

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 278 of 2010

Original Application No. 364 of 2010

Original Application No. 1000 of 2010

Tuesday, this the 4th day of January, 2010

CORAM:

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

1. Original Application No. 278 of 2010 -

K. Saseendranadhan, Administrative Officer (Rtd.),
 Ammu, Koppambil House, South Chittoor,
 Cochin-682 027.

Applicant

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

1. The Commissioner of Customs (Preventive), Central Revenue Buildings, I.S. Press Road, Cochin-682 018.
2. The Chief Commissioner of Central Excise & Customs, Central Revenue Buildings, I.S. Press Road, Cochin-682 018.
3. The Commissioner of Central Excise, Central Revenue Buildings, I.S. Press Road, Cochin-682 018.
4. The Assistant Commissioner of Customs (Preventive), Central Excise Bhavan, Kathrikkadavu, Kaloore, Cochin-682 017.
5. The Pay & Accounts Officer, Customs House, Wellington Island, Cochin-682 009.
6. The Chairman, Central Board of Excise & Customs, North Block, New Delhi – 110 001.
7. Union of India, represented by its Secretary, Department of Revenue, North Block, New Delhi-110 001.

Respondents

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

2. **Original Application No. 364 of 2010 -**

P.V. Sujatha, W/o. Shri N.K. Krishnan, Administrative Officer,
Office of the Commissioner of Customs (Preventive), Central
Revenue Buildings, I.S. Press Road,
Cochin-682018.

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Applicant

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

1. Commissioner of Customs (Preventive), Central Revenue Buildings, I.S. Press Road, Cochin-682 018.
2. Chief Commissioner of Central Excise & Customs, Central Revenue Buildings, I.S. Press Road, Cochin-682 018.
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4. Pay & Accounts Officer, Customs House, Wellington Island, Cochin-682 009.
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.

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Respondents

(By Advocate – Mr. A.D. Raveendra Prasad, ACGSC)

3. **Original Application No. 1000 of 2010 -**

1. S. Thulasi, Administrative Officer, Office of the Commissioner of Central Excise & Customs, Cochin-682 018.
2. P. Sundarambal, Administrative Officer, Central Excise I Division, Ernakulam, Central Excise Bhavan, Kathrikadavu, Cochin-682 017.

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Applicants

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

1. Commissioner of Central Excise & Customs, Central Revenue Buildings, I.S. Press Road, Cochin-682 018.

2. Chief Commissioner of Central Excise & Customs,
Central Revenue Buildings, I.S. Press Road, Cochin-682 018.
3. Assistant Commissioner of Central Excise, Ernakulam I Division,
Central Excise Bhavan, Kathrikkadavu, Cochin-682 018.
4. Pay & Accounts Officer, Central Revenue Buildings, I.S. Press Road,
Cochin-682 018.
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. Sunil Jacob Jose, SCGSC)

These applications having been heard on 4.1.2011, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

Having identical issues these Original Applicants were heard together and are being disposed by this common order.

2. The applicants while working as Office Superintendents under the respondents were promoted as Administrative Officers in the month of May, 1997 and June, 2001 as the case may be. On promotion they opted to avail the benefit of pay fixation under FR 22 (1)(a)(i). The posts of Office Superintendent and Administrative Officer were merged in the wake of implementation of the recommendation of the Vth Central Pay Commission. Years later the audit objected to the pay fixation granted under FR 22 (1)(a)(i) on the ground that as the pay scales of Office Superintendent and Administrative Officers were merged into the pay scale of Rs. 6500-10500/-

by the Central Pay Commission with effect from 1.1.1996 the benefits of pay fixation under FR 22(1)(a)(i) cannot be granted. The representations submitted by the applicants to the respondents were of no avail.

3. Aggrieved, the applicant filed these Original Applications mainly for a declaration that they are entitled for fixation of their 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 applicants towards alleged excess payment and to direct the fifth respondent to take appropriate action to issue pension payment order in the case of the applicant in OA No. 278 of 2010 on the basis of revised pay band and higher grade pay granted with effect from 1.1.2006 taking into account the increments drawn thereafter.

