

**Central Administrative Tribunal  
Madras Bench**

**OA/310/00743/2016**

**Dated the 29<sup>th</sup> day of August Two Thousand Eighteen**

**P R E S E N T**

**Hon'ble Mr.P.Madhavan, Member(J)**

1. E.B.Akhilan
2. T.Sugumar
3. S.Murali
4. K.Sivaramangai
5. B.Venkataramana
6. K.Vasanth
7. R.Nagarajan
8. R.Angavai Rajathi
9. A.S.Usharani
10. S.Ramadevi
11. J.Dhanasekaran
12. R.Bhuvaneswari
13. N.Palani
14. A.Glory
15. R.Avvai Rajathi
16. K.B.Srinivasan
17. Singaravel
18. D.Santhini
19. R.Chitra
20. R.Ganapathy
21. A.V.Arul Mohan
22. S.Raghuraman
23. T.P.Balaji
24. K.Jayaraman
25. D.I.Prasad
26. R.Gnanasambandam
27. K.S. Venkataraman
28. K.Chellammal
29. B.Madhavan
30. D.Clement Suresh Kumar
31. R.Suresh
32. M.Kandasamy
33. P.Venkatesan
34. C.Srinivasan
35. D.Kalyanaraman
36. M.Kakkum Perumal
37. A.Solomen Selvaraj
38. R.Ravi
39. S.Ramasamy
40. B.Nirmala Devi

41.D.RajeshKannan  
42.R.V.Ananthanarayanan  
43.P.Rajkumar  
44.C.Saravanan  
45.R.Boopathi  
46.S.Shanmugakani  
47.A.S.Venkatesan  
48.S.Karthikeyan  
49.S.Sridhar Natarajan  
50.J.Marshall  
51.T.Kalidass  
52.P.Rajmohan  
53.V.R.Uma  
54.M.Shanthi  
55.R.Muthukumaran  
56.K.Lakshmanaperumal  
57.A.V.Sridhar  
58.N.D.Bharathi .. Applicant

By Advocate **M/s.Kaavya Silambanan**

**Vs.**

1. The Chief Commissioner of Central Excise,  
121, Nungambakkam High Road,  
Chennai 600 034.
2. The Additional Commissioner(CCA),  
121, Nungambakkam High Road,  
Chennai 600 034.
3. Deputy Commissioner (CCA),  
121, Nungambakkam High Road,  
Chennai 600 034. .. Respondents

By Advocte **Mr.V.Sundareswaran**

**ORDER**

Pronounced by Hon'ble Mr.P.Madhavan, Member(J)

Heard. The applicants in this OA are seeking the following relief:-

“To direct to call for the records of the 5<sup>th</sup> respondent made in Order No.23/2015 dated 28.4.2015 in so far as it states that the applicants are not entitled to arrears of pay from the date of notional promotion as Inspectors and consequential letter of the 4<sup>th</sup> respondent made in C.No.II/03/28/2015-CCA.Estt. dated 07.1.2016 in so far as para 3(2) of the said letter is concerned and quash the same and consequently direct the respondents to extend the benefits of arrears of pay with effect from 20.1.2003 to the applicants and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.”

2. Learned counsel for the applicants submits that the applicants 1 to 56 are working as Superintendents/Inspectors in the Customs and Central Excise Department in Tamil Nadu and Puducherry. The applicant No.57 took voluntary retirement from service in 2007 and applicant No.58 is the wife of Inspector K.Murali who expired in the year 2013.

3. The case of the applicants in brief is that the applicants were promoted as Inspectors after a long delay as per order No.23/2015 dated 28.4.2015 issued by the Deputy Commissioner (CCA) with the approval of the competent authority. The said order clearly states the date of notional promotion and it further states that pay fixation etc. shall be done in accordance with the existing instructions. But according to the counsel for the applicants the respondents have denied the arrears of pay due to the applicants from the date of notional promotion. Some of the officers are benefited by the notional promotion and some of them got aggrieved due to the lowering of the category and filed petitions before the Grievance Cell requesting arrears of pay. But the authority had not granted arrears of pay to the officers belonging to 'A' category and at the same time they have not recovered the excess payment given to the other 'B' category. According to the applicants, the respondents are denying the due arrears of

