

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No. 354/90  
T. A. No.

~~188~~

DATE OF DECISION 28-2-1991

PK Krishnan Kutty Nair Applicant (s)

Mr P Ravindran Advocate for the Applicant (s)

Versus

Chief Controller of Accounts Respondent (s)

Central Board of Excise & Customs  
AG CR Building, New Delhi-110 002  
and others.

Mr KA Cherian, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yy*
2. To be referred to the Reporter or not? *Yy*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yy*
4. To be circulated to all Benches of the Tribunal? *Yy*

JUDGEMENT

Shri SP Mukerji, Vice Chairman

In this application dated 15.4.1990, filed under Section 19 of the Administrative Tribunals Act of 1985, the applicant who has been working as a Senior Accountant in the Pay and Accounts Office, Customs House, Cochin, under the Collector of Customs, Cochin has challenged the impugned order dated 15.1.90 at Annexure-X by which the posts of Senior Accountant/Accountant in the Excise Collectorate and Customs Collectorate were clubbed together and only 2 posts were granted special pay of Rs 35/- and given to those who were senior to the applicant. By the same order, his representation for stepping up of his pay on the basis of the special pay drawn by his junior was also rejected. The applicant has also prayed that he should be granted

special pay. The brief facts of the case are as follows.

2 The applicant is working under the Chief Controller of Accounts of the Central Board of Excise and Customs. He was transferred to the Pay and Accounts Office of the Collectorate of Customs consequent on the departmentalization of Accounts in 1976. At that time<sup>also</sup> the Customs and the Excise though under the same Collectorate were two different establishments. In 1983, separate Collectors were appointed and they become independent units having two Pay and Accounts Officers; one for Customs and the other for Central Excise. In 1979, special pay of Rs 35/- per month was sanctioned to UDCs in the non-Secretariat offices who were attending to the work of more complex and important nature. The number of such posts, however, was limited to 10% of the sanctioned strength of UDC. Later on, this incentive was extended to the Accounts Organization and in 1981 the Chief Controller of Accounts, CBEC sanctioned special pay of Rs 35/- per month to two Junior Accountants of the Central Excise Collectorate, but none of the Junior Accountants of the Pay and Accounting Unit of the Customs Collectorate was granted such benefits. On this, the applicant moved the Tribunal by an application which was allowed to be withdrawn on 15.6.87 when the scheme of special pay itself was scrapped. Later in 1989, the Government decided that special pay of Rs 35/-, if drawn on 31.12.85 would count for fixation of pay in the revised scale with effect from 1.1.1986. Since as a result of this decision, persons junior to the applicant

in the Excise Collectorate got higher pay in the revised pay scale, the applicant before us prayed that either he should <sup>also</sup> be given special pay with restrospective effect or his pay in the revised scale should be stepped up. The applicant has come up with this application when his representation was rejected by the impugned order dated 15.1.90 at Annexure-X. His plea is that by clubbing the Accounts Staff of 19 in the Excise Collectorate and 5 in the Customs Collectorate and reckoning 10% of the total of 24, only 2 special pay posts could be sanctioned, both of which happened to be in the Excise Collectorate. If, however, each Collectorate got 10% of its Accounts Staff separately, the Excise Collectorate would have got 2 special pay posts and the Customs Collectorate would have got 0.5, rounded off to 1 special pay post. He (the original applicant) being the seniormost Accountant in the Customs Collectorate would have got the special pay post. His further argument is first of all the that <sup>first</sup> posts of Accountant with onerous duty ~~first~~ had to be identified in either of the two Collectorates separately, in accordance with the guidelines at Annexure VI. His grievance has been accentuated by the order at Annexure-VIII dated 5.6.89 by which special pay received by those on 31.12.85 would be reckoned for fixing the pay in the revised pay scale with effect from 1.1.86.

