

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: **30 SEP 1994**

APPLICATION NO: 270 of 1994.

APPLICANTS:- **Sri.H.Ramakrishna, Bangalore.,**
V/S.

RESPONDENTS:- **Collector of Central Excise, Bangalore**
and two others.

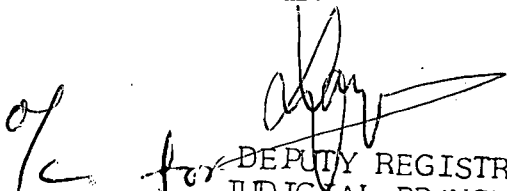
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1. **Sri.Harikrishna S.Holla,**
Advocate, No.34/3, II Floor,
Ganesh Building, 5th Main,
Gandhinagar, Bangalore-9.
2. **Sri.M.S.Padmarajaiah,**
Sr.Central Govt.Stng.Counsel,
High Court Bldg, Bangalore-1.

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.
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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 20th September, 1994.

Issued on
30/9/94 B.


DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH.

ORIGINAL APPLICATION NO. 270/ 1994

TUESDAY, THE 20TH DAY OF SEPTEMBER, 1994

SHRI V. RAMAKRISHNAN ... MEMBER (A)
SHRI A.N. VUJJANARADHYA ... MEMBER (J)

Shri H. Ramakrishna,
S/o Shri H.M. Gundiah,
aged about 48 years,
Working as Superintendent of
Central Excise & Customs,
MSIL Complex, HAL Air Port,
Bangalore - 560 017.

... Applicant

(By Advocate Shri H.K.S. Holla)

Vs.

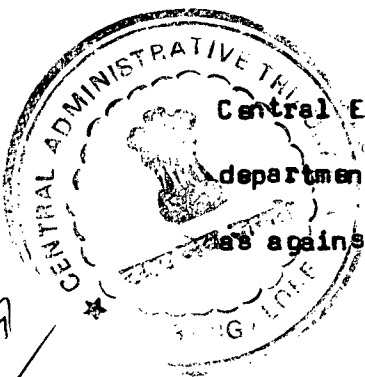
1. The Collector of Central Excise,
Headquarters, Central Revenue
Buildings, Queens Road,
Bangalore - 560 052.
2. The Principal Collector of
Customs and Excise,
Hyderabad.
3. The Union of India represented
by its Secretary to Govt.,
Ministry of Finance,
New Delhi.

... Respondents

(By Advocate Shri M.S. Padmarajiah, Senior
Standing Counsel for Central Government)

O R D E R

Shri V. Ramakrishnan, Member (A)



The applicant who is presently functioning as Superintendent,
Central Excise and Customs in Bangalore has challenged the order of the
department dated 15.3.93 which seeks to reduce his pay to Rs. 2300/-
as against Rs. 2600/- already drawn by him on his promotion as

....2/-

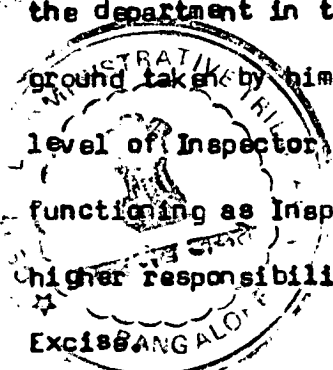
Superintendent. He also seeks a direction that his pay should be stepped up in accordance with the rules.

2. The facts of the case in brief are as follows:-

The applicant joined the department as LDC in 1971. He was appointed as Inspector (ordinary grade) of Central Excise on 9.2.73 and was promoted to Inspector (selection grade) on 13.6.77. While serving as Inspector (selection grade) of Central Excise, certain disciplinary proceedings were initiated against him and he was imposed the penalty of (1) reduction of pay to the stage of Rs. 425/- per month, (2) reversion to the post of Inspector (ordinary grade) and (3) ranking him lowest in the grade of Inspector (ordinary grade) on the date of reversion. This was done by the order of disciplinary authority dated 30.1.80, which took effect from 5.2.80, the date on which the order was received by the applicant. The applicant challenged this order before the Karnataka High Court through a writ petition and got a stay on 13.2.80. The case was transferred to the CAT and was finally disposed of on 28.12.86. The Tribunal while upholding the penalty of reduction of pay and also reversion to the level of Inspector (ordinary grade), quashed the order ranking him juniormost in the level of Inspector (ordinary grade) on the date of reversion. The applicant as well as the department have moved the Supreme Court by an SLP against the Tribunal's order. The SLP is still pending before the Supreme Court. Neither the applicant nor the department had obtained any stay from the Supreme Court.

