

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.No.210/00296/2016

Dated this Friday the 29th day of September, 2017

**Coram: Hon'ble Shri Arvind J. Rohee, Member (J)
Hon'ble Shri R. Vijaykumar, Member (A).**

Bippen Singh,
Retired Superintendent (Preventive)
Aged 62 years
Residing at
Flat No.5, Bldg.No.12,
Sher-e-Punjab Society,
Mahakali Caves Road,
Andheri (E), Mumbai-400 093. .. Applicant.

(By Advocate Ms.Priyanka Mehndiratta).

Versus

1. Union of India, through
the Secretary,
Central Board of Excise & Customs,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001.
2. The Commissioner of Customs (Gen.),
Personnel & Estt. Deptt.,
New Custom House, Ballard Estate,
Mumbai-400 001.
3. The Commissioner of Customs (Gen.),
New Custom House, Ballard Pier,
Mumbai-400 001. .. Respondents.

(By Advocate Shri D.A. Dube).

**Order reserved on : 15.09.2017
Order delivered on : 29.09.2017**

Order

Per : Arvind J. Rohee, Member (J).

The applicant who retired as Superintendent
(Preventive), office of Central Excise and Customs

while working with respondent No.3, approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside order dated 21.04.2015 (A-1) with consequential benefits.

b) This Hon'ble Tribunal may further be pleased to hold and declare that the Applicant is entitled to exercise option under FR 22(1)(a) now as no such opportunity was allowed to him earlier.

c) The Hon'ble Tribunal may further be pleased to direct the Respondents to remove the anomaly in pay of the Applicant with reference to the pay being drawn by his juniors from 1.04.1998 onwards so as to bring his pay at par with the Juniors.

d) The Hon'ble Tribunal may further be pleased to direct the Respondents to pay the arrears along with interest @ 18%.

e) Cost of the Application be provided for.

d) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The applicant joined the Customs Department as Preventive Officer on 01.04.1981 through Staff Selection Commission. He was promoted as Superintendent of Customs (Preventive) on 29.08.1997. It is stated that in the promotion order dated 29.08.1997 no instructions were included regarding

exercise of option under F.R.22(1)(a)(i) for pay fixation on promotion. The applicant was, therefore, under bonafide impression that correct pay as admissible to promotion post will be fixed by the Preventive Pay Bill Section. However, this was not done nor it was revealed to the applicant till his retirement.

3. It is stated that the respondents have failed to bring to the notice of the employees the DoP&T's Circular No.13/2/97-Estt.(Pay-1) dated 12.12.1997 by which it is stated that the officers who are promoted are required to exercise option. Since the applicant was not asked to exercise the option, he could not do so.

4. The applicant retired on superannuation on 30.09.2014. At that time while processing his case for fixation of pension, it was revealed to him that he was getting less pay than his juniors Shri A.K. Chhabra and Shri Atul Kumar. At that time of his retirement applicant was drawing basic pay of Rs.26,830/- + Grade Pay of Rs.6600/-, whereas his juniors were drawing basic pay of Rs.27,530/- + Grade Pay of Rs.6600/-.

5. The applicant submitted a representation dated 19.01.2015 to respondent No.3 for removal of the anomaly in his pay fixation. This was followed by another representation dated 06.02.2015. However, it

was rejected by the impugned order dated 21.04.2015 (Annexure A-1) on the ground that the option is to be exercised within one month from the date of promotion. However, since it was not so exercised the pay was properly fixed as per the rules and hence the applicant is not entitled to any relief.

6. The impugned order has been challenged in the present O.A. filed on 23.03.2016. Along with O.A., M.P.392/2016 is filed for condonation of delay.

7. It is stated in the above referred M.P. for condonation of delay that at the time of completion of retirement formalities, it was revealed that his juniors were getting more pay than him. Thereafter he submitted his representation on 19.01.2015 and another on 16.02.2015 which were rejected by the impugned order dated 21.04.2015 and the O.A. has filed within one year from that date. Hence it is not barred by time. However, delay, if any, is liable to be considered, since it is not intentional especially when the claim is for incorrect fixation of pay on promotion.

