

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
DATED THIS THE 28TH DAY OF OCTOBER, 1986.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy, .. Vice-Chairman.
And
Hon'ble Mr. L.H.A. Rego. .. Member (AM).

APPLICATION NUMBER 1011 OF 1986.

Shri B.J. Rai,
Aged 60 years, S/o P. Ramaya Alva,
Assistant Collector of Customs (Retd.)
'Gokulam' Belmatta New Road,
Mangalore-575 001. .. Applicant.
(By Sri S. Vasanth Kumar, Advocate)
v.

1. The Union of India
by its Secretary, Ministry of Finance
Department of Revenue, New Delhi.
2. The Collector of Central Excise,
Queens' Road, Bangalore-560 001. .. Respondents.
(By Sri M.S. Padmarajaiah, Standing Counsel)

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This application coming for hearing this day, Vice-Chairman made the following:

ORDER

In this transferred application received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act 1985 ('the Act'), the applicant while challenging Government of India letter No.F.A-12018/2/80-Ad.II dated 31st July, 1982 (Annexure-D) had sought for a direction to the respondents to regulate his pension as if he had become eligible for the 'senior scale' on 21-6-1980.

2. The applicant joined service on 11-4-1944 as an Inspector
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of Central Excise in the Central Excises and Customs Department of Government of India. In 1966 he was promoted as a Superintendent. On 21-6-1976 he was promoted as Assistant Collector of Customs and Central Excise (Group-A)(AC). On 31-8-1980 the applicant attained superannuation and retired from Government service.

3. The applicant claims that on the terms of the order made by Government in its letter No.A.26014/35/78-AD.II.A dated 6-3-1979 (Annexure-B), he became entitled to the senior scale on his completing four years regular service in the junior scale and that his pension under the Central Services Pension Rules, 1962 (Rules) should be fixed and paid. But, the authorities taking the view that he had not become eligible for the senior scale on 21-7-1980 and had become eligible for promotion to that scale on 1-11-1981 have denied the same.

4. In seeking the reliefs, the applicant had challenged an order made by Government on 31-7-1982 (Annexure-D). But, at the hearing, Sri S.Vasanth Kumar, learned counsel for the applicant in our opinion very rightly did not press the challenge as that order made by Government after the applicant retired from service had no relevance.

5. In justification of their actions the respondents have filed their statement of objections before the High Court.

6. Sri Vasanth Kumar contends that on the very terms of the order made by Government on 6-3-1979, which was in force as on the day the applicant retired from service, the authorities were bound to hold that he had become entitled

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to the senior scale on his completing four years of service, that is on 21-6-1980 and regulate his pension under the Rules on that basis.

7. Sri M.S.Padmarajaiah learned Central Government Senior Standing Counsel appearing for the respondents contends that the later order made by Government on 31-7-1982 (Annexure -D) regulated the services of those that were in service on 1-1-1973 and on the terms of that order, the applicant becomes eligible to the senior scale on 1-11-1981 and not on 21-6-1980 and the authorities were justified in not acceding to the demand of the applicant.

8. Both sides do not dispute that the applicant on attaining superannuation retired from Government service on ~~31-8-1980~~ 31-8-1980.

9. We will assume for purposes of this case, that the order~~s~~ made by Government on 31-7-1982 (Annexure-D) is valid in its entirety. But, that order can only apply to the recruit²ments and promotions of those that are in service and not those that had retired earlier to that order at all,. The claims of retirees cannot be regulated on the basis of later provisions made for recruitment to Government service. Whatever rights or benefits a retired person had acquired on the date of his retirement, cannot be denied to¹him on the basis of later provisions made for recruitment in that department. We cannot therefore, uphold the contention of Sri Padmarajaiah that the case of the applicant will also be governed by the order of Government made on 31-7-1982. From this, it fol^lows that the claim of the applicant had to be decided only in terms of the order dated 6-3-1979 that was in force as on 31-8-1980.

