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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.1150/97, -

Dt. of Decision : 05-01-99.

B.Syama Sundara Rao

.. Applicant.

Vs

1. The Govt. of India, rep. by the
Secretary to the Government,
Dept. of Revenue, Min. of Finance,
Central Secretariat, New Delhi.

2. The Commissioner of Central Excise,
Visakhapatnam, Visakhapatnam Dist.

.. Respondents.

Counsel for the applicant : Mr.P.Naveen Rao

Counsel for the respondents : Mr.V.Rajeswara Rao, Addl.CGSC.

CORAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

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ORDER

ORAL ORDER (PER HON. SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.))

Heard Mr. P. Naveen Rao, learned counsel for the applicant and Mr. V. Rajeswara Rao, learned counsel for the respondents.

2. The applicant joined the department as Inspector of Central Excise on 19-5-76. After completion of 16 years of service he earned his promotion as Superintendent of Central Excise in the year 1992. The applicant took charge of the higher post on 6-3-92. During March, 1992 consequent upon the promotion as Superintendent of Central Excise his pay was fixed at Rs. 2300/-. It is stated that at that time there was a dispute regarding grant of date of increment in the category of Inspector and after an amicable settlement of the dispute the Government had restored his normal date of increment which falls in the month of May. Accordingly the applicant opted for fixation of pay at the immediate next higher stage. Consequently the pay of the applicant was initially fixed at Rs. 2240/- on 6-3-92 and after adding an increment his pay was further fixed at Rs. 2375/- w.e.f., 1-5-92.

3. On restoration of the normal date of increment an anomaly arose wherein his junior one Mr. K. Kateswara Rao was drawing pay more than that of the applicant as his normal due date of increment happened to be February of the year. The said anomaly had continued since 1980. However, the said anomaly was noticed in the year 1994. The applicant submits that he was advised by the internal audit party to submit an application for rectification of the anomaly and for advancement

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of the date of increment to that of February. The applicant was advised he would have an advantage of an earlier drawal of increment and there would be ^{no} any change in the existing emoluments. The applicant states, believing that, he submitted a representation to advance his date of increment to that of February so that the anomaly of his junior drawing higher pay would be rectified. Thereupon the applicant's pay was fixed initially at Rs.2200/- on 6-3-92 and was fixed at Rs.2450/- from February, 1993. Accordingly arrears were drawn and paid to him.

4. However the audit party raised an objection as to grant of Rs.2450/- from February, 1993 and observed that the applicant was paid Rs.3488/- in excess of his entitlement and ordered for recovery. Accordingly the amount was recovered in 5 instalments and further the pay of the applicant was also revised to a lower stage.

5. He has enclosed the pay stages as fixed by the administration signed by the Administrative Officer (Drawing and Disbursing Officer) Customs and Central Excise, Visakhapatnam (Annexure-I). The said annexure clearly shows that on account of subsequent request made by him to advance his increment to February in the year instead of increment due to him in May he was made to lose one stage in the increment. This loss was continuing regularly and caused financial loss to the applicant. He submits that he made a representation only on the advice given by the internal audit party and that it was done purely on the lapse on the part of the administration wherein the applicant was not at all responsible. When it was pointed out to the applicant that he would have to forego one increment on account of his option, the applicant had immediately submitted a representation to the Controlling Authority viz.,

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Commissioner of Central Excise, Guntur. The Commissioner of Central Excise, Guntur had rejected his representation by an order dated 28-8-95 holding that the pay was fixed on the option exercised by the applicant and as the same had become final and there was no question of any further anomaly. The applicant submitted a review petition to the same authority bringing to his notice the actual position and prayed for reconsideration of his earlier decision.

6. However, the Commissioner of Central Excise, Guntur did not consider to review his earlier decision and rejected his claim by the order dated 17-4-96. The applicant further submitted a representation to the Secretary, Central Board of Excise and Customs, New Delhi on 28-5-96. The representation was considered by the Department of Revenue and they communicated their decision in the impugned proceedings dated 15-10-96 rejecting the claim of the applicant.

7. The department had rejected his claim on the ground that they cannot permit withdrawal of his option exercised on earlier occasion.

