

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.1605/1993

New Delhi, This the 29<sup>th</sup> Day of July 1994

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

Shri C B Prasad,  
Junior Engineer  
P.W.D. Division No.XIX  
(Delhi Administration)  
MSD Building, I.P. Estate  
New Delhi 110002.

...Applicant

By Shri R Rajjapan, Advocate

Versus

1. Union of India Through  
Secretary  
Ministry of Urban Development  
Nirman Bhawan  
New Delhi 110011.
2. The Director General(Works)  
C.P.W.D  
Nirman Bhawan  
New Delhi 110011.

...Respondents

By Shri K C Sharma, Advocate

O R D E R

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

1. The applicant was functioning as Junior Engineer of the Central Public Works Department at the time of introduction of Fourth Pay Commission Scales. Prior to 1.1.86 he was functioning in the pay scale of Rs.425-700 which scale was revised from 1.1.86 to Rs.1400-40-1800-EB-50-2300. The applicant was given a fixation of Rs.1600 in the revised scale with effect from 1.1.86. This fixation is not disputed.
2. Separately instructions were issued on 27.3.91(Annexure R1 to OA) as per which two scales of pay for Junior Engineers in CPWD were allowed from 1.1.86. These two scales were Rs.1400-2300 (namely the replacement scale of Rs.425-700) and

...2/-

(14)

an additional non functional selection grade scale of Rs.1640-60-2600-EB-75-2900). Instructions also stipulated that Junior Engineers on completion of 5 years service in the entry grade of Rs.1400-2300/pre revised scale of Rs.425-700, may be placed in the higher grade of Rs.1640-2900 subject to the rejection of unfitness and vigilance clearance. It was specifically mentioned that the higher grade of Rs.1640-2900 will not be considered as <sup>a</sup> promotional one but will be non functional and the benefit of FR 22 (1)(a)(i) will not be admissible to them as there would be no change in their duties and responsibilities. As far as the applicant is concerned, he had completed 5 years service in the entry grade of Rs.425-700 ~~and~~ the date the non functional selection grade of Rs.1640-2900 was introduced, namely from 1.1.86. The respondents after fixing the applicant at Rs.1600 in the scale of Rs.1400-2300 allowed fixation at Rs.1640 i.e. minimum of the non functional selection grade from 1.1.86. The applicant was made eligible for his next increment in the scale of Rs.1640-2900 on 1.1.87. It is the case of the applicant that his next normal increment date ~~is~~ in Rs.425-700/1400-2300 is 1.8.86 and he should have been allowed increment in the scale of Rs.1640-2900 from this date only and not from 1.1.87. His representations having been rejected, this OA has been filed for a direction that increment date in Rs.1640-2900 should be 1.8.86 for the applicant.

2. The learned counsel for the applicant argued that the scale of Rs.1640-2900 should be deemed to be the replacement scale as far as the applicant is

concerned and thus relied on the orders passed by Hon'ble Supreme Court in Union of India and others Vs Shyama Pada Sidhanta and others reported in 1991 Supp(1)SCC 542.

3. The learned counsel for the respondents argued that the replacement scale for the applicant was Rs.1400-2300 and the scale of Rs.1640-2900 was extended to the applicant not as a replacement scale but as a non functional selection grade which is available to Junior Engineers on completion of 5 years of service in the entry grade. The instructions regarding fixation of pay and being posted to non functional selection grade are contained in Government of India's order issued under FR 22. The relevant order issued on 22.5.89 reads as under:-

Para 2. .....

After careful consideration of the whole matter, it has been decided that when a Government servant is appointed from one post to another where the appointment to the new post does not involve assumption of duties and responsibilities of greater importance than those attached to the old post, including appointment to non functional selection grade, he will draw as initial pay the stage of the time-scale of the new post which is equal to his pay in respect of the old post, or if there is no such stage, the stage next above his pay in respect of the old post. While in the former case his next increment will become due on the date he would have received an increment in the old post, in the latter case his next increment in the new post, however, will become due on completion

of the required period after which an increment is earned in the time scale of the new post. If the minimum of the time scale of the new post is higher than his pay in respect of the old post, he would draw that minimum as his initial pay.

3. Nature of Option available. With a view to avoiding anomalies between seniors and juniors appointed before and after accrual of increment in the old post, it has also been decided that a Government servant on his appointment to such a new post may be given an option for fixation of his pay in the new post either straightaway, with effect from the date of his appointment to the new post or, with effect from the date of his next increment in the old post. In either case the date of next increment will fall due only on completion of the required period of qualifying service from the date the pay is fixed in the new post. The method of pay fixation will be as given in the examples annexed.

This option has to be exercised by the Government servant within one month from the date of such appointment and the option once exercised shall be final."

As per the above provisions which form part of FR 22 a(ii) the applicant was correctly fixed at Rs.1640- on 1.1.86 and has been allowed further increments from the 1st of January of the following years. Respondents have also averred that the junior engineers were allowed to give option for fixation of pay in scale Rs.1640-2900 either from 1.1.86 or with effect from the date of their

next increment in the lower grade. Such option was given repeatedly and even as late as on 27.7.93 but the applicant did not exercise this option, and hence increment date of 1st January in the higher scale has been correctly continued.