3 The respondents have conceded that the Excise and the Customs Collectorates had two separate and independent Pay and Accounts Units. The employees of Pay and Accounts Unit attached separately to the Excise and the Customs Collectorates have <sup>been</sup> concerned Collectorate, though they are controlled

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by the Chief Controller of Accounts and the Junior Accountants in the Pay and Accounts Units of all the Collectorates of Central Excise and Customs and other field formations have a common seniority. The number of special pay posts was limited to 10% of the posts in each cadre and had to be identified as having duties and responsibilities of complex nature. The identification of the posts carrying special pay was left to the Chief Controller of Accounts. The selection of candidates for holding the special pay posts was to be made on the basis of seniority-cum-fitness and suitability and the complex nature of duties to be discharged by them. This was done by a Screening Committee headed by the Controller of Accounts. The respondents have also conceded that at Cochin ~~xxxx~~ there were more than one Pay and Accounts Office because of two separate establishments the of Excise and the Customs Collectorates, but the Committee recommended grouping together the strength of Junior Accountants at the same station to arrive at 10% of posts with special pay. For selecting candidates to hold the special pay posts, capability of the individual would be the main criterion with due weightage to seniority, and seniority-cum-fitness would not be the criterion as per Annexure-III. The Screening Committee recommended two names for holding two special pay posts at Cochin out of a common seniority<sup>list</sup> of Excise and Customs prepared for this purpose. The two names recommended happened to be from the Excise Collectorate but they were senior

to the applicant. The respondents have argued that the Customs Collectorate at Cochin with less than 10 posts cannot have any special pay post because of the 10% limitation. According to them, Annexure-III lays down that where the strength of unit is less than 10, such units cannot be grouped together for the purpose of screening special pay posts and therefore 'special pay would not be available in a unit where the strength is less than 10'. However, each station is taken as one unit and the total strength <sup>there</sup> is taken into account for arriving at the number of special pay posts. They have also argued that the country-wide strength of Accountants is 651 and if the 10% of posts is allowed special pay according to seniority, only the first 65 senior most personnel would be eligible for special pay and the petitioner's rank in the seniority list being 248, he cannot possibly expect any special pay post. The posts being transferable from one unit to another, according to the respondents, there is nothing illegal in clubbing the employees of the same station. They have certified that no person junior to the petitioner was granted special pay.

4 In the rejoinder, the applicant has reiterated that the Customs Unit is distinct from the Excise Unit and the Collector of Customs as disciplinary authority has the power to supervise and recommend disciplinary action against the erring officers. The applicant has produced the OM dated 22.10.80 issued by the Department of Personnel

in which it has been laid down that in calculating the number of selection grade posts limit to 20% of ordinary grade posts, fractions of 0.5 and above are to be rounded off to 1 and fractions less than 0.5 to be ignored.

5 We have heard the arguments of the learned counsel of both the parties and gone through the documents carefully. This Tribunal has been consistently taking the view that entitlement to special pay is not dependent upon the seniority or merits but goes to the person who <sup>actually</sup> holds the post carrying special pay. This is because special pay is attached to the post because of its onerous and complex nature of duty and not to the person. Therefore, unless these posts are identified, any system of granting special pay to the senior-most or most meritorious personnel irrespective of the nature of post held by them would be contrary to the concept of special pay. It is essential that posts of different and complex nature which deserves special pay would also be given to deserving persons who by virtue of their seniority is more experienced <sup>as also</sup> <sup>by virtue</sup> of their competence more meritorious or by virtue of their special skill more suitable. But the first step to be taken is to identify the posts carrying complex and onerous duty. The existence of such special pay posts will not be dependent upon the cadre strength of such posts in the organisation but by the nature of the duties attached to the posts. It <sup>not</sup> <sup>at all</sup> will <sup>therefore</sup>, be correct <sup>to say</sup> that any unit with less than 10 posts cannot have a special post with onerous and complex duties. The load of duties on a post depends upon

22

how many items or persons that post is catering for and the complexity of work handled on that post. The Collectorate of Excise on one hand and the Collectorate of Customs on the other hand can each generate complex duties at the Accountants' level. The Collector of Customs and the Collector~~xxx~~ of Excise would not be in the same grade and pay scale, if one Collectorate had been inferior in importance to the other. Irrespective of the size of the two organizations it can be reasonable to hold that one single and solitary Accountant in one organization may be discharging more onerous and responsible duties than 10 similar Accountants working in bigger organization. <sup>between the number</sup> The ~~hexus~~ <sup>of</sup> special pay posts and the number of cadre strength of that post may not be <sup>quite</sup> rational beyond certain points.

