

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 131/2001

New Delhi, this the 11th day of November, 2001

Hon'ble Shri Govindan S.Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Dr. Nilamani Sarmah
S/o Late Shri T.Sarmah
R/o 159, Sector-III, R.K.Puram
New Delhi - 110 022.

Working as Chief Medical Officer (NSFG)
Dr. R.M.L.Hospital
Eye Department
New Delhi - 110 001.

...Applicant
(By Advocate Shri M.K.Gupta)

V E R S U S

UNION OF INDIA : THROUGH

1. Secretary (Health)
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi - 110 001.
2. Director General of Health Services,
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi - 110 001.
3. Dr. R.M.L.Hospital
through its Medical Superintendent
New Delhi - 110 001.

...Respondents
(By Advocate Shri P.P.Ralhan,
proxy counsel for Shri J.B.Mudgil)

O R D E R

By Hon'ble Shri Govindan S.Tampi,

Applicant Dr. Nilamani Sarmah, challenges respondents' order dated 5-9-2000, conveyed to him on 8-11-2000, rejecting his request for relaxation for exercising his option for pay-fixation, holding that the delay cannot be accepted.

2. Heard S/Shri M.K.Gupta and P.P.Ralhan, learned counsel for the applicant and the respondents respectively.

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3. Facts as brought out in the OA are that the applicant who joined as an ad-hoc Medical Officer in CGHS on 26-3-1973, was regularised on 30-10-1976. He was thereafter promoted as Sr. Medical Officer and Chief Medical Officer w.e.f. 25-11-1982 and 15-9-1989 and was granted NFSG w.e.f. 1-1-1992 by Ministry's order dated 10-4-1995. He had assumed charges on 27-4-1995 and 29-5-95. His pay was fixed in the appropriate pay scale on 23-11-95, though the promotion orders were not endorsed to him. Subsequently on coming to know of the anomaly in his pay fixation vis-a-vis that of his junior Dr. (Smt.) Sonali Majumdar, he represented on 14-3-1996 for rectification of the same, but he was advised on 19-5-97 that as the anomaly arose on account of his failure to exercise the option for refixation on time, his request stood rejected. He represented against it on 7-9-1997, followed by a reminder on 10-2-1998, intimating that option could not be exercised, on account of late receipt of the orders and that he was receiving less pay than his junior. On his being asked to explain the reason for late receipt of the order, he gave a detailed reply on 5-11-1998, explaining the circumstances and seeking condonation of delay in exercising the option. It is pointed that while as Sr. Medical Officer both on 25-11-1982 and then on 1-1-1986, the applicant and his junior Dr. (Smt.) Sonali Majumdar drew the same basic pay, as Chief Medical Officer and as Chief Medical Officer

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(NFSG), the latter drew higher pay, leading to monetary loss being suffered by the applicant. Hence this OA.

4. Grounds raised in the OA are that :-

- (i) the applicant could not exercise his option following his promotions as Sr.Medical Officer and Chief Medical Officer as the promotion order dated 27-4-1994, were never served on him ;
- (ii) the respondents did not take steps to protect his pay but only blamed the applicant for the delay in exercising the option ;
- (iii) the applicant has lost out to his junior both in the grade of Chief Medical Officer and Chief Medical Officer (NFSG) which has resulted in continuous and increasing monetary loss, as he was not given any chance to exercise his option till the date of re-fixation of pay on 23-11-1995 ;
- (iv) the applicant cannot be blamed for not exercising his option consequent on his retrospective promotion ;
- (v) the applicant's representations have not been considered objectively ;
- (vi) respondents' action is illegal and unjust ;



(vii) the applicant cannot be made to suffer on account of the failure of the respondents and;

(viii) the just cause of the applicant cannot be defeated by technicalities ;

5. Rebutting the above pleadings by the applicant, respondents state that the applicant was attempting to mislead the Tribunal by his averment that he was not intimated of his promotion orders. The applicant both on his promotion as Chief Medical Officer (NFSG) w.e.f. 1-1-1992, by order dated 27-4-1994, was directed to exercise option for re-fixation within one month from the order, which he had not done. The plea by the applicant that he did not receive the orders on time is not acceptable as the assumption of charge reports make it clear that he was aware of the orders dated 27-4-1994 and 10-4-95, whereunder submissions of option for pay fixation was mandatory. Not having done so the applicant cannot now turn and claim benefits which was conditional on his exercising option at the relevant time. Besides, the OA filed on 3-1-2000, against rejection of the representation in 1997 was hit by limitation. The contentions made by the applicant are mis-leading and the rejection order issued on 19-5-1997 was clearly explicit. The applicant could have exercised his option, alongwith assuming charge of the promotion posts and not having done so he cannot seek any remedy now. The applicant's representation dated 10-2-1998, was the first of its kind and it has been replied on

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5-9-2000 and it is settled law that repeated representations did not cure the malady of limitation. Applicant's not having exercised the right to opt for pay-fixation in time cannot complain that a colleague who had correctly exercised the option had been given the fixation. The anomaly in pay fixation arose only on the failure of the applicant in not exercising the option, for which he is solely responsible. He cannot now make an issue out of his own failure and seek the benefit. He has to correctly accept the result of his benefit and abide by it, plead the respondents.

