

(20) CAT/7/10

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

O.A. No. 1850/96

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T.A. No.

DATE OF DECISION 25.11.97

Shri R.D. Pipal

Petitioner

Shri H.K. Gangwani

Advocate for the Petitioner(s)

Versus

VOI M/O Defence

Respondent

Sh. P.H. Ramchandrami

Advocate for the Respondent

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The Hon'ble Shri S.R. Adige, Vice Chairman(A)

The Hon'ble Smt. Lakshmi Swaminathan, Member(J)

1. To be referred to the Reporter or not? *Yes*

2. Whether it needs to be circulated to other Benches of the Tribunal?

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member(J)

(21)

Central Administrative Tribunal
Principal Bench

O.A. 1850/96

New Delhi this the **25**th day of November, 1997

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

R.D. Pipil,
R/o C-2/304, Janakpuri,
New Delhi. ...Applicant.

By Advocate Shri H.K. Gangwani.

Versus

Union of India through

1. Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Controller General,
Defence Accounts,
West Block - V,
R.K. Puram,
New Delhi. ...Respondents.

By Advocate Shri P.H. Ramchandani, Sr. Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the action of the respondents in not fixing his pay in accordance with the option submitted by him on 8.12.1988 pursuant to the Ministry of Finance O.Ms. dated 13.3.1984 and 30.11.1988 which, according to him, has been received by the respondents.

2. The main question raised in this case is whether or not the applicant had submitted the option for refixation of his pay subsequent to RPR-73 on 8.12.1988 under the aforesaid Ministry of Finance O.Ms. to the respondents. The applicant claims that his option dated 8.12.1988 was forwarded to AN/IV Section by AN/XIV section under their UO

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(22)

No. AN/XIV/1414/III/Mies dated 9.12.1988 (Annexure A-2). Under the relevant Ministry of Finance O.M. the applicant was allowed time upto 31.12.1988 to give his option for refixation of his pay but his grievance is that the respondents have failed to take further necessary action on the same. The main contention of the respondents in the counter reply is that they have not received applicant's option dated 8.12.1988. They have also submitted that the applicant had never taken up the matter either orally or in writing till he made his first representation on 4.12.1995 which was rejected by the order dated 12.7.1996. They contend that no option has been received by AN/4 section and there is no question of taking action at this belated stage after seven years on his so called option dated 8.12.1988, especially when the applicant was serving in the same office of the respondents.

3. The applicant has in his rejoinder submitted that the claim is not time barred relying on the judgement of the Supreme Court in M.R. Gupta Vs. Union of India (1995 (5) SCC 628) as this is a question of refixation of pay which is a continuing wrong. Shri H.K. Gangwani, learned counsel, has also argued that as the applicant is not responsible for the delay in disposal of his case ~~now~~ but it is due to the negligence of the Department concerned which has not taken necessary action on the option exercised by him on 8.12.1988, he cannot be penalised. He has relied on the judgement in S.R. Bhanrale Vs. Union of India & Ors. (1996 SCC(L&S) 1384). Shri Ramchandani, learned counsel for the respondents, has also relied on S.R. Bhanrale's case (supra) and submits that

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the case of the respondents is that they have never received the option said to have been exercised by the applicant on 8.12.1988 and, therefore, they are not guilty of any delay.

4. The short question for consideration in this case is whether or not the applicant had, in fact, exercised his option on 8.12.1988 in pursuance of the O.Ms. dated 13.3.1984 and 30.11.1988 and given to the respondents. From the copy of the forwarding letter from AN/IV section dated 9.12.1988 (Annexure A-2), it is seen that they have forwarded the same for refixing of applicant's pay with effect from February, 1976 for necessary action to AN/XIV section. There is also another copy of the notings, of AN/XIV Section (Annexure A-4) from which it appears that as per the records available in that section, it was evident that the option exercised by the applicant was forwarded to AN-IV section vide No. AN/XIV/14114/III dated 9.12.1988. The respondents, however, claim that they have never received the option dated 8.12.1988 and their contention is that the applicant has never taken up the matter earlier than 4.12.1995 i.e. seven years later. No doubt, it is a fact that the applicant is serving in the same Department but merely because he had not taken up the matter earlier regarding the option does not by itself give a defence to the respondents in not taking action at their end with regard to the option in accordance with the rules. We find from the material on record that the respondents have stated that they have not received the option. They have also filed an affidavit in which they have stated that File No. AN/XIV/14114/Misc. dated 9.12.1988 containing the letter No. AN/XIV/14114/III/Misc. dated 9.12.1988 (Annexure A/2) is not available/traceable in the office. Moreover, that the said record has also become time

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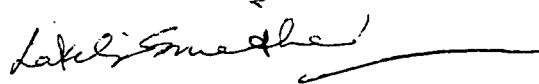
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barred. However, the main ground taken by the respondents for rejecting the applicant's case seems to be that he had not taken up the matter with them earlier and the case is barred by limitation. This ground taken by the respondents is not tenable in the light of the Supreme Court judgement in M.R. Gupta's case (*supra*) as this is a question of refixation of pay which is a continuing wrong which cannot be denied merely on the ground of delay and limitation. Further, from the materials available on record, particularly annexures A-1, A-2 and A-4, it appears that the option exercised by the applicant dated 8.12.1988 which was before the cut off date of 31.12.1988 was forwarded to AN/XIV Section on 9.12.1988 and it was for the Department to have taken necessary action to refix his salary in accordance with the relevant rules. In the facts and circumstances of the case and having regard to the observations of the Supreme Court in S.R. Bhanrale's case (*supra*), this application is, therefore, liable to succeed. The applicant has superannuated from service w.e.f. 31.7.1996 and this O.A. has been filed thereafter on 22.8.1996.

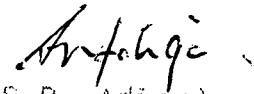
5. In the result, this application is allowed with a direction to the respondents to refix the pay of the applicant notionally at par with that of his junior, in accordance with the relevant rules and instructions. In the facts and circumstances of the case, the applicant shall be entitled only for payment of the revised retiral benefits consequent to the notional refixation of pay from the due date. Necessary action, including payment of the retiral

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benefits shall be taken within a period of 3 months from the date of receipt of a copy of this order. No order as to costs.



(Smt. Lakshmi Swaminathan)
Member (J)



(S.R. Adige)
Vice Chairman (A)

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