8. The respondents have filed reply dated 03.10.2016 and denied the averments made in the M.P. for condonation of delay. He stated that since the applicant has not furnished the option form the pay was fixed as per rules and considering his date of promotion. Had he submitted the option regarding date

of increment, his pay would have been accordingly fixed. However, in absence of option it cannot be said that his pay was incorrectly fixed. The applicant has not raised any objection regarding incorrect fixation of his pay after he was promoted on 29.08.1997 or immediately after his retirement on 30.09.2014. As such no satisfactory reasons are given for condonation of delay. The M.P. for condonation of delay is, therefore, liable to be rejected and consequently the O.A. cannot be entertained.

9. On 15.09.2017, we have heard Ms.Priyanka Mehndiratta, learned Advocate for the applicant and the reply arguments of Shri D.A. Dube, learned Advocate for the respondents on M.P. for condonation of delay. We have carefully perused the entire case record.

10. The only question arises for our consideration is whether the M.P. for condonation of delay is liable to be allowed for the reasons stated therein and O.A. can be entertained for decision on merits.

11. It is not disputed that the applicant was promoted as Group 'B' officer way back in 1997. As such as per F.R.22(1)(a) when any employee is promoted he has to exercise the option for proper fixation of his pay. This is necessary, since the date of increment in the feeder cadre and date of fixation of

pay in the promotional cadre are relevant for being considered. On promotion pay is normally fixed in the basic pay prescribed for the promotion post. However, if the option is exercised the employee may get one additional increment in the feeder cadre. Since the same has not been done in this case, its consequences are that the applicant's pay has been fixed on his promotion treating next date of annual increment counting from date of his promotion and not from the date of annual increment in his feeder cadre. Hence he was getting less pay than his juniors.

12. The applicant is a Group 'B' officer and as such it cannot be said that he was unaware that any option is required to be exercised after securing the promotion. He kept silent and accepted the pay fixed by the respondents without any grievance. He could have challenged the order of pay fixation on his promotion which in fact gives rise to cause of action to approach this Tribunal. It is obvious that he did not take any steps at that time. It is unbelievable that the applicant was unaware about the fact that option is to be exercised, since he must have had discussion with his fellow colleagues regarding pay fixation and exercise of option. In such circumstances of the case, it cannot be said that the delay is liable to be condoned atleast from the date of the retirement of the applicant when according

to him for the first time he came to know that his pay has been incorrectly fixed. The O.M. dated 12.12.1997 issued by the DoP&T on the subject option of date for fixation of pay on promotion must have been circulated to all concerned in which there is a reference to the provisions of F.R.22(1)(a)(i).

13. From the above discussion it cannot be said that simply because it was revealed to the applicant at the time of settlement of his pension on retirement that his pay has not been properly fixed at the time of his promotion and he then submitted a representation, that the cause of action actually arose at the time of submitting the representation on passing the impugned order. It also cannot be said that it is a continuing cause of action since the matter pertains to proper fixation of pay on promotion and pay fixed is accepted by him, without any grievance till his retirement.

14. In such circumstances of the case, it cannot be said that delay has been properly explained by the applicant for entertaining the present O.A. As such although it may be said that delay is not intentional, the period of limitation to approach this Tribunal will start from the date his pay was fixed on promotion which he accepted without any reservation. Hence it cannot be said that the cause of action has arisen to approach this Tribunal only when the

impugned order is passed and since the O.A. is filed within one year from that date, the same is within limitation.

15. From the above discussion we are of the view that sufficient reasons are not given for condonation of delay in approaching this Tribunal in the present O.A. Hence the M.P. for condonation of delay stands rejected.

16. Since the delay in approaching this Tribunal is not condoned, there is no question of entertaining the present O.A. which is hit by the provisions of Section 21 of the Administrative Tribunals Act, 1985.

17. Consequently, the O.A. cannot be entertained to proceed with the matter and to decide it on merit.

18. Hence the O.A. also stands disposed off, since it cannot be entertained as barred by limitation.

19. However, in the facts and circumstances of the case, the parties are directed to bear their respective cost of this O.A.

(R. Vijaykumar)
Member (A)

(Arvind J. Rohee)
Member (J).

H.

