

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(11)

O.A./T.M. No. 990/1992

Decided on: 2-7-92

Gurbax SinghApplicant(s)

(By Shri B.B. Raval Advocate)

Versus

U.O.I. & AnotherRespondent(s)


(By Shri M.K. Gupta Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A. VEDAVALLI, MEMBER (J)

1. Whether to be referred to the Reporter or not? *Yes*
2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO. 990 OF 1992

NEW DELHI THIS THE 2nd DAY OF JULY, 1997

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (JO)

Gurbax Singh
S/o Shri Khazan Singh,
R/o Quarter No. 394, Sector IV,
Ramakrishna Puram,
New Delhi-110 022.

...Applicant

By Advocate Shri B.B. Raval

Versus

1. Union of India
Through the Cabinet Secretary,
Government of India,
Rashtrapati Bhavan,
New Delhi.
2. The Secretary,
Research and Analysis Wing,
Cabinet Secretariat,
Government of India,
Room No.88, South Block,
New Delhi-110 011.Respondents

By Advocate Shri M.K. Gupta

ORDER

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

The applicant is an Under Secretary (Language) in the Research and Analysis Wing (hereinafter referred to as R&AW) under the Respondent No.2. He joined R&AW on 6.1.1973 as a Field Officer (Language) in Chinese. Consequent on the bifurcation of the I.B. and formation of R&AW in September, 1968, the Recruitment Rules for various posts under the R&AW were notified only in October, 1975 and till that time, the erstwhile employees of I.B. who have come over to R&AW were continued to be governed by the I.B. Rules (hereinafter referred to as "the old rules"). In terms of the rules notified by the R&AW in 1975, employees who have come over to R&AW, the erstwhile employees of I.B. were given an option to be governed by the old rules till the next promotion or to be

governed by the new rules, i.e., R&AW Rules, 1975. The applicant opted to be governed under the new rules. Under the old rules, Field Officer (Language) or Assistant C.I.O. in the grade of Rs.550-900 eligible for promotion to the next higher grade of Assistant Foreign Language Examiner (hereinafter referred to as "AFLE") (Class-I in the I.B. in the grade of Rs.700-1300. Under the R&AW Rules, 1975, however, Class-I post was at the level of Deputy Foreign Language Examiner and their intermediate grade of AFLE in the scale of Rs.650-1200 was introduced in Class-II which became a promotional post for the Class-III category. A few Field Officers in the Class-III category who have exercised their option to be governed by the old rules and who were treated as eligible only to the next promotional post of AFLE Class-II post in the R&AW, filed a Writ Petition in the Delhi High Court which was transferred to the Principal Bench of this Tribunal (T-493/1986 CW No.2199 of 1981 - Shri Sham Sunder and Others Vs. U.O.I. and Others). The contention of the applicants in the aforesaid petition was that having opted to be governed by the old rules, they were entitled for promotion as AFLE (Class-I) in the grade of Rs.700-1300 as was prevalent in I.B. and not to the post of AFLE (Class-II) under the new rules in the grade of Rs.650-1200 as in R&AW. Their plea was accepted by the Tribunal and it was directed that the applicant should be deemed to have been promoted to the grade of Rs.700-1300 on the date they were actually promoted as a result of their selection by duly constituted DPC. In other words, these applicants were deemed to have been promoted straightaway to the grade of Deputy Foreign Language Examiner in the Class-I scale instead of having been treated as promoted to the post of AFLE Class-II in the grade of Rs.650-1200 under the respondents in the R&AW.

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2. The applicant submits that in implementing the judgment of the Tribunal in the aforesaid case, the respondents have overreached themselves and promoted all the Field Officers (100%), who had opted for the old rules directly to the post of Deputy Foreign Language Examiner in the Class-I although the old rules provided only for the promotion only to the extent of 25% quota for the promotees. Having thus promoted all the Field Officers to the post of Deputy Foreign Language Examiner, they had included their names in the combined seniority list of Deputy Foreign Language Examiners from the date they were promoted originally to the grade of AFLE. Finding that his option was based originally on the consideration that under the old rules only 25% posts have to be filled up in the Class-I post in the AFLE in the promotion quota in the I.B., and the prospect was better under the new rules in R&AW, the applicant opted under the new rules. But because of the faulty implementation of the judgment of the Tribunal in Sham Sunder (Supra), the applicant requested the respondents to permit him to revise his option retrospectively so that he could also be governed by the old rules. He also submitted that had he been promoted to the rank of AFLE in 1978-79 from the post of Interpreter under the new 1975 rules as per his option, he would have become eligible for promotion to the post of Deputy Foreign Language Examiner in 1982-83 itself and to the post of Foreign Language Examiner in 1986-87 on the completion of prescribed years of qualifying service. He, therefore, contends that by the inaction of the respondents in not promoting him, he had not only lost two promotions due to him in the relevant years but had lost his seniority also in view of the respondents action in implementing the judgment in Sham Sunder (Supra) in a

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faulty manner by granting promotions to all the optees 100% and promoted them directly to the grade of Deputy Foreign Language Examiner by which they had been ranked senior to the applicant. In the light of this, the applicant contends that he is entitled to have his option to be governed by the old rules retrospectively and to be promoted from the date his juniors were promoted by enlarging the scope of the quota from 25% to 100%.

