

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

MUMBAI BENCH, MUMBAI

OA NO. 701/2001.

Dated: this 20th day of June, 2003.

HON'BLE MR. JASBIR S. DHALIWAL, MEMBER (J)
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

Gur Kirpal Singh
working as Asstt. Director (HULL)
Under Addl. Director Marine
Customs Marine Head Quarters
2nd Floor, Hotel Waldorf
16, Arthur Bunder Road
Colaba, Mumbai-400 005.
Residing at 237, Type IV
C.G.S. Colony, Wadala (W)
Mumbai.

(By Advocate: Sh. R.G. Walia)Applicant.

Versus

1. Union of India through
Ministry of Finance, Deptt. of
Revenue, C/o Central Board of Excise
& Customs, North Block
New Delhi.
2. Commissioner
Directorate of Preventive Operations
(Customs & Central Excise)
4th Floor, A Wing, Lok Nayak Bhuvan
Khan Market, New Delhi.
3. Commissioner of Customs
New Custom House
Mumbai.
4. Addl. Director Marine
Customs Marine HQs
Hotel Waldorf, 2nd Floor
16, Arthur Bunder Road, Colaba
Mumbai.

(By Advocate: Sh. V.G. Masurkar)Respondents.

O R D E R

SHRI S.K. MALHOTRA, MEMBER (A)

The present OA has been filed by the applicant with a prayer that the respondents may be directed to pay him the salary of the post of Staff Officer w.e.f. May, 1982 to April, 2001 on which post he claims to have been working. He has also prayed that the above period should

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be counted for the purpose of granting annual increments and fix the pay of the applicant accordingly in the scale of Rs. 8000-13,500.

2. The facts of the case, in brief, are that the applicant was appointed as Boat Engineer and joined the Respondent Deptt. in 1975. Later, this post was redesignated as Engineer. This is a Group 'B' post and its scale at that time was Rs. 840-1200. The applicant was regularised and confirmed as an Engineer w.e.f. 6.9.1988 as Group 'B' officer. He claims that in May, 1982, he was directed to work as Staff Officer in the pay scale of Rs. 1100-1600. He has claimed that he has been holding the full charge of this post. In support of his contention, he has annexed copies of certain orders issued during the period 1982-2000. He has already been promoted on adhoc basis as Asstt. Director which is a Group 'A' post in the pay scale of Rs. 8000-13500, vide order dated 12.4.2001 (Ex. E). It has been stated by him that since he was working as Staff Officer which carries a higher scale of Rs. 1100-1600 and he has been discharging full duties attached to that post, he should be paid the salary of the post of Staff Officer as against his salary as Engineer in the scale of Rs. 840-1200. He has been requesting the respondents for his promotion and for grant of financial benefits as applicable to the post of Staff Officer and his case was also recommended by his Addl. Director but he has not been given the benefit of higher pay. He has, therefore, filed this OA praying for the reliefs as mentioned above.

3. Respondents have filed their written statement wherein they have stated that the post of Engineer against which the applicant has been working was not a permanent post but was a temporary one. In the absence

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of Recruitment Rules, the applicant was recruited on adhoc basis without getting a clearance from the UPSC. He was regularised against this post w.e.f. 7.10.1988. As per the relevant rules, when a Group 'A' and Group 'B' posts are filled up without the approval of the UPSC, then the department is required to take approval from the UPSC to regularise these posts and their regular service starts from the date of approval of the UPSC. Therefore, the regular service of the applicant as Engineer starts from 7.10.1988. As regards the claim of the applicant that he was looking after the duties of Staff Officer which is a Group 'A' post, it has been stated that the applicant was discharging duties assigned to him by his superior officers. It does not mean that he is discharging the duties of a Group 'A' post. Infact, there was no Group 'A' post in the department concerned during the period 1982-1998. 12 Group 'B' posts were upgraded to Group 'A' posts in the scale of Rs. 8000-13,500 on 18.9.1998 and Group 'B' posts were abolished. Thus, no Group 'A' post was available in the department before 18.9.1998. The duties carried out by Group 'B' officer during this period were the same as carried out by now promoted Group 'A' officer. Hence, the applicant is not entitled to get the benefit of higher pay prior to his promotion w.e.f. 12.4.2001. It has further been contended that the Staff Officer is not a designation. It is just an internal office arrangement to function/look after the allotted job smoothly. The only Group 'A' post which existed at the relevant time was that of Officer on Special Duty (OSD), the charge of which was not given to the applicant at any time.

4. We have heard Shri R.G. Walia, learned counsel

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for the applicant and Shri V.S. Masurkar appearing on behalf of the respondents and have examined the pleadings.

