

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 26TH DAY OF MAY 2009)

Present

Hon'ble Mr. Justice A. K. Yog, Member (J)

Hob'ble Mrs. Manjulika Gautam, Member (A)

ORIGINAL APPLICATION No.1219 Of 2002.
(U/S 19, Administrative Tribunal Act, 1985)

Krishna Mohan son of late Sri Mohan Lal, Sharma, retired as Assistant Engineer on 31.7.1993 (Building and Road) Garrison Engineer (West) New Cantt, Allahabad, resident of 337, Attarsuiaya Allahabad.

.....Applicant.

By Advocate: Shri O.P. Khare.

V E R S U S

1. Union of India through Secretary, Ministry of Defence, (Engineering Branch), New Delhi.
2. Engineer-in-chief, Army Headquarters, Military Engineer Services, D.H.C.P.O. Kashmir House, New Delhi – 110011.
3. Garrison Engineer (West) New Cantt, Allahabad.
4. Garrison Engineer, Military Engineering Services, Dinjan, District Dibrugarh, Assam.

..... Respondents.

By Advocate: Shri V.K. Pandey
Shri S. Chaturvedi.

ORDER

(Delivered By : Justice A.K. Yog, Member-Judicial)

Heard learned counsel for the parties. Perused the pleadings and documents on record.

2. By means of this OA applicant has claimed following relief/s:-

"8. Relief Sought.

This Hon'ble Tribunal be graciously pleased to grant following relief to the Applicant :-

- (i) *That the orders dated 31.7.2001, 11.8.2001 and 4.1.2001 rejecting the representation for fixation of pay after promotion under 22 C be quashed to the extent it denies re-fixation of pay of the Applicant under Rules, (Annexure-A-1, A-2 and A-3).*
- (ii) *That the respondent No. 2 be directed to re-fix the pay of the Applicant on promotion from Superintendent (Building and Roads) grade 1 to the post of Assistant Engineer B/R with reference to the option dated 8.4.1985 under FR 22C, G.O.I order (15) and as per option dated 8.4.1985 and pay consequential benefits due to revision of pay and pension from one rate.*
- (iii) *That the respondent No. 2 be directed to pay interest @ 18% per annum as per Apex Court's Judgement in V.L. Mehrotra Vs, State of U.P. and Others, U.P. and Others, U.P.L.E.B.C (2000) 2-1599.*
- (iv) *Any other and further relief that this Hon'ble Tribunal deems fit to order in the facts and circumstances of the case.*

....."

3. Relevant extract of the impugned order dated 31.07.2001

(Annexure A-1 to the Compilation-1 to the OA) reads:-

".....
2. Your representation for stepping up of pay at par with your junior Shri Daya Ram has been duly considered. However, it is regretted that it cannot be accepted on account of following reasons:-

- (a). The pay of your junior, Shri Daya Ram, was re-fixed on promotion after he had exercised option at the lower scale. His pay was fixed in consonance with CAT Allahabad Judgement on

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OA 5/92. His pay was @ Rs. 880/- wef 02 Jul 84 with DNI 01 July 85 and raised to Rs. 920/- on 01 Jul 85.

(b). On your promotion as AE B/R in Nov 83 you did not exercise option for your pay fixation in the promoted post wef the date of your next increment in lower post. This option was to be exercised by you under FR 22 within one month of your promotion. As you failed to do so, your pay cannot be stepped up at par with your junior. As such your pay was fixed @ Rs. 845- wef 10 Nov 83 and raised to Rs. 880/- wef 01 Nov 84 and further raised to 920/- on 01 Nov 85.

.....”

4. Objection Representation dated 26.04.01 filed by the applicant was again rejected by Engineer in Chief vide impugned order dated 11.09.2001 (Annexure A-2/Compilation-I), Para 3 of the said order is reproduced :-

“.....
3. As regards your claim of exercising option on promotion as AE B/R as per letter at Appx 'B' to your above representation, it is invalid as per Govt. rules in force then as well as now, having not been exercised within the limitation period of one month of promotion date. It was also not in proper format nor addressed correctly or countersigned. No casualty in the Part II Order was also published recording this option as required.

.....”

5. Para 2, 3 and 4 of another impugned order 4 Jan 2002 passed in OA No. 461/93 by Engineer in Chief Annexure (A-3/Compilation-I) reads :-

“.....
2. You have been intimated factual position under Speaking Order issued to you in compliance with Hon'ble CAT Allahabad judgement dated 21 Mar 2001 in OA 461/93 vide

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this office letter No. OA 461/93/97/EIB (P&A) dated 31 Jul 2001.

3. You have rightly said that Hon'ble CAT Allahabad had held option as valid in respect of Shri Daya Ram, AE B/R.. Judgement of the CAT is applicable to that particular CAT case and it cannot be extended in your case.

4. In view of the position explained above, it is regretted, your pay cannot be stepped up at par with Shri Daya Ram, AE B/R.

.....”

