

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 404/2006.

Jaipur, this the 23rd day of November, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.

Jagdish Chander
S/o Shri Amilal,
Aged about 58 years,
R/o House No. I/Type-V,
Customs and Excise Colony,
Vidyadhar Nagar, Sector-7,
Jaipur.

... Applicant

By Advocate : Ms. Ashish Joshi.

Vs.

1. Union of India
Ministry of Finance,
Department of Revenue,
Government of India through its
Secretary.
2. Chairman,
Board of Central Excise and Customs,
Ministry of Finance, Department of Revenue,
North Block,
New Delhi.
3. Director General,
Directorate General of Systems and Data Management
(Customs and Central Excise)
Hotel Samrat,
New Delhi.
4. Commissioner,
Customs and Central Excise,
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur.

... Respondents

: O R D E R (ORAL) :

The applicant has filed this OA thereby praying for

the following reliefs :-

"(i) By an appropriate order or direction the impugned order dated 23.3.2006 (Annexure A/1) may kindly be declared as arbitrary, illegal, unjustified and be quashed and set aside and respondents may be directed to give one increment to the applicant in the lower grade of Joint Commissioner as per FR.22(I) (a) (1).

(ii) Or any other appropriate order or direction which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case may kindly be passed in favour of the applicants.

(iii) Costs of the application may kindly be awarded in favour of the applicant.

2. Briefly stated, the facts of the case are that the applicant was granted non functional selection grade of Rs.14300-400-18300 in the junior Administrative Grade vide order dated 22.12.2003 (Annexure A/3) along with other persons. In the order it was specifically mentioned that the order has no bearing on the inter-se seniority of the officers in the Junior Administrative Grade. In other words, as can be seen from the order it is clear that it was not a promotion but grant of a non functional selection grade and for all intents and purpose seniority in the lower grade has to be maintained. On account of grant of non functional selection grade the pay of the applicant was fixed vide order dated 1.3.2004 (Annexure A/4). However, in this order the applicant has been shown as Additional Director.

3. The grievance of the applicant in this OA is that earlier he has been designated as Joint Commissioner and

on account of grant of non functional selection grade he was assigned duties of the post of Additional Director. Since the applicant was carrying out the duties and responsibilities of greater importance on account of grant of non functional selection grade, his pay should have been fixed under FR 22(I) (a) (1) whereas the respondents have wrongly applied Rule FR 22 (I) (a) (2) thereby denying him an increment in the grade of lower post. According to the applicant provisions of FR 22(I) (a) (2) applies to those government servants where on appointment/promotion to the new post the duties and responsibilities are the same or does not involve duties and responsibilities of greater importance. Thereafter the applicant immediately submitted a representation dated 10.03.2004 (Annexure A/7) to the Director General to refixation of his pay by granting him benefit under FR.22 (I) (a) (1). However, the applicant was conveyed about the decision which was taken after referring the matter to the Ministry whereby it was rejected on the ground that the non functional selection grade is a non functional grade and ^{to pay} has to be fixed under FR 22(I) (a) (2) and the provisions of FR 22(I) (a) (1) is applicable when promotion is made on higher functional grade. The copy of the Ministry Clarification letter dated 11.5.2004 was also annexed. The respondents have also placed a copy of the letter dated 11.5.2004 as well as copy of the Ministry letter dated 12.5.2004 as Annexure A/8 and A/9. Thereafter the applicant made another

representation dated 14.5.2004 (Annexure A/10). The said representation was again rejected vide letter dated 17.5.2004 (Annexure A/10A) in view of earlier ~~rejection~~ order dated 11.5.2004, copy of which has already been sent to him by letter dated 12.5.2004. The applicant has also placed copy of the Government of India Order 24 on record, according to which fixation of pay of Grade "A" Central Services Officers appointment to the selection grade is to be governed by provisions of FR.22(I) (a) (2). A copy of the same is placed as Annexure A/11. The applicant has again made representation dated 26.5.2004 thereby clarifying that the order 24 cannot be made applicable in their cases. Again the representation of the applicant was rejected vide letter dated 22.7.2004. The said representation was communicated to the applicant on 9.9.2004. The applicant has also placed on record copy of letter dated 24.1.2006 (Annexure A/15) whereby the case regarding refixation of pay of one Shri Upendra Nath Gupta, who was also granted non functional selection grade to justify that even the department was of the view that officers working in the grade of Additional Commissioner are empowered to exercise more power than the person working in the grade of Joint Commissioner and thus it is a case where appointment as Additional Commissioner definitely involves assumption of higher responsibilities. However, the Ministry subsequently vide Annexure A/1 directed the Director General to refix the pay of Upendra Nath Gupta and Jagdish Prasad as per