salary to the officers belonging to the 'A' category. Learned counsel for the applicants submits that the applicants belong to Data Entry Operators category of the Central Excise Department and there existed another category called Ministerial Cadre in the department. The Central Excise Department decided to merge the Data Entry Operators and the Ministerial Cadre Officers in the year 2001 and this resulted in grievances among both the categories. The Cadre Restructuring was notified by the department on 19.7.2001. The Board prepared a draft Recruitment Rules for the post of Inspectors and Senior Tax Assistant (STA) and began to process the list for conducting DPC. The new Inspector Recruitment Rules, 2002 superseded the old Recruitment Rules, 1979. The Recruitment Rules for STA was issued on 20.1.2003 and the 2 cadres have been re-designated as STA. The re-designated STAs filed OA 1065/2002 before the Chennai Bench of the Central Administrative Tribunal to declare the Rules as invalid, arbitrary and illegal. This Bench by Order dated 12.9.2003 upheld clause (b) in the said Rule. On similar issues, various CAT Benches across the countries have passed orders. In Mumbai, the ministerial Officers coming under clause (a) filed WP 6957, 6959/2003 against the Order of this Tribunal in OA 1065/2002 dated 12.9.2003. The Hon'ble Mumbai High Court in its final order dated 17.10.2003 held that the clause (b) and (c) is operative simultaneously alongwith clause (a) during the initial 2 years. Thereafter, the Board has issued a letter dated 04.10.2004 to all cadre controlling authorities to implement the Order of the Hon'ble Mumbai High Court and various other orders passed by the CAT in the light of the decision of the Hon'ble Mumbai High Court. The cadre controlling authority of Central Excise Department did not initiate any action to implement the order of the Board dated 04.10.2004. The delay in implementation of the order gave advantage to the Ministerial Officers under clause (a), who had occupied the post of Inspector erroneously. The said Ministerial Officers filed WP 31478/2004 in the Hon'ble Madras High Court against the implementation of the Board's letter dated 04.10.2004 and obtained a stay. The above said stay was vacated by the Hon'ble High

Court of Madras on 15.6.2009 and dismissed the WP. In the meanwhile, the fixation of inter-se seniority Rules 5 (I) & (ii) of STA and Rule 4(iv) of TA RR was challenged in WP Nos.2723, 3303 & 8606 of 2005 before the Hon'ble Madras High Court and the Hon'ble Madras High Court by its common Order dated 13.7.2004 quashed the inter-se seniority Rules of STA and TA RR. Against the said common order, the Department filed a SLP in CA No.2491-2503/2010 before the Hon'ble Supreme Court and the Hon'ble Supreme Court by Interim Order dated 04.4.2008 directed the Department to implement the promotion under the existing RR of STA and TA subject to the outcome of the SLP. The Hon'ble Apex Court upheld the Rules of inter-se seniority and directed to give effect to the Rules immediately and disposed the SLP. Consequent to the Order of the Hon'ble Apex Court, the Department had conducted the review of promotions made under various DPCs from December 2002 onwards and the notional promotion was given to clause (b) officers w.e.f. 20.1.2003 as per Establishment Order No.23/2015 dated 28.4.2015. It is on the basis of the said order the applicants are claiming arrears of pay from the date of notional promotion in this OA.

4. Whiles, the respondents filed MA 855/2016 to delete the names of the first and second respondents as they were not necessary parties in this matter and it was allowed by this Tribunal. The applicants produced Annexures A1-17 in support of their claim.

5. The respondents entered appearance and filed a detailed reply. According to the learned counsel for the respondents the applicants are not entitled to get any arrears of pay. It is submitted that a cadre restructuring had taken place and the Government of India has published Recruitment Rules (RR). Counsel for the respondents would contend that the applicants had challenged the Rules on various grounds and the inter-se seniority was also disputed and a lot of litigation had taken place. According to him, the applicants had not actually worked from the date of their notional promotion and they are not entitled to get any benefit during that period on the principle that “no work no pay”. Accordingly, the applicants are not entitled to get higher salary and arrears of pay

in this case.