6 The respondents themselves have admitted that the Collectorate of Excise and <sup>the Collectorate of</sup> Customs were two separate units having independent Pay and Accounts Units. Clubbing them together for the purpose of calculating 10% of posts carrying special pay would not be fair to the smaller of the two units. The Government of India themselves in the O.M. dated 29.11.82 at Annexure-III indicated that field units under one organization, each being less than 10 cannot be grouped together for purposes of granting special pay benefits. Query-4 and the answer thereto in Annexure-III read as follows.

" 4 In case where there are a number of field units under one organisation and the strength of UDCs in each such unit is less than 10, whether the units could be grouped together for purpose of granting this benefits? No "

7 The respondents have interpreted <sup>the</sup> ~~negative~~ answer to the query saying that the units of less than 10 cannot have any special pay posts. We again think that this is not correct, because the negative answer refers <sup>only</sup> ~~to~~ such units not to be grouped together for purposes of getting special pay posts. The strength of Accountants in the Customs Unit being 5, the number of special pay posts <sup>be</sup> would ~~0.5~~ rounded off to 1 on the analogy of the clarification given by the Department of Personnel at Annexure-XII.

The relevant extract of which reads as follows:

"It has been decided in consultation in the Ministry of Finance that while working out the number of selection grade posts @ 20% of the total strength of the combined cadre if the resultant figure shows a differential of 0.5 (point five) and above the figure may be rounded up to a whole while the differential less than 0.5 may be ignored. For example, in the combined cadre of 24 the figure comes to 4.8. In this case 0.8 will be round off to one and 5 selection grade posts can be created"

Thus, we have no doubt in our mind that <sup>the</sup> ~~Customs~~ Collectorate at Cochin would be entitled to atleast one special pay post. Even if the Collectorate of Customs and Excise are clubbed together with a total strength of 24 Accountants, 19 being in Excise and 5 in Customs, being an independent unit under full-fledged Collector, the Customs Collectorate deserves atleast 1 special pay post because the Collectorate of Customs is an independent <sup>viable</sup> ~~administrative~~



unit. An analogy can be drawn from the example of District as a unit of administration. There are districts with population of 10 million and districts with population of half a million or less. There are districts comparable geographical in size to that of the entire state of Kerala, but so long as these units small or big remain a distinct unit of administration<sup>they are</sup> headed by a Collector or a District Magistrate. Likewise the Accounts Branch of a distinct administrative unit of the Collector of Customs cannot be denied at least one special pay post of Accountant so long as the identity of Collectorate as distinct functional unit is accepted.


8 In the above view, the 5 Accountants in the Collectorate of Customs can justifiably claim one while the ~~the~~ special pay post, 19 Accountants in the Excise Collectorate, 2 special pay posts.

9 In the facts and circumstances we allow this application to the extent of declaring that one out of 5 posts of Accountants/Senior Accountants in the Customs Collectorate should be identified as a special pay post, in addition to the 2 such posts already identified in the Excise Collectorate. The person who discharged the duties of that post as on 31.12.85 and if the applicant happened to hold that post on 31.12.85, he should be notionally granted special pay of Rs 35/- per month for purposes of his pay fixation in the revised pay scale with effect from 1.1.86 in accordance with the Chief Controller of


Accounts, CBEC's letter dated 5.6.89 at Annexure-VIII.

10 The application is disposed of on the above lines

and there will be no order as to costs.

 28/2/91

(AV Haridasan)  
Judicial Member

 28-2-91

(SP Mukerji)  
Vice Chairman

28-2-1991