

**Central Administrative Tribunal  
Ernakulam Bench**

OA No.180/00883/2017

Thursday, this the 7<sup>th</sup> day of November, 2019.

CORAM

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member**

**Hon'ble Mr.Ashish Kalia, Judicial Member**

V.T.Xavier, aged 76 years,  
S/o Thomas,  
Retired Deputy Office Superintendent Level I,  
Calicut.  
Residing at Mangat, Poonithura P.O.  
Kochi-682 038.

Applicant

(Advocate: Mr. Pirappancode V.S.Sudheer)

**versus**

1. Union of India represented by its  
Secretary, Ministry of Finance,  
North Block, New Delhi-110 001.
2. The Chairman  
Central Board of Customs and Central Excise,  
Department of Revenue, Ministry of Finance,  
Government of India,  
North Block, New Delhi-110 001.
3. The Commissioner of Central Excise & Customs  
Cochin I Commissionerate,  
I.S.Press Road, Kochi-682 018.
4. The Chief Accounts Officer,  
Office of the Commissioner of Central Excise,  
Customs and Service Tax,  
Central Revenue Road, I.S.Press Road,  
Kochi-682 018.
5. The Chief Accounts Officer,  
Office of the Commissioner of Central Excise,  
Customs and Service Tax, C.R.Building,  
Mananchira, Calicut-673 001.

6. Senior Accounts Officer  
Pay & Accounts Office,  
Central Excise, Central Revenue Building,  
I.S.Press Road, Kochi-682 018.

Respondents

(Advocate: Mr.Sinu G.Nath, ACGSC)

The OA having been taken up on 1<sup>st</sup> November, 2019, this Tribunal delivered the following order on 07.11.2019:

### **ORDER**

**By Ashish Kalia, Judicial Member**

By filing this OA, the applicant has sought the following reliefs:

*(i) Quash Annexure A10.*

*(ii) Direct the respondents to fix the applicant in the pay scale of Rs.425/- (UDC scale) with effect from 15.1.1976, in the light of Annexure A1 letter and Annexure A2 order and accordingly grant him all benefits, including re-fixation of his pension, following such fixation, expeditiously and within a time limit to be fixed by this Tribunal.*

*(iii) Direct the 2<sup>nd</sup> respondent to consider and pass orders on Annexure A11 petition, expeditiously and within a time limit to be fixed by this Tribunal*

*(iv) Declare that the applicant is entitled to have his pay scale at Rs.425/- revised with effect from 15.1.1976 under FR 26 and CSR 418 (B) and accordingly entitled to have his pay and pension refixed.*

2. The applicant was initially working as National Disciplinary Scheme Instructor (NDS Instructor) in the Department of Ministry of Education and Social Welfare with effect from 16.12.1963 in the scale of pay of Rs.95-3-131 EB-4-155 (old LDC scale). He was promoted as NDS Instructor Gr.I in the scale of pay of Rs.110-4-150 EB-4-170-5-180 EB-5-200 (old UDC scale) on 4.1.1973. After giving technical resignation, the applicant joined the Central Excise Department without any break of service on 15.1.1976. However, he was posted only as LDC in the pay scale Rs.260-400, the applicable pay scale for LDC. His earlier department – Department of Youth Affairs and Sports,

Govt of India had revised the old pay of the applicant in the cadre of UDC at Rs.425/- as basic pay. The grievance of the applicant is that when he joined the Central Excise and Customs Department as LDC, he was not given the pay scale of Rs.425 in UDC scale which he was enjoying in his earlier department, whereas his current employer had fixed his pay at Rs.334/- plus Rs.91/- as personal pay and his pay scale was fixed at Rs.425/- as per Annexure A3. The applicant retired from the service of the Central Excise on 30.6.2002. Since there was considerable reduction in both the pension and retirement benefits, the applicant filed OA No.791/2002 seeking re-fixation of his gratuity on the basis of his basic pay of Rs.7775/-, drawn as on 1.6.2002 as against Rs.7600/-. That OA was allowed and it was later confirmed by the Hon'ble High Court in W.P.(C) No.15717/2005 by dismissing the appeal filed by the Government. His present grievance is that his pay should have been fixed at Rs.425/- in equivalence UDC pay which he was enjoying in his erstwhile department. Representation submitted by the applicant was of no avail. The applicant has referred to FR 26 in support of his claim.

