

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI.

O.A. No. 2482 of 1992

Date of decision: 21.03.1995

Shri Bahadur Sinoh Petitioner
Shri Shanker Raju Advocate for the Petitioner

Versus

Lt. Governor of Delhi & Others Respondent
Shri Rejendra Pandita Advocate for the Respondents

CORAM:

Hon'ble Mr. K. Muthukumar, Member(A)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches
of the Tribunal? *no*

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(K. MUTHUKUMAR)
MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2482 of 1992

New Delhi this the 21st day of March, 1995

Hon'ble Mr. K. Muthukumar, Member (A)

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Shri Bahadur Singh
R/o House No. 617/6,
Govind Puri,
New Delhi-110019.

.....Applicant

By Advocate Shri K.L. Bhandula

Versus

1. Union of India through
Secretary to the Govt. of India,
Ministry of Water Resources,
Shram Shakti Bhavan,
New Delhi-110001.

2. The Chairman,
Central Water Commission,
Sena Bhavan,
R.K. Puram,
New Delhi-110066.

.....Respondents

By Advocate Shri M.L. Verma

JUDGMENT

This application is against the rejection of the applicant's representation for stepping up of pay at par with that of his junior, namely, one Shri J.N. Poonia. The applicant was promoted as EAD-AE

on 6.12.1968 in the Central Water Commission, New Delhi. He was promoted on ad hoc basis as Assistant Director-Assistant Executive Engineer (hereinafter referred to as 'AD-AEE') with effect from 14th July, 1980 and was regularly appointed to the said post with effect from 9.8.1982. His junior Shri J.N. Poonia although promoted on 14.07.1980 on ad hoc basis as AD-AEE was regularly promoted to the post of AD-AEE on 5.4.1984 and the applicant was admittedly senior to Shri Poonia in the grade of AD-AEE. The respondents issued an Office Memoranda dated 26.09.1981 and 24.12.1981, in order to remove the

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anomaly arising out of the fixation of pay on promotion of officials to the next higher grade under FR 22C. It provided for an option for fixation of pay on promotion under which the official concerned will have the option (a) either to have his initial pay fixed in the higher post on the basis of FR 22C straightway without any further review on accural of increment in the pay scale of lower post or (b) his pay on promotion may be fixed initially in the manner as provided under FR 22(a)(i) which may be refixed on the basis of the provisions of FR-22C on the date of accural of next increment in the scale of pay of the lower post. The applicant's grievance is that the respondents have not acceded to his request for refixation of his pay by way of stepping up of his pay at par with that of his junior Shri Poonia, whose pay was apparently fixed with respect to the option exercised by him under the aforesaid instructions. As a result of this, the junior has been getting a pay of Rs.1250/- in the grade from 1.12.1984 whereas the applicant's pay was Rs.1200/- and this anomaly continued even after the revised pay scales which came into force with effect from 1.1.1986. The applicant has, therefore, sought for the following reliefs:-

- (i) Refixation of his pay in the grade of Assistant Director-Assistant Executive Engineer with effect from 1.12.1980 at the same level drawn by his junior Shri Poonia with consequential benefits.
- (ii) The enhancement of the pensionary benefits on the basis of the pay so fixed at par with the aforesaid junior. The applicant has retired on attaining the age of superannuation on 30.09.92.

2. The respondents have resisted this application and

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have contended that the applicant did not exercise his option for refixation of his pay in the grade of AD-AEE in accordance with the provisions contained in their OM dated 26.09.1981 and, therefore, the position of the applicant remained as the same even after his promotion to the grade of AD-AEE on regular basis. They have also contended that the anomaly in the pay drawn by the applicant was not directly as a result of the application under FR-22C in as much as his pay has to be regulated in accordance with the option exercised by him with reference to the aforesaid OM as well as the clarifications issued by the Government dated 8.2.1983. The respondents have also raised the plea that the application is barred by limitation.

