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OA 430/2005

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA No. 430 of 2005**

Date of order 27th
27th April, 2009

C O R A M

**Hon'ble Ms. Sadhna Srivastava, Member [Judicial]
Hon'ble Mr. Amit Kushari, Member[Admn.]**

Harihar Nath Choudhary, S/o Late Pitamber Choudhary, Resident of
Village – Rampatty, P.O. - M. Sinuwara, Via – D.M.C. Laheriasarai,
P.S. Ashok Paper Mills, Rameshwar Nagar, District – Darbhanga.

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Applicant.

1. The Union of India through the Chairman, Central Board of Revenue, Excise and Custom, North Block, New Delhi.
2. Under Secretary Ad-IV.A. Government of India, Ministry of Finance, Department of Revenue, Jeevandeep Building, New Delhi.
3. Commissioner of Central Excise, Central Revenue Building, Virchand Patel Road, Patna -1.
4. Assitt. Commissioner [P&V], Central Excise [Head Quarter] Patna.
5. Deputy Commissioner[P&V], Central Revenue Building, Virchand Patel Road, Patna -1.
6. Deputy Commissioner, Central Excise Division, Laheriasarai, P.O. - Laheriasarai, District – Darbhanga.

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Respondents.

Counsel for the applicant : Shri A. Narayan

Counsel for the respondents : Shri Amitav Pandey, ASC

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ORDERAmit Kushari, Member [A] :-

The applicant was in active service of the Indian Navy from 1.3.1951 to 28.2.1961 and was kept as a reservist for a period of ten years upto 28.2.1971. During this period, he got retention fee of Rs. 10/- per month only. In the meantime, the applicant secured civil employment and in 1963 he joined as Sub-Inspector, Central Excise on 18.5.1963. On 28.2.1961, when he was released from Indian Navy, he was getting basic salary of Rs. 133/- plus free food, accommodation and medical aid etc. In the office of the respondents [Central Excise Department of Patna] he was given a pay scale of Rs. 110-4-150-EB-170-5-180 and his pay was fixed in the new pay scale in accordance with the Ministry of Finance OM No. 8[34]-Estt.III/57 dated 25.11.1958. This OM of the Ministry of Finance deals with fixation of pay of pensioners on being re-employed. The order reads as follows :-

“[a] Re-employed pensioners should be allowed only the prescribed scale of pay, that is, no protected time-scale such as those available to pre-1931 entrants should be extended to them.

[b] The initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed.

In cases where it is felt that the fixation of initial pay of the re-

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employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer has rendered before retirement in a post not lower than that in which he is re-employed."

2. This order obviously applies only to pensioners. When the applicant joined the Department of Central Excise on 18.5.1963, he was not a pensioner. He became a pensioner in 1971 and so this order becomes applicable to him only with effect from 1971 when he became a part of pension establishment of Finance Service. Since the applicant was getting Rs. 133/- + free food and accommodation etc., the respondents thought that this fitted into the undue hardship category as mentioned in OM dated 25.11.1958 and, therefore, the authorities granted him 20 increments in the scale of Rs. 110-4-180. Since he continued in the Naval Service and thereafter in Central Excise service from 1951 to 1971 for 20 years, therefore, he had been granted 20 increments by the respondents as per Finance Ministry's order dated 25.11.1958.

3. The ld. counsel for the applicant Shri A. Narayan says that in 1963 the applicant had already put in 13 years service in the Navy and was drawing higher pay of Rs. 133/- + allowances and, therefore, he should have been granted 13 increments in the scale and his pay should have been

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fixed at a higher level right from 18.5.1963 instead of 1.3.1971. In 1963, his pay had been fixed at Rs. 110/- only at the bottom of the scale of Sub-Inspector.

4. Shri Amitav Pandey, 1d. Additional Standing Counsel for the respondents drew our attention to Annexure-A/11 in which the entire case of pay fixation of the applicant has been dealt with in great details by the respondents. He points out that the question of fixation of pay of the applicant with 13 advance increments with effect from 1963 simply did not arise because the applicant was not a pensioner at that time. The Office Memorandum dated 25.11.1958 deals with specifically re-employed pensioners and therefore it will have effect on the applicant only from 1.3.1971. He says that the respondents have rightly given him 20 increments as on 1.3.1971 and have fixed his pay at the maximum of the scale which was at Rs. 180/- His pay could not have been fixed above Rs. 180/- since that was the maximum of the scale on re-employment. The applicant was promoted as Inspector, Central Excise on his own turn on the basis of inter se seniority of the Excise Department on 5.12.1972.

5. Shri A. Narayan, 1d. counsel for the applicant says that while promoting him as Inspector, the respondents did not take into account his notional seniority on the basis of previous Naval Service. Had this been

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done, he should have been promoted on 20.5.1964 instead of 5.12.1972. The applicant has submitted in support of his arguments a copy of an order passed by the Hon'ble Supreme Court in AIR 1977 in the case of S. Krishnamurthy vrs. The General Manager, Southern Railway wherein notional seniority of the appellant was allowed by the Hon'ble Court in granting further promotion. It appears that the respondents have examined this matter in great detail and have come to the conclusion that the case of the applicant, Harihar Nath Choudhary is absolutely different from the case of S. Krishnamurthy. Shri S. Krishnamurthy could not be promoted due to an administrative error which was rectified by the Board by giving him promotion with a later date allowing pay & allowances from the actual date of promotion. This applicant could not produce any other authorities for counting his previous Naval Services. The grievance of the applicant is that he worked for 27 years 8 months and 13 days in Central Excise and retired on 31.1.1991. He, therefore, could not draw full pension which could have accrued to him had he completed 33 years. The 1d. counsel for the applicant says that had this period in Navy been counted then the pension of the applicant could have increased substantially. He says that the applicant was getting only a pension of Rs. 30/- per month for his service in the Navy and this is totally ignorable.



6. The respondents have pointed out that the pension of Rs. 30/- drawn by the applicant was totally ignored while fixing the pay of the applicant in the new pay scale after re-employment and his pay was not slashed down on this count. However, if this period initially has to be counted as active service for calculating pension then the amount of Navy pension drawn by the applicant so far has to be refunded to the Govt. in view of the Pension Rules of 1972.

7. The applicant has pointed out that the period under reference is prior to 1972 and, therefore, the pension rule should not be applicable on him.

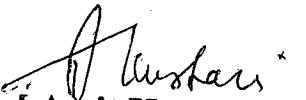
8. We have carefully considered all the arguments given by the counsels of both the sides and we have perused the pleadings carefully. The applicant while filing this O.A. has made a fundamental mistake in imagining that he was an army pensioner in 1963 while joining civil employment. Actually he was only a reservist and he was not a pensioner at all. Therefore, the benefit of pay fixation from 1963 by giving 13 increments would not be applicable to him. We are, therefore, of the view that his pay fixation had to be done from 1971 as has been correctly done by the respondents. His promotion from 1964 also could not be feasible since he could not be promoted before his seniors in the civil employment.

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The third claim i.e. benefit of service for calculating pension while retiring from civil employment does not appear to be genuine also. He cannot count for obvious reasons the period for which he was drawing pension already. If he agrees to refund the pension with interest then certainly this period could be counted for calculating his civil pension. The arguments made by the applicant in this O.A. appear to be totally fallacious and misleading.

There is no merit in this O.A. and it is, therefore, dismissed. No costs.

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[Amit Kushari]
Member [Admn.]


[Sadhna Srivastava]
Member [Judicial]