The department subsequently considered him for promotion to the higher level of Superintendent, Central Excise on restoration of his seniority as per the Tribunal's direction. The Department by its order dated 26.10.92 (Annexure A-1) promoted him to officiate in the grade of Superintendent. The promotion took effect from 1.11.92 and

his pay as Superintendent was fixed as Rs. 2600/- p.m. It is admitted in the reply statement of the department that only after such promotion and at the time of scrutiny for fixation of his pay in the grade of Superintendent, the department noticed that no action was initiated to bring down his pay in the light of the disciplinary authority's order dated 30.1.80 which was upheld by the Tribunal. The department instructed the Chief Accounts Officer by a letter dated 12.11.92 to take necessary action to re-fix the applicant's pay in the light of the earlier orders dated 30.1.80 and to recover the amount paid to him in excess. The Chief Accounts Officer by his letter dated 8.3.93 informed the applicant that he had calculated the excess payment made to the applicant from February 1980 to January 1993 which was of the order of over Rs. 64,000/-. The applicant was asked to arrange refund of this amount. The applicant submitted a representation on 15.3.93 contending that as he had served the department in the selection grade without being demoted to ordinary grade, the question of recovering any differential in salary would not arise. This representation was rejected by an order dated 18.5.93 and he was directed to refund the alleged excess payment or face recovery of Rs. 535/- per mensem in 120 monthly instalments commencing from the pay bill of June, 1993. The applicant then approached this Tribunal in OA 554/93 where he had annexed copies of the letters dated 8.3.93, 15.3.93 and 18.5.93 and challenged the action of the department in trying to recover the alleged excess payment. The main ground taken by him in OA 554/93 was that he was never demoted to the level of Inspector (ordinary grade) and that all along he had been functioning as Inspector (selection grade) which according to him carried higher responsibilities till he was promoted as Superintendent, Central



The department in their reply in OA 554/93 contended that in view of the Tribunal's order upholding the penalty of reduction of pay, they were at liberty to recover the excess payment made to him. They did not deny the stand of the applicant that he was not brought down to the level of Inspector (ordinary grade) and that he continued to discharge the duties of the selection grade post which according to him carried higher responsibilities. The Tribunal by its order dated 30.9.93 quashed the order seeking to recover over Rs. 64,000/- and observed that admittedly the Selection Grade post carried higher responsibilities and as the applicant was discharging the duties of the higher post, he was paid the salary attached to that post and recovery of the pay of the post drawn by him was not warranted. The Tribunal, however stated that the rights of the parties will automatically be regulated in terms of the final decision of the Supreme Court on the SLPs pending before it.

The present application relates to fixation of his pay at the level of Superintendent. As Superintendent, his pay has been initially authorised at the level of Rs. 2600/- from November, 1992. However, the Chief Accounts Officer, on the basis of the directions of the department had sought to re-fix the pay of the applicant as Superintendent by notionally fixing the pay at the minimum of the Inspector (ordinary grade) with effect from February, 1980 notionally regulating his pay for subsequent periods on the basis of such notional initial fixation as against the pay actually drawn by him as Inspector (selection grade). This exercise has resulted in the applicant's pay being re-fixed at the stage of Rs. 2300/- with effect from 1.2.92, the date of next increment raising his pay to Rs. 2375/- with effect from 1.2.93 (pay re-fixation statement dated 15.3.93 as at Annexure A-5) whereas the applicant, however, had earlier been authorised to pay at Rs. 2600/- in

....5/-

November, 1992 onwards on his promotion as Superintendent. The applicant has challenged this pay re-fixation statement as at Annexure A-5.

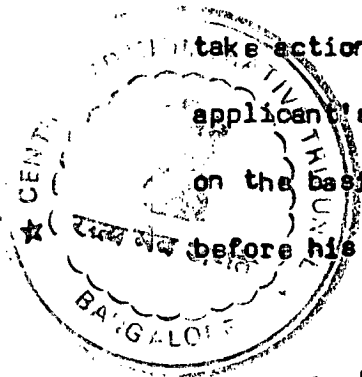
3. We have heard Shri H.K.S. Holla for the applicant and Shri M.S. Padmarajaiah, the Senior Standing Counsel for the department.

4. From the narration of the factual position, it is clear that the department had been remiss as they did not take timely steps to bring down the pay of the applicant after the Tribunal by its order in December, 1986 had upheld such reduction of pay. The Tribunal disposed of OA 245/86 on 18.12.86 where they upheld the penalty of his reduction in rank to the level of Inspector of Central Excise (ordinary grade) as also reduction of his pay, but only quashed the order which stipulated that he should be ranked as lowest at the level of Inspector (ordinary grade) on the date of reversion. The Tribunal at the request of the applicant's counsel stayed the operation of the order for a period of 90 days. As the Supreme Court had not accorded any stay, the Tribunal's orders should have been implemented around the middle of March, 1987 or soon thereafter. The department, however, did not take any action to bring down the pay of the applicant but have admitted that they noticed that no action was initiated to bring down his pay in the light of the order of the disciplinary authority (and which was upheld by the Tribunal in December, 1986) only at the time of the fixation of officer's pay in the level of Superintendent which was done in November, 1992. The order seeking to recover the excess payment drawn by the applicant as Inspector was issued on 8.3.93 and as has been brought out earlier, this was quashed by the Tribunal by its order dated 30.9.93 in OA 554/93. The department apparently had accepted the decision of the Tribunal. As such, the position with regard to the pay drawn by the applicant as Inspector stands concluded by the Tribunal's decision in OA 554/93.

