CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 2501/1994

New Delhi, this 31st day of January, 1995

Hon'ble Shri P.T.Thiruvengadam, Member(A)

1. Shri N.K. Jain
   2303, Dharampura
   Near Jain Naya Mandir, Delhi-6

2. Shri R.D. Garg
   General Secretary
   IASRA/ICAR, Library Avenue
   New Delhi-12 .. Applicants

(By Applicant No.2 in person)

Versus

Union of India, through

1. Secretary & DG, ICAR
   Krishi Bhawan, New Delhi

2. Director
   IASRA (ICAR), Library Avenue
   New Delhi-12 .. Respondents

(By Shri A.K. Sikri, Advocate)

ORDER (oral)

This OA has been filed with the following prayers:

1. To direct the respondents to fix the pay of the applicant No.1 under Rule FR 22(a)

2. To stay recovery of monthly instalments of Rs.1000/- as directed by Res.No.2

3. To refund an amount of Rs.~~50,000/-~~ 5,000/- recovered so far from July, 1994 to Nov. 1994.

2. Brief background to the case is as under. The applicants had filed a case before the Industrial Tribunal where an award was given in their favour. Recovery certificate allowing certain payment to the applicant had also been issued by the Labour Commissioner based on certain dates of promotion as assumed by the applicants. The implementation of the award of the Industrial Tribunal/Recovery Certificate were challenged by the Respondents in a Writ Petition before the High Court of Delhi and an order was passed by the High Court on 19.8.92 and the order reads as under:

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"We dispose of this writ petition with the direction that the recovery certificate stand quashed in view of the action taken by the petitioner. If the respondents-employees like to invoke decision of Section 36(a) of the Industrial Disputes Act, it will be open to them to do so if permitted by law subject to the objectio s raised, if any, by the petitioner."

3. As per the interim order dated 10.5.91 passed by the High Court in the Writ Petition, an Assessment Committee was constituted to consider the cases of the technical personnel. Consequently, vide office order dated 13.1.92 promotion was given to the applicant No.1 in the scale of pay of Rs.650-1200 from that of Rs.550-900 with effect from 1.7.80. By a further circular dated 12.2.92, the applicant No.1 and others were advised to give their opinion for fixation of pay within a period of one month from the issue of that circular i.e. within one month from 12.2.92. Applicant No.1 represented on 17.3.92 that the fixation of pay may be deferred for the time being till the Hon'ble High Court decided CWP No.2328/90 pending with the High Court. At the time when the representation was given, the writ petition was pending and the final orders were passed on 19.8.92 by the High Court. Since this representation itself was made one month after the issue of circular dated 12.2.92, the respondents went ahead with the fixation as per Rules. In other words, the pay was fixed under FR 22(c) from the date of promotion vide office order dated 8.5.92. Applicant No.1 again represented against this pay fixation and his representation was rejected by the respondents vide their letter dated 14.12.92. The applicant continued to give further representations to the higher authorities.

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4. As regards the recovery in the case of applicant No.1, the learned counsel for the respondents explained that based on the recovery certificate of the Labour Commissioner, certain payments had been made. Later on based on the orders of the High Court wherein the recovery certificate was quashed and promotions made, based on guidelines of High Court, it was found in certain cases recoveries were to be made and in certain other cases arrears had to be paid. Action had been taken accordingly and the recovery which is going on in the case of applicant No.1 as a result of implementation of the orders of the High Court. I do not find anything wrong with this action of the Respondents and accordingly reliefs 2 and 3 have to be rejected.

5. The applicant No.2 argues that as per the instructions with regard to option for fixation of pay in promotion the promotion order itself should have contained the option clause of immediate fixation under FR 22(c) or fixation at a later date. In this case with regard to applicant No.1 option clause was not contained in the promotion order dated 13.1.92 and option was extended by a separate circular issued on 12.2.1992. It is his case, that non-compliance of the instructions should give him the benefit of extending the period of option indefinitely. This arguement was countered by the learned counsel for the respondents stating that no prejudice has been caused to the applicant by not incorporating the option in the original promotion order, dated 13.1.92. In the subsequent circular dated 12.2.92 the allowable time of one month for exercising the option was given not from the original date of promotion order but from the date of issue of the letter circulated. Thus the interest of the applicant had been taken care of. I agree with the stand taken by the respondents and non-incorporation of the option clause in the promotion order which has been corrected by the circular a month later and extending the

period of option by one month from the issue of letter circular cannot be faulted.

6. The learned counsel for the applicant then argued that ante-dating of promotion is still an issue being agitated before the appropriate forum. The issue has been referred under Section 36A of the Industrial Disputes Act to the Industrial Tribunal for a decision. It was argued that in view of this, the respondents cannot insist an option for pay fixation to be exercised within one month. I do not see the linkage between the refererence to the Industrial Tribunal and pay fixation relating to promotion as a result of promotion order dated 13.1.92. If the applicant succeeds in getting the promotion further ante-dated by the decision of the Industrial Tribunal, the respondents will no doubt be giving relevant option once again at that point of time. In the circumstances, relief No.1 stands rejected.

7. The learned counsel for the respondents raised the issue regarding limitation. Representation for extension of date of option had been ultimately rejected on 14.12.92 and the applicant had chosen to approach this Tribunal only on 14.12.94. It was argued that because of the lapse on the part of the applicant, at least the first relief should be disallowed on limitation. There is force in the argument on limitation in relation to the first prayer. Even otherwise, this issue has been decided on merits.

In the circumstances, the OA is dismissed. There will be no order as to costs.

P.T. Thiruvengadam

(P.T. THIRUVENGADAM)
MEMBER(A)
31.1.1995