

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

O.A. 2171/95

This the 28th day of November, 1996.

HON'BLE SHRI R.K. AHOOJA, MEMBER(A).

Shri P.K. Ghosh  
R/o RZ/F-148,  
Gali No.4, Mahabir Enclave,  
Palam,  
New Delhi-110045. .... Applicant  
(By Advocate Shri K.L. Bhandula)

Versus

1. Union of India through ,  
Secretary to the Govt. of India  
Ministry of Water Resources,  
Shri Shakti Bhavan,  
New Delhi-110001.
2. The Chairman  
Central Water Commission  
Sewa Bhavan,  
R.K. Puram,  
New Delhi-110066. .... Respondents.  
(By Advocate Shri B. Lall)

ORDER(Oral)

The applicant was promoted to the post of Asstt. Engineer on 20.3.86, alongwith his junior, one Shri S.N. Dhar. Both were regularised in the higher post w.e.f. 28.11.90 vide order dated 31.7.92. The applicant submits that the pay of his junior Shri Dhar has been refixed on regularisation at a higher level than him. Accordingly, he made a representation dated 21.7.93 but the same was rejected on the ground that he had not exercised the option in respect of the date of refixation of his pay. Later on,

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in pursuance of a Supreme Court judgment, the date of regularisation of the applicant as well as Shri Dhar was changed from 28.11.90 to 23.1.93. The applicant is aggrieved that he had given his option in May 1995, within one month of the issue of the orders of regularisation at Annexure-II but no action was taken thereon by the respondents, resulting in financial loss to him. He therefore seeks a direction to the respondents to refix his pay in the grade of Asstt. Engineer w.e.f. 1.1.93 at the level of pay drawn by Shri S.N. Dhar with consequential benefits including payment of arrears.

2. The respondents deny that the applicant had exercised his option. Since Shri Dhar had exercised such option under FR 22C for choosing the date of fixation of pay on promotion, his pay had been fixed at higher level due to one additional increment in the lower pay-scale. The applicant not having exercised the same option could not now seek parity with his junior.

3. The applicant thereafter filed an additional affidavit with which he submitted a copy of a Peon-book entry showing the receipt by the Estt. Section, the option exercised by him within one month of order dated 5.4.96 No.A-32012/1/94-Estt.-V(ii). In their counter reply to this additional

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affidavit, the respondents have expressed their doubt regarding its authenticity of the copy of the Peon-book.

4. I have heard the Ld. counsels on both sides. The applicant submits that after the first year of regularisation he had submitted a representation dated 21.7.93 (copy at Annexure-5) seeking stepping up of his vis-a-vis his junior's pay on review of pay fixation of his junior. This representation was rejected by the Central Water Commission vide order dated 3.10.94 (Annexure-6) wherein it was explained that as the applicant had not exercised any option within the stipulated period, his pay could not be brought at par with his junior. It is thus clear that the applicant was aware of the requirements of the rules since the respondents rejected his earlier representation on the ground that the option had not been exercised by him in time.

The respondents by their order dated 5.4.95 (Annexure-2) provided a fresh opportunity for exercising this option. The claim of the applicant, therefore, seems plausible that he had exercised this option.

5. The respondents however, <sup>have not</sup> categorically denied the authenticity of the Peon-book entry but have only stated that there appears to be a 'doubt' about the genuineness of the receipt of the letter. In these circumstances, it am of the view, keeping

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in mind the earlier correspondence of the applicant with the respondents regarding exercising the option and the additional affidavit submitted by him, that the option had been duly exercised by him within one month.

6. In the light of the above discussion, the respondents are directed to refix the pay of the applicant on the basis that he had duly exercised the option for adjusting the date of fixation of pay under FR 22C. The applicant would be entitled to all consequential benefits by way of arrears etc. but without, in the circumstances of the case, any interest. Respondents will comply with these directions within three months from the date of communication of a copy of this order. No costs.

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R.K. Ahuja -  
(R.K. AHOOJA)  
MEMBER (A)