5. The issue at present is whether the department can seek to re-fix the pay of the applicant as Superintendent, Central Excise on the basis of notional re-fixation of pay at the level of Inspector giving effect to the order of reduction of pay passed much earlier. In view of the decision in OA 554/93, the department cannot bring down the pay at the level of Inspector. Having accepted the judgement, the Department has no right to notionally re-fix the pay as Inspector, Central Excise and proceed to fix the pay at the higher post of Superintendent on the basis of such lower pay notionally re-fixed as Inspector. The situation at present is that his pay as Inspector as on 31.10.92 was Rs. 2600/- and his promotion as Superintendent took effect from 1.11.92. On his promotion as Superintendent, his pay has necessarily to be fixed in accordance with the relevant rules taking into account the pay actually drawn by him as Inspector immediately prior to his promotion and not on the basis of any lower pay to be notionally re-fixed. The department had not taken steps in time to bring down his pay as Inspector all these years, and they had not denied the contention that the applicant continued to shoulder higher responsibilities and had not been brought down to the level of Inspector (ordinary grade). They cannot try to do so now. They had also promoted him to the next higher level of Superintendent, Central Excise and the applicant had also been initially authorised pay at Rs. 2600/- per month with effect from November, 1992. It is not open to them at this stage to ignore the pay actually drawn by him as Inspector but to proceed to fix his pay as a Superintendent on the basis of a lower pay notionally arrived at, at the level of Inspector. His pay as a Superintendent should be fixed as per the relevant rules taking into account the pay actually drawn by him as Inspector. We have taken this view for the reason that the Tribunal in its judgement dated 30.9.93 in OA 554/93 had quashed the orders of the department seeking to recover the excess payment

from him by bringing down his pay for the period from February, 1980 to January 1993. The Tribunal had then observed that if some order is made in the SLPs pending before the Supreme Court, the rights of the parties will automatically stand regulated in terms thereof. In the present case also, we make the same observation.

6. In the light of the foregoing we quash the pay re-fixation statement dated 15.3.93 as at Annexure A-5 and direct the department to take action on the lines of our observation in para 5 and to fix the applicant's pay as Superintendent in accordance with the normal rules on the basis of the pay actually drawn by him as Inspector immediately before his promotion as Superintendent. No costs.



Sd-

(A.N. Vujjanaradhya)
Member (J)

TCV

Sd-

(V. Ramakrishnan)
Member (A)

TRUE COPY

Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore

B-747

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

CONTEMPT APPLICATION NO. 68/1995
IN ORIGINAL APPLICATION NO. 270/94

DATED THIS THE FIFTEENTH DAY OF SEPTEMBER, 1995

MR. JUSTICE P.K. SHYAMSUNDAR, VICE CHAIRMAN

MR. V. RAMAKRISHNAN, MEMBER (A)

Mr. H. Ramakrishna
S/o. H.M. Gundaiah
Aged about 50 years
Superintendent of Customs
Air Cargo Complex
Bangalore.

... Petitioner

(By Advocate Mr. H.K.S. Holla)

Vs.

Mr. Sridharan J
The Collector of Customs
Head Quarters
Queen's Road
Bangalore-560 052.

... Respondent

(Mr. M.S. Padmarajaiah, S.C.G.S.C.)

O R D E R

Mr. Justice P.K. Shyamsundar, Vice Chairman:

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We are today told by the learned Standing Counsel that Government has since complied with our order made while disposing of O.A. No. 270/1994. He has produced a copy of the said order in this connection and the same is placed on record. We have also heard Mr. H.K.S. Holla, learned counsel for the petitioner/in this Contempt Petition. We think there is little reason to pursue this matter further although Mr. Holla says that Government had taken a

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long time in complying with the directions of this Tribunal and there was little justification for remaining aloof for over a year in the simple matter of fixing the applicants pay in the light of the order made on earlier occasion and therefore, 12% interest may be awarded to the applicant. In principle we agree and in all probability we should have acceded to counsel's suggestion that the arrears payable to the applicant may be hiked a little by directing it should carry some interest. But the learned Standing Counsel says it was not intentional but it was due to the financial implications which had to be cleared stage by stage by different authorities. We see some force in this submission and therefore, we cannot deem that some thing more by way of interest on what has now been paid has to be paid.

2. Mr. Holla says arrears ordered to be paid has not been fully reckoned^{and} the computation as done still leaves an yawning gap. If that is so, the authority should make good any short fall. We direct the Department to take care of this aspect and tie up all loose ends if any found to be still dangling. Proceedings dropped.

Sd-
(V. RAMAKRISHNAN)
MEMBER (A)

Sd-
(P.K. SHYAMSUNDAR)
VICE CHAIRMAN

TRUE COPY

mr.

Section Officer

Central Administrative Tribunal
Bangalore Bench