FR 22 (1) (a) (2) as per letter dated 24.5.2004. It is further stated that the said order was conveyed to the applicant on 25.4.2006. As such, the applicant has filed this OA thereby praying for the aforesaid reliefs.

4. We have heard the Learned Counsel for the applicant at admission stage. We are of the view that the applicant is not entitled to any relief for the reasons stated hereinafter.

5. In sum and substance the grievance of the applicant is that the duties and responsibilities of the post of Additional Commissioner and Joint Commissioner are not same as the Additional Commissioner under the Act of 1962 is empowered to exercise more power as compared to officials working in the grade of Joint Commissioner. Therefore, on promotion to the post of Additional Commissioner, the applicant is entitled for benefit of one increment under FR 22(I) (a) (1). It is further stated that the case of the applicant cannot be compared with the other Central services like CSS, IA&AS where the nature of duties do not change on promotion whereas it is so in the case of IC&CES whereas there is increase in the duties and responsibilities. Therefore, the order No.24 in the case of applicant who belongs to IC&CES services cannot be made applicable. It is further stated that one Shri Upendra Gupta was granted benefit under FR.22(I) (a) (1) and his case was again reopened and

subsequently he was also denied the benefit of one grade increment by fixing his pay under FR.22(I)(a)(1). According to the applicant, the respondents have passed rejection orders without application of mind. As such, the applicant is entitled to the aforesaid reliefs.

6. We have given due consideration to the submissions made by the Learned Counsel for the applicant. As already stated above, the applicant is not entitled to any relief for more than one reasons. In this case cause of action has arisen in favour of the applicant on 1.3.2004 when his pay was fixed on account of grant of non functional selection grade in the junior administrative grade. Against his refixation, the applicant made representation. The applicant made representation dated 10.03.2004 (Annexure A/7) which was rejected vide letter dated 12.5.2004. Thereafter, the applicant again submitted his representation dated 14.5.2004 (Annexure A/10) which was again rejected vide order dated 26.5.2004. This was also followed by another representation dated 22.7.2004 (Annexure A/13), which representation was also rejected and communicated to the applicant vide order dated 9.9.2004. The applicant has not challenged the validity of these orders whereby his representations against refixation have been rejected. Admittedly, the cause of action has arisen in favour of the applicant on 11.5.2004 when his representation for fixation of pay was rejected vide Annexure A/7. Thus, in

view of the law laid down by the Apex court in the case of S. S. Rathore v. State of Madhya Pradesh, AIR 1990 SC 10 wherein the Apex Court has held that where the Rules do not provide for filing of an appeal or making of a representation to a higher authority, the cause of action would be the date of adverse order (or occurrence of the cause for grievance) itself. The Apex Court has further held that where the Rules do not provide for filing an appeal or making a representation to a higher authority, submission of a representation or repeated unsuccessful representation will not furnish or extend the cause of action. Thus, in view of the law laid down by the Apex Court in the case of S.S. Rathore (supra), we are of the view that the repeated unsuccessful representations to the higher authorities will not furnish or extend the cause of action. Even on this ground, this application cannot be entertained in view of the provisions contained in Section 21 of the Administrative Tribunals Act, 1985.

