

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(6)

OA No. 294/93 .. Date of decision: 12.07.93

Sh. S.K. Gupta .. Applicant

Versus

Union of India .. Respondents

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Hon`ble Sh. J.P. Sharma, Member (J)

For the applicant .. Applicant in person

For the respondents .. None

JUDGEMENT (Oral)

(Delivered by Hon`ble Sh. J.P. Sharma, Member (J)

The applicant is working as Senior Architect, CPWD. The Senior Architects were appointed on promotion on the Non-functional Selection Grade (NFSG) as Senior Architects w.e.f. 30.10.89. These orders were issued on 5.3.91. By a subsequent order dated 29.10.92 on the representation of the applicant, the applicant was allowed to exercise option in relaxation of the prescribed period of one month. He got the pay fixation after the accrual of increment in the old post. However, after exercise of the option, the pay was allowed to be fixed notionally. The orders regarding fixation of pay, however, was to be effected from the date of issuance of revised pay fixation order and no arrears of past periods would be admissible. The applicant again made a

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representation on 19.Nov. 92 but no effect. The present application has been filed by the applicant on 4.2.93 and notices were issued to the respondents.

The applicant in this application has prayed for the payment of arrears and he also prayed for award of suitable compensation for harrasment.

The respondents contested this application and on 3.5.93 filed a reply. The only contention of the non award of arrears in the Non-functional Selection Grade w.e.f. the date of increment in the old post, the applicant did not give his option to get his pay fixed after accrual of the increment in the old post within one month as is required under FR 22(a) (ii) and by DOPT orders No. 7/1/80-Estt. P.1 dated 26.9.81 and 24.12.81. In view of the fact, the pay of the applicant was fixed as Rs. 4850/- w.e.f. 30.10.89 in accordance with rules.

Subsequently, on the representation of the applicant, his request was agreed to with reference to the date given in option notionally without payment of arrears.

The case was taken up in the pre-lunch session, Sh. P.P. Khurana, learned counsel for the respondents was not available. The matter was adjourned after lunch break and the learned counsel on behalf of the respondents is not present. The case is being, therefore, decided after hearing the applicant in person and on the basis of the counter filed by the respondents. The applicant has pointed out in the

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averments made in the counter that his pay was fixed at Rs. 4850/- w.e.f. 30.10.89. It is a wrong statement of fact. It was however, fixed as Rs. 4950/- w.e.f. 30.10.89. The basic question that arise is that when the applicant did not give option as required under DOPT orders dated 26.9.81. and 24.12.81, then the pay would not have been fixed on the date of accrual of increment in the old post. So far, it cannot be disputed because one months period was allowed to the applicant to give his option. However, since the one month period was condoned by the respondents themselves and the request of the applicant was acceded to with respect to the date given in option i.e. fixation of his pay after accrual of the increment in the old post, the action of the respondents not giving the arrears from the date of such fixation, shall be against the principle of natural justice. When an error has been condoned, then full benefit has to be given after condonation of the act.

It has also been argued by the applicant that the pay of the applicant was fixed w.e.f. 30.10.89 i.e. Rs. 4950/- to be drawn for a whole year upto 31.10.90. He has annexed the pay chart in para 4.b of the application which is reproduced below :

Month	Pay	DA	CCA	Total	Pay	DA	CCA	Total		
									Due	
										Drawn
11/89	4950	1238	100	6288	5000	1250	100	6350		
12/89	4950	1238	100	6288	5000	1250	100	6350		
1/90	4950	1386	100	6436	5000	1400	100	6500		

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2/90	4950	1386	100	6436	5000	1400	100	6500
3/90	4950	1386	100	6436	5000	1400	100	6500
4/90	4950	1386	100	6436	5000	1400	100	6500
5/90	4950	1386	100	6436	5000	1400	100	6500
6/90	4950	1386	100	6436	5000	1400	100	6700
7/90	4950	1584	100	6634	5000	1600	100	6700
8/90	4950	1584	100	6634	5000	1600	100	6700

Taking all the facts into account when once the option which was required to be given within one month time has been accepted subsequently, there is no objection by condoning the delay by the respondents withholding of the arrears of pay on account of non-functional selection grade w.e.f. 30.10.89 shall be arbitrary and unjust.

The application is therefore, allowed partly and the respondents have already fixed pay of the applicant in non-functional selection grade w.e.f. 6.11.92. The respondents are directed to pay arrears arising out of grant of non-functional selection grade w.e.f. 1.11.89 to 5.11.92.

The other relief of compensation claimed by the applicant is dis-allowed. The respondents are directed to comply with the directions within a period of 3 months from the date of receipt of this order.

There will be no order as to costs.

J. P. Sharma
(J. P. Sharma) 12.7.93
Member (J)