3. The learned counsel for the applicant while arguing on the pleadings in the application made reference to a decision in R. Sangeeta Rao Vs. Union of India, a decision of the Principal Bench reported in ATJ Vol.(2)1990 page 120. The learned counsel also argued that in terms of the OM dated 8.2.1983, the departmental authorities should have obtained the option from the applicant when he was regularly promoted to the said grade with effect from 9.8.1982. The fact that the applicant did not himself exercise that option, could not be held against him in view of the aforesaid clarification. On my direction, the learned counsel for the applicant subsequently produced the order of his regular promotion to the grade of AD-AEE with effect from 22.09.1982 along with the original copy of the Ministry of Home Affairs (Department of Personnel & Administrative Reforms) OM dated 8.2.1983 containing clarifications on the points of doubts raised in the OM dated 26.09.1981. The counsel for the

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respondents while arguing on the averments of the respondents drew my attention to the Madras Bench decision in N.V. Subramanian & Others Vs. The Comptroller and Auditor General of India, New Delhi and Others, 1988 (1) SLJ (CAT) Vol.27 page 465, in support of the contention that there was no violation of Article 14-16 as options were given to all the affected staff.

4. I have heard the counsel for the parties and have carefully gone through the record. The option was provided to the employees for fixation of pay to the higher post in terms of FR-22C in pursuance of the decision taken by the Government.. To rectify the anomalies in such fixation, the said OM was issued on 26.09.1981 although the orders took effect from 1.5.1981. It was also made clear in the clarification dated 8.2.1983 that the said option was not to be allowed in cases where the promotions were made on ad hoc basis. It was, however, provided that where such a promotion was followed by regular appointment to the higher post without a break, the option could be allowed and the on the date of initial appointment to the higher post, option to be obtained within one month from the date of such regular appointment. Admittedly, the applicant was appointed on an ad hoc basis on 14.07.1980 even prior to the issue of the aforesaid OM dated 26.09.1981 and the clarification dated 8.2.1983. It is also provided in the above clarification that in the order promoting the Government servant, it may be mentioned that the applicant has to exercise his option within one month on his promotion, so that the benefit of fixation of pay can be given in case he exercises his option under paragraph 2(b) of the OM dated 26.09.1981. Apparently, when the applicant was promoted on a regular basis on 9.8.1982, the aforesaid clarification was not available. I have also seen the order of promotion of the applicant issued by the

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Central Water Commission by their office order dated 22.09.82. This order does not make any mention about the exercise of the option of the applicant. This was perhaps due to the fact that the clarification contained in the OM dated 8.2.1983 was not in existence then. Apparently, the benefit of this option was not available to the applicant. The respondents have not taken the plea that such an option was subsequently given to the applicant consequent on the issue of the orders dated 8.2.1983. The learned counsel for the respondents also did not bring out any record or averments to this effect. The fact remains that the option which was made available as a result of the clarification from a subsequent date was not provided to the applicant, as a result of which, the benefit which accrued to his junior in his pay fixation as a result of his regular appointment did not accrue to the applicant from a date later than the issue of the order dated 8.2.83. The learned counsel for the respondents' reliance on the decision in Subramanian (supra) is not tenable here as in that case the facts were different and the option was ^{also} available to all as a result of creation of a new cadre consequent on the reorganisation of the department.


5. Since there is no averment by the respondents that after the issue of the clarification dated 08.02.1983, the applicant was in fact provided option to be exercised by him in terms of the OM dated 26.09.1981,, the applicant cannot be held responsible for failure to exercise such option and it would be ^{un}fair and unjust to subject him to continuing loss on account of difference in emoluments vis-a-vis his junior as a result of the fixation of his pay from the date of his promotion.

6. In the light of the above discussions, I find there is merit in the prayer and the application is accordingly

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allowed. The respondents are directed to refix the pay of the applicant in terms of the OM dated 26.09.1981 so that his pay may be brought on par with that of his junior Shri Poonia from time to time and also to pay to him the consequential benefits thereof. The respondents are also directed to refix the pension of the applicant on the basis of the revised pay so refixed. The above directions may be complied with by the respondents within a period of 3 months from the date of service of this order.

There shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)

21-3-95

RKS