**3.** Notices were issued and the respondents entered appearance through counsel Sri Sinu G.Nath, learned ACGSC. In the reply statement filed by the respondents, it is submitted that the present OA is filed belatedly after an elapse of 16 years. Since no petition for delay condonation had been filed by the applicant, the OA may be dismissed in limine. It is further submitted that the applicant had joined the respondent department on 15.1.1976 and protection of pay was granted and pay fixation was done in the then LDC scale. The

applicant was redeployed from Ministry of Education and Social Welfare to the Central Excise Department in the cadre of LDC. Based on the instructions from the Ministry, his pay was refixed at par with refixation made in his erstwhile department of Ministry of Education and Social Welfare. The pay of the applicant was fixed at Rs.334/- by giving 12 advance increments (counting the number of completed years in the previous department) in the scale of LDC at Rs.260-400 with effect from 15.1.1976 and was also granted Rs.91/- as personal pay, to bring it to the level of Rs.425, i.e., protection of pay was granted in the LDC scale. It is further submitted that the pay scale of UDC cannot be granted to an LDC under FR 26 just because of the retrospective revision of pay scale in erstwhile department. The officer had joined the respondent department on 15.1.1976 and his pay in the erstwhile department was Rs.425/- as on 14.1.1976, which was protected by grant of 12 advance increments and personal pay as on 16.1.1991. Stating that there is no merit in the OA, the respondents have prayed for dismissal of the OA.

4. Heard learned counsel for the parties at length, perused the records, and appreciated the legal position. The short question raised in the present original application is whether the applicant is entitled for higher pay scale in the pay scale of LDC or not. Learned counsel for the applicant has drawn our attention to Annexure A2(a) where his pay is shown as Rs.425 + DA Rs.114.80 + ADA Rs.53.6 and HRA Rs.31.90, which comes to Rs.624.80. Total arrears of pay and allowances on account of above refixation for the period 1.3.1971 to 1.1.76, received by the applicant, was Rs.10441/-. The applicant was re-deployed to the

Central Excise Department as his erstwhile department had been abolished. We have glanced through the pay fixation details at page 26 of the OA (Annexure A3/3) wherein it is shown that as on 31.12.1976, his pay was Rs.334 + 91 and as on January, 1991, his pay was Rs.1640+30. This shows that though the applicant's pay was fixed at Rs.334/-, pay scale admissible to UDC, he had been granted the same despite the fact that the applicant had joined the present department to the post of LDC carrying pay scale of 260-400. However, his pay was protected by the department as on January, 1991 by granting 12 increments and his pay was fixed at Rs.1640/-, which is equivalent to Rs.425/- which was granted w.e.f 1.1.1977 onwards till January 1991 when the pay scale of Rs.1640/- was granted, equivalent to Rs.425/- basic pay he was drawing in his erstwhile department.

5. After appreciating the pay fixation of the applicant, we see no merit in the present original application. A person who has been re-deployed is entitled only for getting his pay protected. Despite having joined the lower post, the department had granted him pay protection by adding 12 increments. The applicant cannot claim that he should be fixed in the higher pay scale of UDC. The applicant was re-deployed in the pay scale of LDC.

6. In the facts and circumstances of the case, we are of the view that the present OA lacks merit and the same is liable to be dismissed. Accordingly, the OA is dismissed with no order as to costs.

**(Ashish Kalia)**  
**Judicial Member**

aa.

**(E.K.Bharat Bhushan)**  
**Administrative Member**

**Annexures filed by the applicant:**

- Annexure A1: Copy of the order passed by the Deputy Secretary, Ministry of Education and Social Welfare, Government of India vide letter No.A.39015/8/75-NFC dated 23.1.1976.
- Annexure A1(a): Copy of the legible copy of Annexure A1.
- Annexure A2: Copy of the order dated 20.12.1989 by the Department of Youth Affairs, Government of India.
- Annexure A2(a): Copy of the legible copy of Annexure A2.
- Annexure A3: Copy of the relevant extract of the revised pay order implemented in Central Excise & Customs vide order C.No./II/20/A-5/89/Acc.Gr.I dated 16.1.91 with the date of pay as on 1.2.91.
- Annexure A4: Copy of the order dated 23.11.2004 of this Tribunal in OA No.791/2002.
- Annexure A5: Copy of the judgment dated 8.6.2005 of the Hon'ble High Court of Kerala in W.P.(C) No.15717/2005.
- Annexure A6: Copy of the representation dated 28.7.2015 submitted by the petitioner before the 3<sup>rd</sup> respondent.
- Annexure A7: Copy of the letter C.No.II/25/A-40/2015 Accts.I dated 21.9.2015 of the 4<sup>th</sup> respondent.
- Annexure A8: Copy of the petition dated 20.10.2015 submitted by the applicant before the 5<sup>th</sup> respondent.
- Annexure A9: Copy of the reminder dated 12.11.2015 submitted by the applicant.
- Annexure A10: Copy of the letter C.No.II/25/A-7/2001 Accts.II dated 11.1.2016 of the 5<sup>th</sup> respondent.
- Annexure A11: Copy of the representation dated 11.7.2016 submitted by the applicant before the 2<sup>nd</sup> respondent.
- Annexure A12: Copy of the order dated 4.9.2017 of the Hon'ble Supreme Court in W.P.(C) No.763/2017.