6. The counsel for the applicants mainly relies upon the decision of the Hon'ble Supreme Court in Ramesh Kumar Vs. Union of India reported in (2015) 14 SCC 335. According to the applicants, the Hon'ble Supreme Court has held that the principle of “no work no pay” is an ordinary rule and when the respondents themselves are at fault in passing the order, the applicants are entitled to get the arrears of pay from the date of their notional promotion. It was also stated in the above decision that when retrospective promotions are effected, all benefits flowing therefrom including monetary benefits must be extended to an employee who was denied promotion earlier. It was held that in appropriate cases the court can take into account all the facts in their entirety and pass an appropriate order in consonance with law.

7. On the other hand, counsel for the respondents would content that the delay occurred in this case was solely due to the dispute between two cadres regarding the inter-se seniority and it has taken a lot of time to finally settle all the disputes as per order of the Hon'ble Supreme Court in the SLP filed by the Department. The Hon'ble Supreme Court has upheld the inter-se seniority prescribed in the rules and disposed of the case in 2009. So the delay was entirely due to the inter-se dispute regarding seniority etc. between the members of the cadre and there is absolutely no ground to allege that the respondents had delayed the promotion. It is submitted by the counsel for the respondents that immediately after vacating the stay, the department had taken action and granted promotion to the officers concerned on the basis of inter-se since seniority and they were given notional promotion from various dates. Therefore, the notional promotion were effected on various dates from 2003 onwards, the department is not liable to grant arrears of pay as they had not worked in the post. The respondents mainly relied on the decision of the Hon'ble Supreme Court in Union of India vs. B.M.Jha (reported in (2007) 11 SCC 632) and the State of Haryana & Others vs. O.P.Gupta & Others (reported in (1996) 7 SCC 533 in support of their contention.

8. I have carefully gone through the arguments put forward by both the counsels and pleadings in this case. It can be seen that there existed a dispute against inter-se seniority due to cadre restructuring and the applicants had challenged the rules before various Tribunals and Hon'ble High Court of Madras, Mumbai, Andhra Pradesh etc. and finally the department has taken up the matter to the Hon'ble Supreme Court in SLP CC No.5272-5284/2008 which was disposed of on 15.6.2009. On going through the decision in Ramesh Kumar Vs. Union of India, it could be seen that the Hon'ble Apex Court has held that the normal rule regarding pay is "no work no pay". But this could be changed in the facts and circumstances of each case. When the respondents are at fault and had caused the delay, the applicants could claim retrospective pay and arrears from the date of their promotion. In the instant case it could be seen that much of the delay was caused due to the inter-se dispute between two cadres which were got integrated and the disputes were finally settled by the Hon'ble Apex Court by disposing the SLP CC No.5272-5284/2008 on 15.6.2009 upholding the rules.

9. Under the above circumstances, I feel that the respondents cannot be found fault with for the delay occurred in granting notional promotion to the applicants in this case. The delay has been caused mainly because of the inter-se dispute between the applicants which arose out of cadre restructuring and formulation of rules. There is no material evidence to show that it was because of the delay on the part of the respondent department the promotion had got delayed. Hence, the decision in Ramesh Kumar Vs. Union of India has no direct application in this case. In State of Haryana & Others vs. O.P.Gupta & Others it was held that in case of seniority dispute, seniority list would have to be prepared after settlement of disputes and eligible persons will have to be given notional promotion from the deemed date. In such circumstances, the promotees cannot be granted arrears of pay from the deemed date as they had not worked during that period. In such cases "no work no pay" is the principle to be adopted. In Union of India vs. B.M.Jha (reported in (2007) 11 SCC 632) the Hon'ble Supreme Court has

again held that when notional promotions were given with retrospective effect, backwages cannot be granted as they had not worked in the promotional post from the deemed date. Therefore, I am of the view that the decisions in the case of State of Haryana & Others vs. O.P.Gupta & Others and UoI vs. B.M.Jha squarely applies to the case in hand. Since the applicant themselves have caused the delay due to the inter se dispute, the department cannot be blamed for such delay.

10. In view of the above, I find that this is not a fit case to adopt the principle laid down in Ramesh Kumar Vs. Union of India reported in (2015) 14 SCC 335. As such the OA is completely devoid of merits and is dismissed. No costs.

**(P.Madhavan)**  
**Member(J)**

**29.08.2018**

/G/