4. Having perused the provisions of FR 22 a(ii) as contained in the Govt of India's order dated 22.5.89 quoted supra I am satisfied that the applicant has been correctly fixed at Rs.1640 on 1.1.86 and has been correctly allowed increment from the 1st January in the following years. The applicant had not exercised this option for fixation of his pay in the higher scale with effect from the date of his next increment in the lower grade namely 1st August of every year. Obviously in this particular case such option was not to his advantage. The applicant concedes this in his rejoinder. I have also gone through the orders of the Hon'ble Supreme Court relied upon by the applicant. The case under consideration before the Hon'ble Supreme Court was the case of replacement scale wherein it was held that the employees need not wait for 12 months from the date of fixation of their pay in their new scales for earning increment in the revised scale. This is not the situation in the circumstances of this OA. The scale of Rs.1640-2900 is not a replacement scale for the erstwhile scale of Rs.425-700 and accordingly the law laid down by the Hon'ble Supreme Court is not of relevance to the Applicant in this case.

5. The learned counsel for the applicant then referred to the order passed by the Bombay Bench of this Tribunal in OA 535/93 decided on 8.2.94.

The order is reproduced as under:-

" The only controversy which arises in the present case is, whether if the applicants would be entitled to put in full one year service in the revised pay scale before they can draw an increment or whether the date of original increment in the lower pay scale would be same for drawing an increment in the revised pay scale.

2. The three applicants who appeared in person joined as Junior Engineers respectively on 9.11.77, 21.3.77 and 25.3.77 in the pay scale of Rs.425-700. The entry grade for this scale of pay by virtue of Govt of India order dated 22/3/91 was Rs.1400-40-2000 EB 50-2300 and on completion of five years of service in the entry grade as on 1/1/86 or thereafter, the Junior engineers will be placed in the higher grade pay scale of Rs.1640-60-2600-EB-75-2900 subject to rejection of unfit and that the higher grade will not be treated as a promotion one, but will be non-functional. Several representations were made by the applicants to the respondents requesting that they should be granted increment on the date which would have been available to them in the lower pay scale and it was unnecessary for them to put in full 12 months of service in the revised scale before drawing the next increment. These representations were not accepted.

3. The learned counsel for the respondents pointed out that by letter dated 12/4/93 (Esbit R 1) the junior engineers were asked to give an option for fixation of their pay in the scale of Rs.1640-2900 within a month from the date of issue of this O.M. and the option once exercised shall be final, but the option was not given by the applicants. It must be noted that the applicants pleaded that several representations were made to the respondents requesting the respondents to adhere to the date of increment in the revised pay scale and it does not appear to be that this was a case where the respondents should have proceeded on the basis that there was no option. Even otherwise filling of this petition because of the rejection of the representations could have served as exercising the options as were required by the letter aforesaid. The next contention was that the application would be barred by time. But this objection can be sustained because non-granting of the increment is a recurring cause of action and the question of limitation cannot arise in the present case.

4. The position of law in this respect is as laid down by the Supreme Court in the case of Union of India and others Vs Shyama Pada Sidhanata and others 1991 AIG Vol 16 where it has been held that the office memorandum contrary to FR 23,22(a)(ii) and 26(b)(i) cannot be given effect to and the employees were entitled to get the first increment in the new scale on the date of due in the old scale.

5. In the result, the application is allowed and the respondents are directed to grant next increment to the applicant in the higher grade pay scale of Rs.1640-2900 on the normal date as due in the entry grade of Rs.1400-2300 in respect of all the three applicants. The applicant will be entitled to costs which is quantified at Rs.500/- in one set. This shall be done within two months from the date of receipt of this order."

The only law which has been laid down in the above order is that an office memorandum contrary to FR 23,22(a)(ii) and 26(b)(i) cannot be given effect to. I have already held that in this OA there is no infraction of the fundamental rules particularly FR 22(a)(ii). This apart the Bombay Bench of this Tribunal has proceeded on the premise that the option to adhere to the date of increment in the lower pay scale should be deemed to have been made. Accordingly, the operative portion states that the date of next increment to the applicants in the higher grade should be the normal date as due in the entry grade of Rs.1400-2300. As far as this OA is concerned I have already observed that <sup>for</sup> this applicant it would <sup>not</sup> have been advantageous to have his increment in the higher scale corresponding to the normal date of increment in Rs.1400-2300. The applicant has himself stated in his rejoinder that he was not interested in that option for getting his pay fixed in the higher scale from the date subsequent to 1.1.86.



Thus I do not find that the orders passed in  
DA 535/93 to be of assistance to the applicant  
in this case.

6. Under the circumstances the DA is dismissed.  
No costs.

*P.T. Thiruvengadam*

(P.T. THIRUVENGADAM)  
Member(A)

LCP