

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 291 of 2002

Thursday, this the 22nd day of July, 2004

CORAM

**HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER**

1. P.V. Narayanan,
S/o late Sankara Marar,
Inspector of Central Excise,
Special Customs Preventive Unit,
Post Office Bakel, Kasaragod District
Permanent Address: Parvathy Niiyam,
Vythala Road, PO Kurumathur,
Cannanore District.Applicant

[By Advocate Shri T.C. Govindaswamy]

Versus

1. Union of India represented by the
Secretary to the Government of India,
Ministry of Finance,
Department of Revenue, New Delhi.

2. The Commissioner of Central Excise & Customs,
Cochin Commissionerate, Cochin.

3. The Commissioner of Central Excise & Customs,
Calicut Commissionerate, Calicut.

4. Administrative Officer,
Office of the Assistant Commissioner of
Special Customs Preventive Division,
Kallai Heights, Kallai, Calicut.Respondents

[By Advocate Shri M.R. Suresh, ACGSC]

The application having been heard on 22-7-2004, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, while working in the Railways,
participated in a process of selection for appointment to the
post of Inspector of Central Excise and Customs. The applicant
qualified in the written examination. However, the candidature
of the applicant was subsequently cancelled by the Staff
Selection Commission on the ground that he was not entitled to

age relaxation taking into consideration the Government service rendered by him. The applicant challenged the action before the Principal Bench of the Central Administrative Tribunal in OA.No.456/1996. The Tribunal vide its order dated 28-5-1997 allowed the OA, set aside the order cancelling the applicant's candidature and directed the respondents to hold a supplementary interview for the applicant for the post advertised in July 1994 within a period of one month after giving him 10 days prior notice and if he qualified in the interview, to grant him resultant benefits. Although a review application was filed by the Staff Selection Commission, the same was dismissed. Therefore, the Staff Selection Commission conducted a special interview and the applicant was placed at rank No.1 in the merit list. Accordingly, the 2nd respondent issued order dated 17-1-2000 appointing the applicant as Inspector of Central Excise and placing him above one S.Padmakumar, the then rank No.1 in the selection held in the year 1994. The grievance of the applicant is that although he had been assigned seniority over Padmakumar, his pay has been fixed only at the beginning of the scale and he was not given notional fixation of pay on par with Padmakumar. The applicant's representation in that regard has been rejected by Annexure A6 order dated 14-3-2002 stating that, as per the Fundamental Rules, the pay could be fixed only at the beginning of the stage when he is appointed to that post. Hence, the applicant has filed this application seeking the following reliefs:-

- "a) Call for the records leading to the issue of Annexure-A6 and quash the same.
- b) Declare that the applicant is entitled to be treated as having been notionally appointed under the respondents with effect from the date of appointment of Shri Padmakumar (the applicant's next junior), i.e. 12-2-1996 and

declare further that the applicant is entitled to all the consequential service benefits including notional fixation of pay and service.

- c) Direct the respondents to grant the applicant all the consequential benefits arising out of the declaration in Para 8(b) above within a time limit as may be found just and proper by this Hon'ble Tribunal.
- d) Award costs of and incidental to this Application.
- e) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. The factual averments in the OA regarding cancellation of the candidature of the applicant, subsequent selection of the applicant and appointment are not disputed. Respondents have also conceded that the applicant has been given seniority above Padmakumar. However, they contend that the applicant is not entitled to fixation of pay on par with Padmakumar as he was appointed only in the year 2000.

3. We have carefully gone through the pleadings and have heard the arguments of Shri T.C.Govindaswamy, learned counsel of the applicant and Shri M.R.Suresh, learned counsel of the respondents.

4. Learned counsel of the applicant with considerable tenacity argued that once the applicant has been given seniority over Padmakumar, the applicant is entitled to have his pay fixed notionally by appointing the applicant notionally with effect from the date of appointment of Padmakumar. Apart from saying that fixation of pay under Fundamental Rules would be made in the beginning of the scale of pay, no valid contention has been raised by the respondents as to why the applicant who has been granted seniority over Padmakumar should not be given fixation of pay notionally on par with him. The fact that the applicant's appointment was delayed for many

years is not on account of any disability of the applicant or any reason attributable to him, but on account of the wrong interpretation of the rules by the Staff Selection Commission, is not disputed. On account of the mistake committed by the Staff Selection Commission or the respondents, the applicant cannot be made to suffer. Since the respondents have issued Annexure A2 order placing the applicant above Padmakumar, it is incumbent on their part to make his appointment notionally with effect from the date on which Padmakumar was appointed and to fix his pay notionally with effect from that date.

5. In the conspectus of facts and circumstances, we allow the Original Application, setting aside the impugned order Annexure A6, declaring that the applicant is entitled to be treated as having been appointed as Inspector of Central Excise with effect from the date of appointment of Shri Padmakumar, viz. 12-2-1996, and that the applicant is entitled to have his pay notionally fixed with effect from that date and directing the respondents to issue orders appointing the applicant notionally with effect from ~~12-6-1996~~
^{*12-2-1996} and fixing the pay notionally on par with Shri Padmakumar. The above direction shall be complied with by issuing appropriate orders within a period of two months from the date of receipt of a copy of this order. No order as to costs.

Thursday, this the 22nd day of July, 2004.

H. P. DAS

ADMINISTRATIVE MEMBER

A. V. HARIDASAN
VICE CHAIRMAN

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* Corrected as per order dt. 06.10.2004 in MA 725/04