4. The applicants submit that they were promoted as Administrative Officers from the posts of Office Superintendent. The post of Administrative Officer is a Group-B gazetted post whereas the post of Office Superintendent is a Group-C post. The post of Administrative Officer carries higher responsibilities than the post of Office Superintendent. On promotion the applicants were asked to exercise their option for pay fixation. Accordingly, their pay was fixed as per FR 22(1)(a)(i). To revise the pay now after lapse of many years is illegal and arbitrary. Office Superintendent is the feeder cadre of Administrative

Officer as per recruitment rules. Although the Vth Central Pay Commission has merged both the pay scales of Administrative Officer and Office Superintendent, it was not implemented for quite some time. The applicants were granted the benefits of pay fixation on promotion as Administrative Officer and that cannot be taken away by way of a clarification. In 2008(208) ELT 321 (SC) the Hon'ble Supreme court held that if the clarification is beneficial to the party it should be applicable retrospectively and if it is oppressive, it should be applied prospectively. Therefore, the benefit of fixation granted to the applicants prior to issue of clarification is to be protected. The competent authority has not amended the order of promotion so far. The post of Office Superintendent and Administrative Officer were merged vide order dated 8.10.2002 as such all those promoted earlier are entitled for fixation under FR 22(1)(a)(i). The order dated 24th July, 2006 denying the benefit of pay fixation under FR 22(1)(a)(i) was quashed by the Bangalore Bench of this Tribunal. The order of the Bangalore Bench was upheld by the Hon'ble High Court of Karnataka. The SLP filed against it was also dismissed.

5. The respondents submitted that the benefit of pay fixation under FR 22(1)(a)(i) cannot be granted since the post of Office Superintendent and Administrative Officer were merged in to one scale of pay of Rs. 6500-10500/- by the Vth Central Pay Commission with effect from 1.1.1996. There is no legal bar to straight away recover the excess payment made to the parties by the Department without obtaining the consent of the employees or giving them opportunity of being heard.

6. In the rejoinder the applicants submitted that the order of the Bangalore Bench in OA No. 373 of 2006 has become final. It was accepted and implemented by the respondents. When a law has been laid down by the Apex Court it should be applied equally to all similarly situated persons. Therefore, the OAs should be allowed. An interim stay was also granted in OA 373 of 2006 to maintain status quo.

7. We have heard the learned counsel for the applicants Mr. C.S.G. Nair and Mr. Sunil Jacob Jose, SCGSC & Mr. A.D. Raveendra Prasad, ACGSC, learned counsel appearing for the respondents and scrutinized the records.

8. The issue of application of FR 22 (1)(a)(i) on merger of the post of Office Superintendent and Administrative Officer under the respondents was considered by the Bangalore Bench of this Tribunal in OA No. 373 of 2006. In the order dated 13th February, 2008 allowing the OA the Bangalore Bench held as under:-

“9. It is a fact that on the date of her promotion the posts of OS and AO carried the same pay scales. This Bench of the Tribunal in O.A No. 227/06 decided on 10th April, 2007 [Vijaydev C.S v. Navodaya Vidyalaya Samithi & Ors. 2007 (3) SLJ 134] has held that in the case of promotion the pay fixation is to be done under the provisions of FR 22 (1) (a) (1) only. In the said judgement, it was also established that granting a higher pay scale in the same category of post was a promotion as 'promotion' means “to raise to a higher grade (Chambers 20th Century Dictionary). Admittedly, in the present case there was no raising to a higher grade of pay, and so, the condition of FR 22 (III) will have to be satisfied, for treating the appointment as promotion. Again as per the Dictionary meaning 'Grade' means “a stage of advancement”. The point to be seen for this purpose is whether the applicant was granted an advancement in her career. The post of OS was a Group 'C' non-gazetted post and that AO was a Group 'B' gazetted post on the date of her promotion. The mere fact that a post is changed from non-gazetted to gazetted or its categorization is

changed from Group 'C' to Group 'B' need not mean that there was an advancement as far as persons occupying that post are concerned. If the posts are equivalent there is no advancement at all. Now, we have to look into the ingredients governing equivalence of two posts. The Hon'ble Apex Court had an occasion to deliberate on this issue in Sub-Inspector Rooplal and Another vs. Lt. Governor Through Chief Secretary Delhi and Others [(2000) 1 SCC 644]. We quote the excerpts from paragraph 17 of the above judgement.

“.....
Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than “pay” will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. it is so held by this Court as far back as in the year 1968 in the case of Union of India v. P.K. Roy. In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors are: (i) the nature and duties of a post ; (ii) the responsibilities and powers exercised by the officer holding a post, the extent or territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criteria.....”