6. Reference is also made to the order dated 23.12.94 (Annexure A-1/Compilation-II) in the case of *Daya Ram Vs. Union of India and others* in OA No. 5 of 92 passed by CAT Allahabad Bench. Relevant Para 45 it reads :-

“.....
4. From the averments made in the counter affidavit by the respondents, it is clear that the applicant had exercised his option, by his option certificate dated 22nd September, 1986, which was within one month of his promotion to the grade of Assistant Engineer. The said certificate of option annexed as Annexure-1 has also been counter signed by an officer K.P.R. Singh the then Garrison Engineer (Project) Port Blair, Andaman. From para 15 of the counter affidavit, the respondents have admitted the option certificate of 22nd September, 1986, as being available on record and the benefit was not given merely on the ground that the part II order was not issued. We are unable to appreciate the contention of the respondents that the applicant being in the Administration should have ensured the publication of the part II order. It is not necessary to go into the question as to who was responsible for the said publication of the part II order. Part II order, ofcourse, provides the necessary authority for the Administration to take further action on the option exercised by the applicant. It is a consequential order arising out of the option. At a later stage when the matter was taken up with the Garrison Engineer (Project) Port Blair, Andaman, he had declined to

issue a part II order on the ground that the applicant's option was not submitted in his office. We, however, find that the Garrison Engineer had in fact attested the option certificate dated 22nd September 1986. The respondents while admitting the availability of the said option on their record, have not contested, either genuineness of the option or varacity of the attestation by the Garrison Engineer, Port Blair. In the circumstances, due oredence will have to be given to the said option dated 22nd September, 1986. The more fact that the consequential part II order had not been issued for what ever reason, can not be held against the employee for his rightful claim for re-fixation of pay under the rules.

In the light of the above discussions, we find that there is merit in the application and, therefore, the application is allowed. We direct the respondent to re-fix the pay of the applicant on promotion from the post of Superintendent. Buildings and Roads Grade I to the post of Assistant Engineer, with reference to the option certificate dated 22nd September, 1986, and consequential benefits thereon, within a period of three months. No order as to costs.

.....”

(Underlined to lay emphasis)

7. It has come on record that the applicant submitted representation dated 13.08.01 (Annexure A-12/Compilation-II), for convenience, contents of it are reproduced:-

“.....
 In para 2 (a) of your above quouted letter it has been stated that pay of my Junior Sri Daya Ram was refixed on promotion after he had exercised option at the lower scale and his pay was fixed at Rs. 880/- w.e.f. 2nd July 1984 with DNI 1st July, 1985 and raised to Rs. 920/- on 1st July, 1985. In this connection I may be permitted to submit that above position in respect of Sri Daya Ram at stated in your letter quoted above is totally incorrect, misconceived and not borne from the facts as per his service record. The facts as per his service records are that

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Mr. Daya Ram was promoted on 11th Feb. 1984 on adhoc basis and his pay was fixed at Rs. 880/- with effect from 11.2.84 as AE B/R (Adhoc), he had not exercised option for fixation of pay from the next incremental date in Supdt. B/R Grade-I till September 1987. This fact is corroborated from the Appendix 'A' to GE (Project), Minnie Bay, Jungalighat Port, Port Blare Andaman letter No. 1584/Pay fix/356/E1 dated 08 Sept. 1987 (Photostat Copy enclosed as Appendix 'A'). I have asked for stepping up of my pay equal to Mr. Daya Ram in A.E. B/R Grade under Normal Rules. Exercising of option for fixation of pay from incremental date in lower grade (Supdt. B/R Grade-I) is a special and next casualty or for that matter knocking the door of CAT is a special circumstances. Therefore not conceding of my request on the plea that his pay (Mr. Daya Ram) was fixed in consonance with CAT, Allahabad Judgement on OA 5/92 is not comparable and is distortion of facts. It would have been appreciable that my case should have been compared with the pay that was fixed initially under Normal rule with out invoking the provision of option/CAT order.

3. It has been stated in Para (b) of your letter under reply that on my promotion as AE B/R in Nov. 83, I did not exercised option for pay fixation in promoted post w.e.f. date of my next increment in lower post. As I failed to do so my pay cannot be stepped up to my Junior. This statement is also not correct as I did exercised my option on 8 April 85, as soon as I came to know that I have been promoted as AE B/R (Regular) vide HQRS. Eastern Command Calcutta Letter No. 131051/1813/12/Engrs/E1B dated 23 March, 1985. I handed over the option to Sri S.C. Varshney the then A.&E(Tech.) on 8.4.1985, (Photostat copy enclosed. As appendix 'B'). I reminded GE MES Dinjan on 10 Sept. 1985 regarding delay in action on my option for refixation of pay dated 8.4.1985 (Photostat Copy of letter dated 10 Sep. 1985 enclosed as appendix 'C') It is further established by the GE Dinjan letter No. 1062/63/E1 dated 5.3.1986. That no action was taken by the authorities as it was wrongfully referred to CDA Patna (Audit Officer) (Photostat copy of letter enclosed as appendix 'D') In this connection I am to say that GE Dinjan should have taken action on my option by forwarding to Cadre controlling authority

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as advised by CDA Patna. Therefore it is submitted I did exercised my option with in one month of my promotion as AE B/R regular.

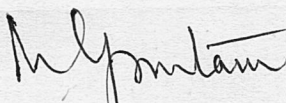
In view of foregoing I again request your goodself to reexamine my case in light of above facts and hope that my request for stepping of my pay/refixation be brought as par with my Junior Sri Daya Ram. Please acknowledge.

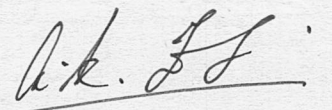
Dated : 13.8.2001

Yours faithfully.

8. In view of the above, impugned orders dated 31.7.2001, 11.8.2001 and 4.1.2002 (Annexure A-1, A-2, A-3) cannot be sustained. In the result impugned orders (Annexure A-1, A-2 and A-3) dated 31.7.2001, 11.8.2001 and 4.1.2002 are set aside, with direction to the Respondent Authority to consider the Representation (Annexure A-12-Compilation-II) afresh in the light of the order of this Tribunal dated 23.12.1994 in OA No. 5/92- Daya Ram Vs. U.O.I. & Ors. (Annexure A-1-Compilation II).

9. OA stands allowed. No costs.


MEMBER (A)


MEMBER (J)

//S.Verma//-