10. The order of Government dated 6-3-1979 and 7-3-1979 on which the applicant had founded his claim reads thus:£

Copy of letter No.F.A.26014/35/78-Ad.II.A.dated the 6th March,1979.

Sub:Fixation of pay in the senior scale in the case of Group-A Officers.

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In supersession of the instructions issued in this Department's letters Nos.A.26011/1/74-PCC dated 23rd April,1976 and No.A.26014/24/78-Ad.IIA dated 1st April,1978, it has now been decided to grant, on a provisional basis Senior Scale in accordance with the concordance table prescribed in Department of Expenditure O.M.No.12/21/74-IC dated the 14th November, 1975 to Group'A' Officers of the Indian Customs and Central Excise Service (both Direct Recruits and Promotees) with effect from the date they complete four years regular service in the Junior scale after 1-1-1973.

2. The fixation of pay in pursuance of the above decision will, however, be subject to an undertaking to be given by the officers concerned that, if on the basis of formal orders of promotion of officers from Junior to the senior scale, they do not become entitled to draw pay in the senior scale with effect from the date from which it has been allowed provisionally, they will refund the amount, if any, overpaid to them.

3. You are requested to take necessary action to regulate the grant of Senior Scale after 1-1-1973 to the entitled officers in the light of these instructions.

Copy of letter No.A.26014/35/78-Ad.IIA dated 7-3-1979.

Sub:As at pre page.

I am directed to refer to this Department's letter of even number dated 6th March 1979 on the above subject and to clarify that the pay fixed in the Senior Scale in accordance with the instructions contained therein, may be treated as final for the purpose of sanctioning pension/pensionary benefits to the retired/retiring officers.

2. It



2. It is further clarified that such of the officers as have retired and have not been allowed the senior scale even though they were eligible, have also to be given the benefit of senior scale in accordance with the instructions contained in this Department's letter referred to above. The pay of such officers may be fixed accordingly and the consequential benefit of pay, allowances and pension etc. given to them."

In the first paragraph of the order dated 6-3-1979 Government had stated that a person who had held a junior post in the Excises and Customs Department on a regular basis for a period of four years becomes entitled to senior scale on provisional basis on his completing four years of service in the junior scale. The one and the only condition stipulated in this order is that an officer must have completed 4 years regular service in the junior scale. Under this order, when a person completes 4 years regular service in the junior scale he automatically becomes entitled to senior scale. With this analysis we will examine the factual position of the applicant.

11. On 10-6-1976, Government promoted the applicant as AC, a junior scale post on an officiating basis in pursuance of which he reported for duty on 21-6-1976. From 21-6-1976 to 21-6-1980 he was holding that post and as on 21-6-1980 the applicant had rendered four years regular service in the junior scale.

12. As ex-abundanti cautela only Government on 7-3-1979 had extended the benefit of the order dated 6-3-1979 to the retirees also.

13. On the very terms of the two orders made by Government which were in force as on 31-8-1980, the applicant had become entitled to the senior scale on 21-6-1980 and therefore, his pension thereto under the Rules had to be computed on

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that basis and not on any other basis. We must, therefore, issue an appropriate direction in that behalf to the respondents

14. Sri Vasanth Kumar contends that the respondents should be directed to pay the difference of salary from 21-6-1980 to 31-8-1980. Sri Padmarajaiah opposes the same.

15. The claim of the applicant for difference of salary is for a negligible period of 2 months and 10 days. We see no merit in this claim of the applicant and we reject the same.

16. In the light of our above discussion, we make the following orders and directions:

- a) We declare that the applicant had become entitled to the senior scale on and from 21-6-1980.
- b) We direct the respondents to compute the pension payable to the applicant under the rules on the basis of our declaration and make him available all arrears of pension only from 1-9-1980 and onwards with all such expedition as is possible in the circumstances of the case and in any event within 6 months from the date of receipt of this order.

17. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

As. Prabhakar
VICE-CHAIRMAN.
[Signature]
MEMBER(AM)(R).

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