3. He, therefore, prays for relief on the above grounds.

4. The respondents in contesting the application have raised a preliminary objection that the application is hopelessly time barred as the applicant has agitated this matter after a lapse of 15 years. As regards the implementation of the judgment in Sham Sunder (Supra), the respondents submit that in pursuance of the directions of the Tribunal in the aforesaid case, the Interpreters who have opted for the old rules and were promoted as AFLE were deemed to have promoted to the post Deputy Foreign Language Examiner. They also maintain that the quota of 25% as allegedly prevalent in the I.B. was not applicable for the posts in R&AW. All the optees of the old rules had to be promoted as Deputy Foreign Language Examiner Class-I because of the judgment of the Tribunal. The post next to the Field Officers(Language) (Interpreters) was that of a Class-I status in the I.B. The applicant's representation for change of option was rejected and he was informed that the benefit of the judgment could not be extended to the applicant as he had opted for the new rules and that he could not be allowed to exercise a fresh option after a lapse of 15 years on the

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ground that the optees of the old rules were benefited as compared to the optees of the new rules. The respondents contend that the applicant, who had opted for the I.B. Rules through error of judgment cannot be allowed at this stage to revise his option retrospectively for the old rules. They also contend that if as a result of the implementation of the aforesaid judgment, the optees of the old rules were to be promoted to the post of Deputy Foreign Language Examiner, the applicant cannot allege any supersession or discrimination as he had opted only for the new rules. Therefore, they submit that the applicant has no case and the application deserves to be dismissed.

5. We have heard the learned counsel for the parties and have carefully perused the record.

6. We find that this O.A. was admitted by an order ex-parte after service of notice and after deeming that the respondents have been served, the applicant has been representing to the respondents on his grievance since February, 1989 and his last representation was made in October, 1989, which was turned down by the order of the respondents in December, 1989, Annexure-A-4. Thereafter, he made a detailed appeal to the Secretary, Cabinet Secretariat on 7.6.90. The repeated representations does not extend the period of limitation. Further, by their order dated 22.2.90, Annexure A-5, the respondents rejecting his representation informed the applicant that the aforesaid letter was issued with the approval of the Secretary, Cabinet Secretariat. Ordinarily, the applicant, in spite of seeking legal remedy at that stage, he made a further detailed appeal to the Secretary in the Cabinet Secretariat in June, 1990 and thereafter filed

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this application on 6.1.1992, after his rejection of appeal by letter dated 8.8.1991. Thus, we find that this application is clearly barred by time and, therefore, the O.A. is liable to be dismissed on this score alone. We are, therefore, inclined to agree with the learned counsel for the respondents on this. However, we heard the matter on merits as well. The main ground of the applicant is that had he known that the 25% quota of promotion to Class-I post would be increased to 100% by the respondents unilaterally in consequence of the judgment of the Tribunal in Sham Sunder's case (Supra), he would have opted for the old I.B. Rules and it was only precisely for this reason, he had requested for permission to exercise fresh option to be governed by the old rules retrospectively so that he could also derive benefit of the aforesaid judgment. We are unable to appreciate this contention of the applicant. The decision to treat all the optees of the old rules as deemed to have been promoted from the scale of Rs.550-900 (Class-III) to Rs. 700-1300 (Class-I) was a conscious decision taken by the respondents while extending the benefit of the judgment in the aforesaid case to the similar optees of the old rules. The applicant cannot contend that this was an arbitrary action particularly when it cannot be said that the restriction of the promotion quota to 25% in the old I.B. Rules should be continued to be followed by the respondents for the post in R&AW also. The option as exercised by them under Rule 157 of the R&AW Rules, 1975, provided that, whoever opts to continue to be governed under the rules under which he or she was originally recruited, that this option would be valid only upto the stage of promotion to the next higher grade. In other words, the next higher grade promotion has to be necessarily to the level of AFLE in Class-I in the grade of Rs.700-1300 which, under the new rules can only be at the

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Level of Deputy Foreign Language Examiner in the Class-I scale. It was only on this basis that the benefit of the judgment in the aforesaid case was extended to all the optees for the old rules. No doubt, the applicant could not have anticipated the litigation and its outcome when he initially opted to be governed by the new rules and it was unfortunate. But it cannot be said that the respondents had acted in an arbitrary manner and had discriminated against the applicant. Had he opted for the old rules initially, he would also be a beneficiary of this judgment. The fact that he had not opted for the old rules is not disputed. The applicant cannot possibly claim that he is entitled to a revised option and that too retrospectively just because there is a subsequent judgment which has benefited the optees of the old rules. The respondents cannot possibly reopen the question of option as this would have to be extended to all the optees of the new rules as in the case of the applicant and in matters of option there should be finality and it cannot be reopened to suit the officials from time to time depending on the development of new circumstances.

7. In the light of the above discussion, we are unable to accept the contention of the applicant. The application, therefore, **is barred by limitation and is also** devoid of merit and is accordingly dismissed. In the circumstances, there shall be no order as to costs.

A. VedaValli

(DR. A. VEDAVALLI)
MEMBER (J)

K. Muthukumar

(K. MUTHUKUMAR)
MEMBER (A)