

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Wednesday the 19th June, 2002

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

O.A. 596.1998

Mukund Shankar Behere,
(Retd. Superintendent of Central
Excise),
UU/79, Mukund Nagar,
Near Swargate,
Pune.
(By Advocate Shri S.P.Saxena) - Applicant

Versus

1. Union of India,
through the Secretary,
Ministry of Finance,
New Delhi.
2. The Commissioner of Central
Excise, (L & T Section),
P.M.T. Building, Swargate,
Pune.
(By Advocate Shri V.D.Vadhavkar on behalf of
Shri M.I.Sethna) - Respondents

ORAL ORDER

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

The learned counsel for the applicant Shri S.P.Saxena and learned counsel for the respondents Shri V.D.Vadhavkar for Shri M.I.Sethna were heard in the matter. Since, at the outset, the learned counsel for the applicant Shri Saxena had pleaded that the case is covered by the judgment and order made by this Tribunal (to which one of us (Hon'ble B.N.Bahadur), Member (A) was a party) in O.A.639/98 delivered on 8.3.2002, we have carefully gone through this judgment. We have also gone through the facts of the present case with the assistance of the learned counsel on both sides and perused of all papers.



....2/-

2. The facts in the present case are indeed similar to the facts of the case of Yashwant Dattatray Gaikwad Vs. Union of India & others, OA 639/98 delivered on 8.3.2002 even though individuals dates and certain other parameters may obviously be different. We are therefore not repeating discussions already made in Gaikwad's case (supra).

3. The learned counsel Shri Saxena argued the case with reference to the earlier judgment which he contended had already discussed the issues regarding limitation and the objection taken by the respondent-department to the effect that retired persons were debarred from exercising options regarding pay fixation.

4. Arguing the case on behalf of respondents, learned counsel Shri V.D.Vadhavkar stated that while he had made all submissions regarding limitation already in Gaikwad's case (supra), he sought to make one argument on which he felt that the present case could be distinguished. He referred to Para 10 of the written statement of respondents and made the point that Shri P.K.Paul who has a central figure in both OAs ^{had} come to the post of Superintendent via the Selection Grade whereas the present applicant did not come to the Selection Grade. In this regard, he sought to draw support from the judgment of the Hon'ble Supreme Court in the matter of Chief Commissioner of Income-tax (Administration) Bangalore Vs. V.K.Gururaj and others, reported at 1996 (33) ATC 269). Shri Saxena clarified that in fact the applicant had not made it to the Selection Grade at the time when Shri Paul perhaps did. But he sought to make the point that the

....3/-

B.S.

removal of anomaly which is prayed for relates to a point in time when even Shri Paul had not got the Selection Grade viz. 1.1.1980.

5.. We have considered the arguments of Shri Vadhavakar through which he seeks to distinguish the case and after carefully considering the facts, we find that no distinction can be said to be drawn from Gaikwad's case (supra). Indeed, the anomaly sought to be corrected relates to 1.1.1980 when admittedly Shri Paul had not made it to the Selection Grade. It is not the case that promotion has also to be granted to the applicant now with retrospective effect. The prayer relates only to fixation as on 1.1.1980 and consequential benefits arising therefrom. An important information provided in this regard was that Ordinary Grade Inspectors' pay scale was revised and increased to the scale of Rs.550-900/- which indeed was the pay scale given of the Selection Grade. Be that as it may, we find that the argument of the learned counsel Shri Saxena has weight, in that the anomaly correction is sought from a date viz.1.1.1980 at which time Shri Paul had not reached the Selection Grade. We have seen the judgment of Shri Gururaj (supra) cited. The facts relate to Special Pay vis-a-vis protection of juniors. It does not have a bearing on the present case.

6.. In view of the above position/discussions, and the detailed discussions made in Gaikwad's case (supra), in regard to

Bnt

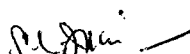
limitation and merits, we are convinced that the present case also deserves to be decided on the basis of Gaikwad's case. Needless to say that arrears will also be limited on the same basis.


7. In the consequence this OA is allowed on the basis of Gaikwad's case in terms of the following orders:

O R D E R

The applicant's pay fixation should be done afresh by providing him protection vis-a-vis the aforesaid Shri P.K.Paul w.e.f. 1.1.1980. To this extent the impugned orders are quashed and set aside. This refixation should be done accepting the option already given by applicant. Pay will be fixed notionally from 1.1.1980 and from time to time thereafter. The applicant's pension will also be refixed on the basis of revised pay notionally fixed. He will be provided with pensionary benefits. No arrears will be available till the date of retirement. Arrears of pension and pensionary benefits will however be available w.e.f. date of retirement. Order to be complied with within three months from the date of receipt of copy of this order.

There shall be no order as to costs.


(S.L. Jain)
Member (J)



(B.N. Bahadur)
Member (A)