10. The respondents have admitted that the nature of duties and responsibilities and powers exercised by the officer holding the post of AO are of advanced nature compared to that of OS. Thus, the post of AO cannot be equivalent in grade to the post of OS and is of a higher status; resultantly the posting from the post of OS to that of AO is a promotion as it is an advancement to a post with higher responsibilities. As 'promotion' from a post to another post where the pay scales are same, will create a doubt as to whether it is actually a promotion in the sense of advancement in 'grade', the Government of India decision under FR 22 has been issued. It is laid down that in such cases where the promotion/posting is to a post carrying identical pay scales, the administrative Head of the Department has to declare the relative degrees of responsibilities of the two posts. (Government of India's order dated 19th August, 1930 under FR 22). The respondents hold that the Administrative Head of the Department is not respondent No. 2 but the authority who is competent to frame the Recruitment Rules. We do not find such a stipulation in the various Government of India orders printed under FR 22. Even assuming that only the authority competent to frame the Recruitment Rules, can issue a certificate regarding comparative responsibilities attached to the posts, we find that all the respondents including respondent No. 1: the

cadre controlling authority have admitted in the reply statement that the post of AO carried higher responsibilities and more important duties than that of the post of OS. Therefore, the pay on promotion of the applicant has to be fixed under the relevant rule i.e. FR 22 (I) (a) (1).

11. We also note that till today the respondents have not notified revised recruitment rules for AO as stipulated in the instruction dated 24.11.2000. The Hon'ble Apex Court in T.R. Kapur v. State of Haryana (1986 (4) SLR 155) in para - 16 has observed as follows:-

“.....
The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well recognized principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Art. 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotions cannot be recalled.” (emphasis supplied)

The above dictum by the Hon'ble Apex Court lays down that even when Recruitment Rules are amended with retrospective effect, employees who had already been promoted before the amendment of the rules cannot be affected by such amendment. That the terms and conditions under which such promotions are granted cannot be altered subsequently with retrospective effect, to adversely affect the interests of those who are already promoted, is nothing but a corollary to the above theory laid down by the Hon'ble Apex Court. In the case on hand, only the pay scales of the two posts became identical with retrospective effect i.e. from 1.1.1996. There is no need to further stress that the mode of fixation of pay in the promotional post cannot be changed with retrospective effect, against the interests of officials who have already been promoted.

12. The instructions dated 24.7.2006 were regarding the fixation of pay under FR 22(1)(a)(i) to the holders of the lower post of OS on the date of the merger with the higher post of AO which used to be a promotional post in the hierarchy. These instructions are in no way applicable to the applicant as she was not holding the post of OS on 5.6.2002 when the merger took place.

13. It is not necessary to discuss the contention raised by the counsel for the applicant regarding clarification of an identical issue in Swamy's News July 1999 edition as it is neither a judicial order or an administrative decision.

14. In the light of the above discussions, we hold that the decision contained in order dated 24th July, 2006 (Annexure A-15) and 13.3.2007 (Annexure A-18) are bad in law and hence the impugned orders are to be quashed and set aside. We order accordingly. The respondents are directed to fix the pay of the applicant under provisions of FR 22(1)(a)(i) from the date she assumed the post of AO at Belgaum Commissionerate.

15. The OA is allowed as above. In the circumstances of the case there will be no order as to costs."

9. In Writ Petition No. 10261/2008 challenging the above order of Bangalore Bench, the Hon'ble High Court of Karnataka held as under:-

"4. We have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent-caveator who entered appearance.

5. The learned counsel appearing for the petitioners submitted that the post of Office Superintendent and Administrative Officer discharge the same duties and after the merger of pay scale of Office Superintendent and Administrative Officer on implementation of the recommendation made by the V Central Pay Commission and in view of the audit objection raised, the appellants have rightly issued the endorsements stating that the applicant cannot be given benefit of fixation of pay scale under FR 22(1)(a)(I) and the CAT was not justified in setting aside the order and in directing them to fix the pay scale under FR 22(1)(a)(1) from the date of applicant assuming the charge of the post of Administrative Officer at Belgaum Commissionerate and therefore, the order passed by the CAT is liable to be set aside.

