

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Friday the 8th day of March, 2002

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.J.K.Kaushik - Member (J)

O.A. 639 OF 1998

Yashwant Dattatray Gaikwad,
14/22, Gawade Park,
Shardha Garden, Opp.TELCO,
Chinchwad Pune 411 033.
(By Advocate Shri S.P.Saxena) - Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Finance,
North Block,
New Delhi - 110 001.
2. Commissioner,
Central Excise and Customs,
Tilak Road,Pune.
3. Chief Accounts Officer,
Central Excise and Customs,
Tilak Road,
Pune 411 002.

ORAL ORDER

By Hon'ble Mr.B.N.Bahadur, Member (A) -

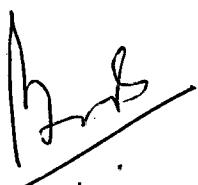
This application is made by Yashwant Dattatray Gaikwad challenging the impugned letter dated 17.6.1997 which follows the letter addressed by the Government of India to the Commissioner, Central Excise, Pune (Exhibit - 2). This impugned letter in fact is a rejection of the application/representation made by the applicant in regard to his grievances made therein and the stand taken by the Government is that "there is no provision for exercising of option by a retired person as such your request cannot be considered."



...2/-

2. The relevant facts as made out by the applicant are that he was a civilian employee of the Department of Central Excise and Customs before superannuating w.e.f. 30.9.1992 as Superintendent in the department. He was appointed as Lower Division Clerk on 31.5.1958, promoted as UDC in August, 1966, further as Inspector on 7.11.1974 and finally as Superintendent from November, 1991. The pre-revised scale of post of Inspector of Central Excise and Customs Department was Rs.425-800/-. The Central Government raised the scale of Inspector from Rs.425-800/- to Rs.500-900/- w.e.f. 1.1.1980. The applicant states that this raising was ordered vide Ministry of Finance letter dated 17.6.1997. This point was immediately clarified by the learned counsel for the respondents to state that it was actually ordered in 1987 (page 45 of the paper book). However, certain clarifications in regard to increments and other points followed from time to time over several years. At this point the important fact was brought out by both the learned counsel to the effect that the fresh option was invited vide letter dated 30.8.1994 (Page 49 of the Paper Book).

3. The applicant is aggrieved about the fixation of his salary and has come to the Tribunal seeking quashing of the two impugned orders referred to above and also seeking a declaration that he is entitled for stepping up of his pay in the grade of Inspector of Customs at par with a certain junior viz. P.K.Paul (it is wrongly mentioned in Para 8 (c) of the OA that grade sought is Inspector of Customs but admittedly grade sought is of Inspector of Excise).



...3/-

4. The respondents have filed a detailed affidavit in reply annexing to it several documents and letters. The details and parawise replies are admitted in this reply. The developments following the issue of orders dated 27.8.1987 have then been challenged by some officers before the Calcutta Bench of this Tribunal contending that the date of increment in the old scale should be changed. The said contention was upheld by the the Calcutta Bench. Also the Hon'ble Supreme Court has upheld the decision of the Calcutta Bench. This development led to further clarifications, through various orders, by the Government. This finally led to the issue of the letter dated 30.8.1994, a copy of which has been annexed at page 49 of the paper book. This letter indeed is important to the issue that comes up before us, as will be discussed ahead in this order.

5. We have seen all papers in the case and have heard at length the learned counsel for respective sides viz. Shri S.P.Saxena for the applicant and Shri V.D.Vadhavkar, learned counsel for the respondents. Let us first deal with the point of limitation argued on behalf of both sides. This plea was strenuously taken by the learned counsel for the respondent Shri Vadhavkar. He stated that the case could not be merely taken as continuing cause of action as, according to him, the applicant while making the representations was aware as early as in 1995 of his grievance and the grade was introduced much earlier, well before his retirement. Even so, he has chosen to come up before the Tribunal only in June, 1998 and that too without a prayer for condonation of delay. This was strictly contested by counsel for the applicant, stating that representation had been made well in time and that the reply had come only as late as in June, 1997.

