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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 89 OF 1992
TaxNox

DATE OF DECISION 3-2-1994

Shri K.G. Patel, Petitioner

Mr. M.S. Trivedi, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent(s)

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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Shri K.G. Patel,
Senior Auditor,
AG, Audit II,
Rajkot.

..... Applicant.

(Advocate: Mr. M.S. Trivedi)

Versus.

1. Union of India,
Through Comptroller &
Auditor General,
O/O C.A.G., New Delhi.

2. The Accountant General
O/O A.G. II, Audit,
Gujarat, Rajkot.

3. The Accountant General,
Audit, O/O A.G.,
Ahmedabad, M.S. Building,
Ahmedabad.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A. No. 89 OF 1992

Date: 3-2-1994

Per: Hon'ble Mr. V. Radhakrishnan, Admn. Member.

Heard Mr. M.S. Trivedi, learned advocate for the applicant and Mr. Akil Kureshi, learned advocate for the respondents.

2. This is regarding exercise of option by the employees who were desirous of getting their pay fixed in the revised scale of pay from a date subsequent to 1.1.1973, but not later than 31.5.1984 to indicate their option in regard to their specific dates from which they wanted their pay to be fixed in the revised scale of pay as per CCS(RP) Rules, 1973. The final date of exercise of such option was extended from time to

time and finally vide Ministry of Finance, Department of Expenditure U.O.Note No. 1(2)E-III/88 dated 24.10.88 last date for option was fixed as 1st December, 1988, enclosure to Annexure A-1, page 10. The case of the applicant is that he was unaware of the order issued by the Ministry of Finance as he was a member of the Audit party and he was doing outside audit. He was not aware of the Ministry of Finance U.O.Note regarding exercising option. The applicant's grievance is that the respondents did not bring these order to his notice which the result that he could not exercise his option as required under the above order before the crucial date i.e., 1.12.1988. He came to know of the concerned U.O.Note from his well-wisher friends and he applied for extension of time for exercising the option on 29.5.1989. He represented that unless he was given the extended time to give his option he would be put to financial loss. Ultimately he was informed after repeated representations that he could not allowed to exercise his option after the said date i.e., 1.12.1988.

3. The contention of the applicant is that even the order of Ministry of Finance, states that "it may now be ensured that the revised decision is brought to the notice to all affected persons". As the respondents had not brought these orders to the notice of the

applicant within that dates specified, it was not possible for him to exercise his option and hence refusal to extend the time beyond this date to unable him to exercise his option is arbitrary and unjust.

4. The respondents have filed reply. They have stated that they had given due publicity to the Ministry of Finance circular by displaying it on Notice Board and by circulating among various section situated at main office at Rajkot. They also say "efforts were made to contact the field parties and communicate to them reference involved". It is their say that because of their efforts 13 members of the field parties exercised their option in time. In a similar way the applicant could have also exercised his option in time. Hence they have pleaded that the applicant's prayer should be rejected.

5. Mr. Trivedi for the applicant stated that as the applicant was a member of the Audit party he was doing outside audit. He was not aware of the Ministry of Finance U.O. Note regarding exercising option. He could not expect to see the notice board in the Headquarter office that he was not working there. No communication was addressed to him informing him of that letter and hence being unaware of the letter he could not exercise the option. He therefore, argued that the



applicant should be allowed extension of time to exercise option as otherwise he will put to financial hardship. He also mentioned the case decided in the Gujarat High Court in C.A.801/88 decided on 27.1.93 when it was held that Administrative instructions should be published in some manner to make it known for persons who are sought to be affected by it. Mode of publication may vary but reasonable publication of some sort must be there. As the instructions were not made known to the applicant in time he was not able to exercise his option, and it is only just that the request of the applicant for extension of date of exercising his option should be allowed when he applied to the authorities after he became aware of it.

6. Mr. Akil Kureshi for the respondents stated that wide publicity was given to the office staff by putting the circular on Notice Board. Due to the efforts made by the respondents to communicate the order to the outside audit parties, 13 persons had exercised the option in time. There was no reason why the applicant also should not have come to know of these order. The applicant had waited for nearly for six months to give his representation and hence he was barred by delay and laches and he could not claim further time for exercising the option. He therefore, argued that the request of the applicant for extension of time ~~shown~~ limit should be rejected.

[Signature]

7. After hearing the arguments of both sides I am convinced that the applicant who was on outside work in audit parties, had not come to know of the U.O. Note of the Ministry of Finance requiring him to exercise option before 1.12.1988. It is also seen that no communication was addressed to him by the respondents to make him aware of the said orders. The applicant gave an application for allowing him to exercise the option as soon as he came to know of the orders i.e., on 26th May, 1989. This was not accepted by the Headquarters office. The contention of the applicant that he was not able to exercise the option within time appears to be genuine and the authorities ought to have granted relaxation in respect of time limit for exercising the option, it has been held by this Tribunal in O.A. 195/93. "There is no embargo on the competent authority against making relaxation in respect of time limit in genuine and fit cases". In the present case the authorities should have appreciated the fact that there was a distinct possibility of the applicant being unaware of the Ministry of Finance orders. Had he known this order, he would have certainly exercise the option within the prescribed time since it was beneficial to him. This being the case I am of the opinion that the respondents could have taken a liberal view about the time limit the facts and circumstances of the case. The respondents had the

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implied power to make relaxation in respect of the time limit. In so far as the question of applicant's claim being barred by delay and laches it seen that the applicant has a genuine case and it would be unjust to refuse relief to him because grant of relief to the applicant is not going to cause any prejudice to anyone. In view of the matter taken as above, I pass the following order:

O R D E R

The application is allowed and the respondents are directed to allow the applicant to exercise his option as per Ministry of Finance U.O. Note dated 24.10.88 which the applicant shall do within four weeks from the date of receipt by him of respondents' communication and on the basis of said option exercised to grant him all consequential benefits of refixation of his pay in the revised pay scale and on subsequent revision of pay scales as per rules. As the applicant has approached the Tribunal in July 1992, arrears of pay and allowance consequent on the refixation is allowed only from 8.7.91. Application is disposed of with the above direction.

No order as to costs.



(V. Radhakrishnan)
Member (A)

vtc.

**THE NATIONAL ADMINISTRATIVE TRIBUNAL
Ahmedabad Bench**

Application No. 04/89/92 of 19

Transfer Application No. _____ Old W. Pett No. _____

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated : 28/02/94

Countersigned.

~~Section Officer/Court officer~~

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Signature of the Dealing
Assistant