

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD.

Allahabad this the 22nd day of December 1995.

Original Application no. 1072 of 1994.

Hon'ble Mr. S. Dayal, Administrative Member.

Dr. N.K. Agarwal, Senior Divisional Medical Officer,  
Northern Railway Hospital, Allahabad.

... Applicant.

C/A Sri K.S. Saxena,

Versus

1. Union of India (through General Manager, Northern Railway Baroda House, New Delhi).
2. The Divisional Railway Manager, Northern Railway Allahabad.
3. The Senior Divisional Accounts Officer, Northern Railway, Allahabad.
4. The FA&CAO/Northern Railway Baroda House, New Delhi.
5. The Divisional Railway Manager, Northern Railway Ferozepur.

... Respondents.

C/R Sri A.K. Gaur.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the  
Administrative Tribunal Act, 1985.

2. The applicant seeks following reliefs:-

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- i. Fixation of annual increment of the applicant in selection grade of Rs. 4500-150-5700 from 01.01.91 in place of 04.06.90.
- ii. Direction to the respondents to pay arrears because of such re-fixation of the annual increment.
- iii. Award the cost of the application.

3. The applicant has stated in his application that he was posted as Senior Divisional Medical Officer at Amritsar and was placed in selection grade from 04.06.90, vide GM/P.H.Qs. office Baroda House, New Delhi, letter no. 240-E/19-XXI/Eia dated 09.07.91. The applicant by his letter dated 14.07.91 requested Sd/- DPO and Sr. DAO, Northern Railway Ferozepur that his fixation of pay in the selection grade may be done from 01.01.91. He claims that request was as per existent rules. [The applicant was transferred from Amritsar to Allahabad on 05.09.91.] The applicant claims that instructions on the subject were circulated under Railway Board's letter no. PC-IV/89/03/101/24 dated 07.06.89 <sup>entitling</sup> ~~intitling~~ him to such a fixation from the date of increment. He states that 04.06.90 was the date of his increment on his old post. He states that the respondents have fixed the selection grade from 04.06.90 inspite of representation there by causing <sup>financial</sup> ~~financial~~ loss to him. He has mentioned that he was given the pay fixation of Rs. 4650 in the selection grade w.e.f. 04.06.90 which would make his pay Rs. 4700 on 01.06.91. While he was drawing Rs. 4575 in his old date upto 31.12.90 and one increment in the old scale would have made his pay Rs. 4700 on 01.01.91 and his pay in the selection grade would have been fixed at



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Rs. 4800.

4.           Argument of Shri K.S. Saxena learned counsel for the applicant and Shri A.K. Gaur learned counsel for the respondent were heard.

5.           The first ground on which the relief has been claimed is the option which has been exercised for fixation of pay in the selection grade w.e.f. 01.01.91 which was the date of his increment in the old scale. Annexure A-5 is a copy of the Railway Board letter dated 07.06.89 under which the applicant claims the benefit. Para 4 of his letter stipulates that option to get pay fixation done after accrual of increment in the old post within one months from the date of appointment. The date of appointment is shown to be 04.06.90 in case of the applicant. This appointment, however, was communicated vide Railway Board letter dated 24.06.91 as mentioned in Annexure A-6 and it seems to have been communicated to the applicant on 12.07.91 as it clear from the same annexure. Hence , the applicant appears to have exercised his option within one month from the date of communication of the order of appointment and this would make him as employee who exercise his option within the time laid down. Thus this objection taken by the respondents in para 6 of their CA of <sup>non-</sup>~~own~~ exercise of option <sup>within</sup>~~after~~ one month has no validity.

6.           The respondents have raised another issue in their CA. This issue is that the so called option of the applicant was received neither by Sr. Divisional Accounts

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Officer nor by Divisional Accounts Officer of Ferozpur.

- The respondents have stated that they have not received
- the option of the applicant. This reply <sup>cannot be accepted</sup> ~~is not believed~~
  - for reasons <sup>given hereafter</sup>. Paragraph 3 of the letter of Railway Board dated 07.06.89 (Annexure A/8) requires that the respondents
  - should have given <sup>invited the</sup> ~~an~~ option <sup>of</sup> to the applicant by writing to
  - him ~~inviting~~ it. The respondents have not claimed to have done it in their counter affidavit. On the other hand when the applicant claims to have sent the option the copy of which has been annexed to the OA as Annexure A/1, they state
  - that they have not received it and <sup>require</sup> ~~require~~ the applicant to prove that it was received. Secondly, the applicant had sent a number of reminders claiming that option was given by him and the Sr. Divisional Accounts Officer, Allahabad, also addressed a letter and a reminder, yet the counter reply does not deny the receipt of reminders and does not mention whether any reply was given and the claim of the applicant denied at that time. The counter reply only refers to letter dated 08.08.94 which was probably addressed to Senior Divisional Accounts Officer, Allahabad, in which the receipt of option was denied. This shows that the
  - preponderance of probability is that the communications was received in the offices of the Sr. DPO and Sr. DAO Ferozpur because the office has shown its culture of not attending to <sup>incoming</sup> ~~incoming~~ written communications.

7. In the Circumstances the Respondent no. 2 is directed to refix the pay of the applicant in the selection grade with effect from 01.01.91 taking the option of the

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applicant as received within time in the offices of the Sr. DAO and Sr. DPO Ferozpur and give arrears and terminal benefits on the basis of pay so refixed. The compliance of the direction of refixation of pay, payment of arrears and terminal benefits on the basis of pay so refixed should be done within three months of the communication of this order to Respondent no. 2 <sup>covering</sup> by the applicant along with a letter stating his claim.

8. There shall be no order as to costs.

  
Member-A

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