the facts and circumstances as above, we allow this OA and declare that the applicant is entitled for fixation of pay under FR 22 (1)(a)(i) on promotion as Administrative Officer from the post of Office Superintendent. There will be a direction to the respondents 1 and 4 to refund the amount recovered from the applicant with regard to the alleged excess payment. There is also a further direction to the said respondents to issue the pension payment order to the applicant on the basis of the revised pay band in the higher grade with effect from 1.8.2009 taking into account the increments drawn. The above direction should be implemented within a period of two months from the date of receipt of copy of this order. Retirement benefits will be recalculated and dues if any shall also to be paid within the above time failing which the respondents will be bound to pay 9% interest as above. No order as to costs.

  
(K. GEORGE JOSEPH)  
ADMINISTRATIVE MEMBER

  
(JUSTICE P.R RAMAN)  
JUDICIAL MEMBER

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