8. Hence, he has filed this OA to call for the records relating to and connected with letter No.A-26015/18/96-Ad-II(A) dated 15-10-96 of the 1st respondent and to quash the same as arbitrary, discriminatory and unconstitutional and for a consequential direction to the respondents to restore the pay fixation granted to the applicant at the time of his promotion as Superintendent of Central Excise and Customs with all consequential benefits.

9. The respondents submit that a dispute was in-existence at the time when the pay of the applicant was fixed in the cadre of Superintendent in regard to the grant of increment in the category of Inspectors and after deliberations the Government

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restored the normal date of increment which existed prior to 1-1-80 (before revision of the pay scales of Inspectors from Rs.425-600 to Rs-500-900/-) and that restoration orders were issued in the year 1994 (Annexure R-I and R-II to the reply). Thereafter Sri Syamasundara Rao, the applicant herein exercised an option for fixation of pay in the cadre of Superintendent under FR 22 I (a) (i) and then under FR 22 C respectively.

10. It is stated that the dispute was resolved on the basis of the discussion with the recognised union and on that basis the pay of the applicant as Superintendent of Central Excise was decided to be fixed at the stage of Rs.2240/- w.e.f., 6-3-92 as he was an Inspector earlier to his promotion as Superintendent of Central Excise. Thereafter it was also decided during consultation with the union that his pay would be raised to the stage of Rs.2375/- w.e.f., 1-5-92.

11. Thus his initial fixation of pay as Superintendent of Central Excise from the date of his promotion i.e., 6-3-92 and thereafter granting an increment immediately ^{on} 1-5-92 was ~~fixed~~ ^{done} with due deliberation and consultation with the union. Whenever a serious dispute arises in a government department a dialogue is maintained with the recognised union. The dialogue with the recognised union and the decision taken thereafter is to ensure good industrial relation in that industry/offices. Such decision arrived ^{at} cannot be unilaterally turned down by the department without consultation with the union. Hence a decision once taken in consultation with the union cannot be changed without proper dialogue with the union and stating reasons for reverting that decision. In this case the decision to fix his pay at the stage of Rs.2240/- as on 6-3-92, to grant

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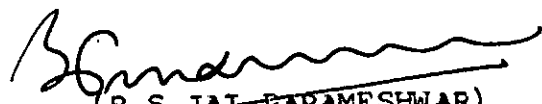
him an increment and to fix his pay at the stage of Rs.2375/- w.e.f., 1-5-92 had been taken in consultation with the union and hence the decision cannot be reversed even if the auditing official took objection to such fixation. Hence, that fixation of Rs.2240/- and Rs.2375 as on 6-3-92 and 1-5-92 respectively should stand and it cannot be changed.

12. The applicant prays for stepping up of pay on par with his junior as his junior was drawing increment from February. Hence, it appears that his pay was fixed on par with his junior w.e.f., 1-2-93 before completion of one year of service from 1-5-92 when his pay was fixed at the stage of Rs.2375/- on that date.

13. The applicant nowhere has stated that for granting him stepping up of pay he had fulfilled the conditions laid down under FR 22 C. We also do not find from the various contentions raised that the applicant had fulfilled conditions laid down under FR 22 C ^{for} of stepping up of pay on par with his junior from the month of February, 1993. The fixation of his pay on par with his junior from the month of February, 1993 by granting him one more increment is not in order. Hence such fixation has to be withdrawn.

14. However his next increment will fall on 1-5-93 raising his pay with the incremental value from Rs.2375/- ~~as on 1-5-93~~. The pay fixation of the applicant should be regulated as above. If the applicant is entitled to arrears if any, on that basis the same should be paid to him within a period of 2 months from the date of receipt of a copy of this order. If any amount has to be recovered from him on the basis of the above direction the same should also be recovered from him in 5 monthly instalments, ~~from the date when he is due for next increment in that scale~~.

15. The OA is ordered accordingly. No costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)


(R. RANGARAJAN)
MEMBER (ADMN.)

Dated : The 5th January, 1999.
(Dictated in the Open Court)

95/1/99

1ST AND 2ND COURT

COPY TO:-

1. HDN3
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A)
5. SPARE

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D. H. NASIR
VICE CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. R. S. DAT PARAMESWAR :

DATED: 5-1-99

ORDER / JUDGMENT

M.A./R.A./C.P.NO.

O.A. NO. 1150/97

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

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