7. That apart, even if, for arguments sake it is assumed that it is a case of pay fixation where the pay of the applicant has not been fixed in accordance with rule, as such, continuous wrong, Even than the applicant is not entitled to any relief. As already stated above, the applicant has not challenged the order dated 1.3.2004 (Annexure A/4) whereby the pay of the applicant was fixed, communication dated 12.5.2004 (Annexure A/8) letter of Ministry dated 11.5.2004 (Annexure A/9),

communication dated 22.7.2004 (Annexure A/13) whereby the representation of the applicant was rejected and communication dated 9.9.2004 (Annexure A/14). The applicant has challenged clarificatory letter dated 23.3.2006 which was internal departmental communication between the Ministry and the Department which clarification appears to have been issued when a question regarding granting the pay fixation under FR.22(I) (a) (1) to one Shri Upendra Gupta, Additional Commissioner was examined and subsequently it was found that the pay of Shri Upendra Gupta, Additional Commissioner was wrongly fixed under FR 22(I) (a) (1) and the said mistake was rectified by issuing a clarification letter dated 23.03.2006 (Annexure A/1). As such, this cannot be said to be an impugned order. However, the clarificatory letter is referable to the original letter and it is the original letter which offer a cause for agitating the matter. Simply because of the copy of the said letter was endorsed to the applicant vide annexure A/2 which letter was not meant to be endorsed to the applicant as the clarification issued vide Annexure A/1 was the internal departmental communication between the functionaries of the department and it ought to have been addressed to Commissioner concerned by the Additional Director. Be that as it may we are of the firm view that the letter Annexure A/1 and A/2 cannot be said to be the impugned order so far as the applicant is concerned. According to us, the impugned orders are those orders where the

adverse orders have been passed and the decision has been conveyed to the applicant on his representation(s) which the applicant have not challenged. Accordingly the applicant is also not entitled to relief on this score alone.

8. That apart, as can be seen from the notification dated 22.12.2003 (Annexure A/3) the applicant was not promoted from the post of Joint Commissioner to that of Additional Commissioner. In fact, the applicant who was a Member of junior administrative grade was granted the non functional selection grade of Rs.14300-400-18300 in his capacity as member of junior administrative grade. Para 2 of the said order makes things further clear that this order has no bearing with the inter se seniority of the officers in the junior administrative grade. It would be useful to quote relevant portion of the said notification, which thus reads as under -

"New Delhi, the 22nd December, 2003.

NOTIFICATION

INDIAN CUSTOMS & CENTRAL EXCISE ESTABLISHMENTS

No. 32/2003. The President is pleased to grant the Non-Functional Selection Grade (Rs.14300-400-18300) in the Junior Administrative Grade to the following officers of IC&CES with immediate effect.

Sl. No.	Name of the Officer S/Shri
1	A. C. Sharma
2	

K

3	
20	Jagdish Chander
53	R C Negi (ST)

2. The Order has no bearing on the inter-se seniority of the officers in the Junior Administrative Grade.

3. Hindi version will follow.

(R. S. MEENA)
Director, Government of India"

9. Thus, the contention of the applicant that he was granted promotion is wholly misconceived. It is grant of higher non functional selection grade in the same cadre i.e. in the cadre of Junior Administrative Grade. Further the Government of India has issued instructions order No.24 in FR 22, which is in the following terms :-

"FR.22(1) (a) - (1)

"Where the Government servant holding a post other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary, or officiating capacity, as the case may be, subject to fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has been accrued or rupees one hundred only whichever is more.

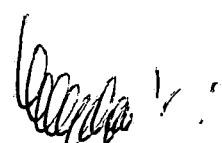
FR 22 (1) (a)-(2)

When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of time-scale which is equal to his pay in respect of old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis."

10. From the perusal of this OM, it is clear that where a person is granted selection grade his pay has to be fixed under provisions of FR 22(1) (a) (2). The applicant has not challenged the validity of the said order. It is ~~not~~ the case of the applicant that the provisions of FR.22 is not applicable in his case, ~~rather~~ it is his case that the provisions of FR.22 is applicable to the applicant also but according to him the pay should have been fixed under FR.22(1) (a) (1) and not under FR.22(1) (a) (2). The applicant has not challenged the validity of the government of India order No.24 as reproduced above. As such, the validity of the said order cannot be examined. On the face of the aforesaid order, the validity of which has not been challenged by the applicant, We are of the view that the applicant is also not entitled to any relief on this ground also.

11. For the foregoing reasons, the OA being bereft of merit, is dismissed.


(J. P. SHUKLA)
ADMINISTRATIVE MEMBER
P.C


(M. L. CHAUHAN)
JUDICIAL MEMBER