CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.367/2002

MONDAY, THIS THE 11th DAY OF OCTOBER, 2004.

CORAM;

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

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

K.M.Abdul Gafoor Khan,
Superintendent of Central Excise,
Special Customs Preventive Unit,
Quilon. = Applicant

By Advocate Mr C.S.G.Nair

Vs

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

2. Union of India represented by
the Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110 001. - Respondents

By Advocate Mr C.Rajendran, SCGSC

The application having been heard on 4.8.2004, the Tribunal on 11.10.2004. delivered the following:

O R D E R

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

The applicant, an Air Force personnel under Leave Preparatory to Retirement was re-employed as Inspector of Central Excise without actually retiring from the Air Force. He joined his post on reemployment on 26.8.1975, while he was officially discharged from Air Force after receiving leave

salary upto 30.9.1975. During the period 26.8.1975 to 30.9.1975 he drew salary from the Customs Department and full leave salary from the Air Force without disclosing the double drawal to either of his employers. His pay in Customs was fixed at the minimum of the scale Rs.425-800, without deducting the unignorable portion of his pension against the existing rules (Ministry of Finance O.M. No.7(34)-Est III/62 dated 16.1.1964, according to which pension upto Rs.50 was only to be ignored in fixation of the pay on re-employment). This was clearly an omission on the part of the Customs & Central Excise Collectorate who fixed his initial pay on re-employment. Later, by O.M. No.F5(14)-E.III(B)/77 dated 19.7.1978, the Ministry of Finance offered a liberalised scheme by which the ignorable portion of the pension was raised upto Rs.125/subject to the condition that the re-employed pensioner opted to come under those orders, in which case his terms of re-employment were to be determined afresh. The applicant, who became aware of the offer, did not opt to come under the orders. He believed that he was being treated as a fresh appointee since 1975 as no reduction in basic pay had until then been made to the extent of unignorable military pension. The Customs and Central Excise Collectorate in which he worked also did not press the matter, because, as they have admitted in their reply statement, they were not aware of a reemployed military pensioner on their rolls. The matter came to light in 1992 in a review and then A-2 order refixing the pay and ordering recovery of the consequential over payment of Rs.17,733/- was issued. The

applicant has challenged this order of fixation and recovery. He is aggrieved that his representation dated 30.5.2001(A-11) followed by a personal hearing, was rejected by the Collector of Customs and Central Excise, Cochin.

2. Heard the learned counsel for the parties. It is regrettable that the administration of the Customs & Excise Collectorate should have been so callous and negligent as to have failed to notice a re-employed pensioner on its rolls. The appointment order dated 16.8.1975 itself identified by asterisk the applicant as one sponsored by the Directorate of resettlement & DSS & A Board. It is even more regrettable that a discharged employee of the Air Force seeking resettlement should have evaded the system by drawing full pay from Customs and full leave salary from Air Force for the same period without even a pang of conscience. What is reprehensible is that the applicant, in a display of persistent brazenness, should have refused to make over the non-entitled leave salary to the Air Force, after the double drawal was detected. The applicant's plea of innocence therefore has to be taken with a fistful of salt. He has pleaded that he took himself to be a general-appointee as on the date of his appointment (as Inspector of Central Excise) he had not retired and for that reason Rule 526(A) of the Civil Service Regulations was not applied to him. The question naturally arises as to what he thought he was, from 1.10.1975. Since he was drawing pension from the Air Force, he should have had no doubt in his mind that he was a re-employed pensioner from 1.10.1975. He has argued that he

did not exercise his option to come under the 19.7.1978 orders or the later orders dated 8.2.1983 as he believed that he was a general candidate and he was not required to exercise any option. Evidently, the applicant was stretching his reprieve a little too far. What disturbs us is that the applicant has deliberately allowed himself the latitude of side-stepping the new dispensation (19.7.1978 and 8.2.1983 ) as the new dispensation while raising the limit of ignorable portion of the pension, sought to redetermine the terms of reemployment. The respondents have stated in their additional reply statement that such redetermination would have meant his being reemployed for the first time from the date of the new orders. The applicant in his rejoinder has offered a calculation sheet of benefits that would accrue to him from 26.8.1975 to 30.9.2002 ignoring the liabilities that would arise from a redetermination of the terms of re-employment.

In the light of the foregoing discussion of the matters at issue, we find no infirmity in A-2 fixation or A-11 communication. We therefore dismiss the application granting liberty to the respondents to enforce recovery, if any, outstanding. No order as to costs.

Dated 11.10.2004.

H.P.DAS
ADMINISTRATIVE MEMBER

A.V.HARIDASAN
VICE CHAIRMAN

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