5. During the course of hearing, learned counsel for the applicant, was asked to produce a letter by which the applicant was formally appointed as Staff Officer. However, no such letter was available on record nor it was produced by the learned counsel for the applicant. He, however, drew our attention to some orders issued during the period April, 1984 to January, 2000 in which the applicant was asked to carry out/look after the duties of the post of Staff Officer as a temporary measure in the absence of the officer concerned going on tour or being on leave. It appears that by various office orders issued by the Respondent Deptt. individual officers including the applicant have been assigned duties from time to time to discharge certain functions but there was no formal order issued by the Respondent Deptt. appointing the applicant as Staff Officer as has been claimed in the OA. The learned counsel for the applicant stated that since the applicant has been performing the duties assigned to him as Staff Officer, he is entitled to the pay and allowances attached to this post. In support of his contention, he cited three judgements; the case of Jaswant Singh Vs. Punjab Poultry Field Staff Association and others reported in 2002 SCC (L&S) 116; Dwarka Prasad Tiwari Vs. M.P. State Road Transport Corporation & Anr., 2002(1) ATJ 391; and P. Tulsi Das & Ors. Vs. Govt. of A.P. & Ors., 2003 (1) SC SLJ 19. In these judgements, the Hon'ble Apex Court has held that a person discharging the duties of higher post is entitled to pay and allowances admissible to that

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post. In P. Tulsi Dass (supra), it has been held as under:-

"Person holding a lesser grade was made the incharge of higher post - He would be entitled to pay scale permissible for the higher grade post - Cannot claim to be a regular member or incumbent of the post to claim consequential benefits for any Advancement Career or Promotion as if he is regular incumbent to the said post."

Based on the above, the learned counsel for the applicant stated that applicant is also entitled to the higher pay attached to the post of Staff Officer.

6. The learned counsel for the respondents emphatically stated that the Staff Officer is not a designation or a post. It is only an internal arrangement. Even, a Group 'B' officer can be called a Staff Officer. Infact, there was no Group 'A' post available in the department till September, 1998. He also stated that no formal orders were issued in the case of the applicant promoting him to the post of Staff Officer as claimed by him. In all the orders issued during 1982-2000 certain duties have been assigned to the officers including the applicant and no order promoting him to the post of Staff Officer has ever been issued. He also pointed out that for Group 'A' post, the clearance of UPSC is also necessary. No such approval of UPSC was ever obtained for his promotion to the post of Staff Officer. The question of granting him the pay scale or any financial benefit for the post of Staff Officer would, therefore, not arise. The officer was

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formally promoted on adhoc basis as Asstt. Director vide order dated 12.4.2001 from which date he is entitled to the higher pay.

7. Learned counsel for the respondents also raised an objection that the OA is barred by limitation. He stated that in case the applicant claims that he has been performing the duties of higher post since 1982, it has not been explained as to why he had not approached the appropriate forum during the last 20 years. The applicant did not even raise any objection when he was regularised in Group 'B' post as an Engineer vide order dated 7.10.1988. In case he felt that he was performing the duties of Group 'A' officer, he should have objected to his regularisation as Group 'B' officer in 1988, which he did not do. In such a situation, his claim to the higher post/scale since 1982 is not sustainable.

8. We have given careful consideration to the matter and have also perused the pleadings. We find that the OA is hit by Law of Limitation. If the applicant was not getting the higher pay of the post of Staff Officer since 1982, he could have approached the appropriate forum/court in the matter within the prescribed period, which he failed to do. The cause of action arose to the applicant in 1982, or latest in 1988 when he was confirmed as Group 'B' Officer whereas he has filed the present O.A. in September, 2001. Therefore, the O.A. is badly barred by limitation and deserves to be dismissed on this ground alone. However, we have considered the case on merits also. In this connection, we would like to refer to the provisions ~~not~~ made under F.R.49 (i) which is reproduced below:

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"F.R.49(i): The Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time under the

Government. In such cases, his pay is regulated as under:

i) where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the competent authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post."

It is crystal clear from the above provision that a Govt. servant unless he is formally appointed to hold full charge of the duties of higher post, he is not entitled to the pay and allowances attached to the higher post

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In the present case, no such formal order appointing him to Group "A" post of Staff Officer was ever issued. From time to time, he was asked to look after certain duties and functions which might have involved higher responsibilities but these orders do not entitle him to the pay and allowances of the promotional post. As pointed out by the respondents in their written statement, there was no Group "A" post in the respondent department till 1998. The question of granting him higher pay scale of Group "A" post would, therefore, not arise. Besides the above, the appointment to Group "A" post cannot be made without the approval of the UPSC. It is, therefore, inconceivable that the applicant was allowed to continue in Group "A" post for a long period from 1982 to 2000 without seeking the approval of UPSC. The fact is that he was never promoted to this post which did not exist at all and the arrangement of looking after the work assigned to him was only an internal local arrangement for smooth functioning of the organisation. Besides, even Group "B" officers, were being designatated as "Staff Officers", as mentioned by the respondents. Therefore, the applicant has no claim to the higher pay of "Group A" officer.

9. As regards the judgements of Hon'ble Supreme Court cited by the learned counsel for the applicant, it may be stated that in these judgements the cases involved are those where the appellants were working on the higher posts which were in their hierarchy based on specific orders passed by the competent authority. But, it is not

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so in the present case under consideration. In the instant case, the higher post against which the applicant claims to have been working did not exist and no formal order of appointment to that post was ever issued. He was only assigned certain functions and responsibilities by the local administration which does not entitle him to the higher scale. It would, therefore, not be proper to draw a parallel between the cases cited above and that of the applicant which are quite distinguishable.

10. Taking into consideration the above facts and circumstances of the case, especially the provisions made under FR 49(i) reproduced above, we are of the considered view that the applicant is not entitled to the higher scale of pay of the post of Staff Officer and the OA does not merit favourable consideration. It is accordingly dismissed.

No order as to costs.

Omall
(S.K. MALHOTRA)
MEMBER (A)

"MS"

Jasbir Singh
(JASBIR S. DHALIWAL)
MEMBER (J)

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