6. During the oral submissions, Shri M.K.Gupta, learned counsel strongly reiterates the pleas made in the OA and state that the applicant could not have exercised the option in time, as it was a case of retrospective promotion and also as the promotion orders did not reach him on time. This would be clear from the letters dated 30-9-98 from the Hospital and his reply on 5-11-98. That being the case, he should not be denied the benefit which is his right, argues Shri Gupta. On the other hand, Shri Ralhan, learned proxy counsel insists that not having exercised the option in time, the applicant has to forfeit his right.

7. We have carefully deliberated upon the rival contentions and perused the documents brought on record. In this case, the applicant claims stepping up of his pay at par with that of his junior Dr.(Smt.) Sonali Majumdar on his promotion as Chief Medical Officer w.e.f. 15-9-89 and as Chief Medical Officer

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(NFSG) w.e.f. 1-1-1992. The preliminary objection raised by the respondents is that the OA is hit by limitation in as much as cause of action arose in May 1997 but the OA has been filed only on 3-1-2001. The applicant on the other hand contends that the cause of action arose following the letter dated 5-9-2000 communicated to him on 8-11-2000 when he was told that his request for condonation of delay in exercising the option for refixation cannot be agreed to. The respondents have also stated during the oral submissions that repeated representations cannot cure the malady of limitation. In the facts and circumstances of the case, we are not inclined to accept the objection raised by the respondents. It is evident that the letter dated 5-9-2000, communicated to the applicant on 8-11-2000 is a well considered representation wherein the respondents have indicated as to how and why they cannot accept the representation of the applicant. The same does not make any mention about earlier letter dated 19-5-97. It is also on record that as the applicant was not agreeable to the contents of the letter dated 19-5-97, he had addressed the respondents following which they had asked him to furnish certain details on 13-9-98, which he did on 5-11-98 (Annexures 9 & 10). That being the case, the representation of 7-9-1997/10-2-1998, replied by the impugned letter of 5-9-2000 cannot be considered as repeated representation, rejected in the same manner. The limitation would correctly start only from the letter dated 5-9-2000 communicated on 8-11-2000 and the OA is clearly within the period of limitation. Even

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otherwise this being a matter of fixation of pay, it is a continuous cause of action and is, therefore, protected by the decision of the Hon'ble Supreme Court in the case of M.R.Gupta Vs. U.O.I. 1995 (5) SCALE 29.

8. The applicant has complained that there has been anomaly in the fixation of his pay in that both at the time of the promotion as Chief Medical Officer and as Chief Medical Officer (NFSG), he lost out in fixation of pay to his junior Dr.(Smt.) Sonali Majumdar. This is an admitted fact and the respondents do not deny it but they argue that as this anomaly arose only on account of the inaction on the part of the applicant, his not having filed the option is he has no case. The applicant's response is that the order of retrospective promotions not duly served on him at all by the Ministry or by the RML Hospital, where he was working, and, therefore, he could not exercise the option. Strange though it may seem, the fact remains that the respondents have not been able to prove that the concerned promotions order were duly served on the applicant. It also stands to reason that no Govt. servant, would, in a normal circumstances fail to fulfill the conditions, subject to the fulfilment of which he would get monetary benefits. The documents brought on record with specific reference to the charge reports of his assumption indicate that this have all been done on dates much later as the promotions were themselves retrospective. That being the case. the benefit of doubt in this case has to go to the applicant and his

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version that the orders were not duly received by him so as to enable him to file the option ~~have~~ ^{by} to the believed. That being the case, the rejection of the request dated 7-9-1997 and 10-2-1998 by the impugned order dated 5-9-2000 communicated on 8-11-2000 would deserve to be quashed and set aside. This is all the more necessary as the respondents themselves admit that the applicant is senior to Dr. (Smt.) Sonali Majumdar and the only reason for the wrong fixation of pay of the applicant was on account of his non-exercise of the option on time. Justice in this case falls squarely on the side of the applicant and the same has to be endorsed.

10. In the above view of the matter, we are convinced that the application should succeed and we order accordingly. The impugned order dated 5-9-2000 communicated to the applicant on 8-11-2000, rejecting his request for condonation of delay in exercising the option for fixation of pay is quashed and set aside. The respondents are directed to permit the applicant to exercise the option within a month from the receipt of a copy of this order and direct the re-fixation of his pay, if he is otherwise eligible in accordance with the option within two months from the date of receipt of the option. He would be, in the result entitled to notional fixation of pay, stepped up to that of his junior Dr. (Smt.) Sonali Majumdar from the date she got the higher grades. This fixation will

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only be notional and he would be entitled for the actual benefits of arrears from 1-1-2001 when he filed this OA. No costs.

S. Raju

(Shanker Raju)
Member (J)

(Govindan S. Tampi)
Member (A)

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