6. The learned counsel appearing for the respondent applicant before the CAT submitted that the order passed by the CAT is justified and does not suffer from any error or illegality as to call for interference in this writ petition and therefore, the writ petition is liable to be dismissed.

7. We have given anxious consideration to the contention of the learned counsel appearing for the parties and scrutinised the material on record.

8. The material on record would clearly show that the applicant was promoted from the post of Office Superintendent to the cadre of Administrative Officer with effect from 29.05.2002. When the applicant was promoted to the post of Administrative Officer, the post of Office Superintendent was Group C Non-gazetted post and post of Administrative Officer was Group B Gazetted post and the duties

attached to the post of Administrative officer were different from the duties attached to the post of Office Superintendent and the duties attached to the post of Administrative Officer are of higher responsibilities than that of lower post of Office Superintendent. The merger of pay scale of Office Superintendent and the Administrative Officer consequent upon the implementation of the recommendation made by the V Central Pay Commissioner was subsequent to the promotion of the applicant from the post of Office Superintendent to the post of Administrative Officer. The order of promotion and post of the applicant-respondent herein would clearly show that the applicant had to exercise her option within one month from the date of her promotion for fixation of pay under FR 22(1)(a)(1) and the applicant having exercised option has joined the post on 26.05.2002. The merger of the pay scale of the Office Superintendent and Administrative Officer has taken effect from 04.06.2002 and applicant has already taken charge of Administrative Officer on 17.05.2002 which is prior to the merger of pay scale on 04.06.2002 and on promotion she occupied Group B gazetted post and the duties attached to the Office of Administrative Officer as on the date of promotion of the applicant was of higher responsibility than the duties attached to the post of Office Superintendent. Further, it is also clear from the perusal of the material on record that the CAT on verification of the original records and the material on record has clearly held that fixation of pay scale of the applicant under FR 22(1)(a)(1) was as per the terms of promotion of the applicant and the same was not affected by the merger of post of Office Superintendent and Administrative Officer subsequent to the date of promotion of the applicant and her taking charge in the place to which she was posted prior to 04.06.2002 and therefore, the petitioners were estopped from contending that appellant was not entitled to fixation of pay as sought for.

9. Having regard to the above referred facts of the case, the finding of the CAT is justified and we do not find any ground to take a different view in this regard and the order passed by the CAT does not suffer from any error or illegality as to call for interference in this writ petition.

Accordingly, we hold that there is no merit in this writ petition and pass the following order:

The writ petition is dismissed. ”.

10. The Apex Court dismissed the SLP filed against the judgement of the Hon'ble High Court of Karnataka.

11. As contended by the applicants, the order of the Bangalore Bench of this Tribunal in OA No. 373 of 2006 has become final and conclusive. It is accepted and implemented by the respondents. The applicants in the instant OAs are similarly situated as the applicants in OA No. 373 of 2006. Therefore, the law laid down by the Apex Court should be applied equally to similarly situated persons. The benefits accrued under the existing rules cannot be taken away by an amendment with retrospective effect as there is no power to make such a rule under the proviso to Article 309 which affects the vested right as held by the Hon'ble Supreme Court in T.R. Kapoor Vs. State of Harayana (supra). As held by the Bangalore Bench only pay scales of the post of Office Superintendent and Administrative Officer became identical with retrospective effect from 1.1.1996. The instructions dated 24.7.2006 regarding fixation of pay under FR 22(1)(a)(i) to the holders of the lower post of Office Superintendent on the date of merger with a higher post of Administrative Officer which used to be a promotional post in the hierarchy are in no way applicable to the applicants herein as they were not holding the post of Office Superintendent on 5.6.2002 when the merger took place.

12. In the light of the above, the impugned orders are quashed and set aside. We declare that the applicants are entitled for fixation of their pay under FR 22(1)(a)(i) on promotion as Administrative Officer from the post of Office Superintendent. The respondents are directed to refund the amount if any recovered from the applicants with regard to the alleged excess payment. The respondents are further directed to issue the pension payment

order of the applicant in OA No. 278 of 2010 on the basis of the revised pay band in the higher grade with effect from 1.1.2006 taking into account the increments drawn thereafter. The above direction should be implemented within a period of sixty days from the receipt of a copy of this order. Any further delay will entail payment of interest at the rate of 9% to the applicants from the date of this order. No order as to costs.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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