..4/-



6. It is important to note that representation had been made in time. Also, there are letters dated 22.3.1996 and 24.9.1996 (Pages 17 and 19 of the Paper Book respectively). These letters are addressed by the respondents, the first one to the Assistant Commissioner, Central Excise, Pune and the second one to the applicant. The second letter written to the applicant refers to his representations on the fixation of his pay, and the anomaly sought to be removed. The applicant is informed that "the matter is not free from doubt-clarifications have been sought for from the Ministry. Your case will be decided on receipt of the said clarification." It is also seen vide letter dated 4.6.1996 (Page 55 of the paper book) addressed to the Government by Additional Commissioner, pune that the issue has indeed been raised for clarification by the Additional Commissioner at the Government level. Under the above circumstances, it cannot be said that the applicant has delayed coming to the Tribunal. Hence the plea of limitation, delay and laches, taken by Respondents cannot be sustained.

7. We have carefully gone through the various annexures appended by both sides, with the assistance of the learned counsel on both sides. The important point that arises is that anomaly in pay fixation was ordered to be corrected in respect of a large number of junior persons vis-a-vis the aforesaid Shri P.K.Paul through an order, a copy of which is appended at pages 24 to 29 of the paper book. However, the applicant's counsel

contended that the applicant's name did not find place in this order, perhaps because at the time the order was issued in February, 1995, the applicant had already retired on superannuation.

8. Now the other point is that enhancement of pay scale was ordered vide letter dated 16.9.1987 (page 45 of the Paper Book). Doubts regarding modalities of pay fixation etc. had continued to linger and finally through one of the letters dated 30.8.1994 (page 49 of the paper book), it was decided interalia (in consultation with the Department of Personnel and Training and Department of Expenditure) that as a one time measure, the pay of seniors etc. wherever necessary may be stepped up to bring it at par with the juniors. It was also stated that the officers in whose cases the option exercised by them earlier with regard to fixation of their pay on their promotion to Group 'B' posts has become non beneficial due to change in the date of increment, may be allowed to revise their option within a period of one month from the date of receipt of this letter.

9. Another ^{point} is that the decision which is under challenge refers to the aspect of option, importantly. The decision taken is that retired officers cannot be provided with such option. The important fact that needs to be checked is as to what is the period the option originally refers. If that period or point in time is such that the applicant had then retired, then it is another matter. However, if the revised option pertains to an earlier point of time when the person

concerned was in service, then withholding his right to exercise a revised option offered to all only on the ground that he now stood retired is clearly wrong, unjustifiable and discriminatory. It will in fact be an unjust act to prevent a retired person from opting because the revision pertains to an earlier option. Clearly the original option to which revision is allowed by the Government itself pertains to a period well before the retirement of the applicant in the instant case. This is a fact not in doubt. Now once the Government allows by its own decision a fresh option being exercised, the mere fact that the decision has come about when the applicant has retired, cannot prevent him from this right. No government servant is likely to give an option which is not beneficial to him.

10. Therefore, it will be in the interest of justice to give directions that the applicant's pay fixation should be done afresh. We hereby do so, and for this purpose we overrule the view taken in the impugned orders to the effect that a retired person is not eligible to exercise option. To this extent the impugned orders are deemed to be quashed and set aside. This refixation should be done accepting the option already given by the Applicant as contained in letter/representation dated 7.12.1995 (Exhibit A-3 at page 14 of the Paper Book). The pay fixation shall be done notionally according to this option granting benefits of, increment etc. as due from time to time. The Applicant's pension may also be refixed on the basis of

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revised notional pay fixation. The arrears of actual payment will however be paid only in respect of pension i.e. from the date of his retirement. This will meet the ends of justice.

11. In view of our above discussion, this OA is allowed as per the orders/directions contained in para 10 above. The order may be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

J.K.Kaushik

(J.K.Kaushik)
Member (J)

B.N.Bahadur

(B.N.Bahadur)
Member (A)

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