

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 301 OF 1992
TAX NO.

DATE OF DECISION 3-2-1994

Shri L.G. Raval, Petitioner

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

Versus

Union of India & Ors. Respondents

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 ?

Shri L.G. Raval,
Senior Auditor,
A.G. Audit II,
Rajkot.

..... Applicant.

(Advocate: Mr. M.S. Trivedi)

Versus.

1. Union of India,
(Through) Comptroller &
Audit 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
Multistoriyed Building,
Ahmedabad.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

JUDGMENT

O.A.No. 301 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 24.10.1988 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 orders issued by the Ministry of Finance as he was at the time on deputation to Government of Gujarat. The applicant's grievance is that the respondents did not bring these order to his notice with the result that he could not exercise his option as required under the above order before the crucial date namely 1.12.1988. As per the applicant, he came to know of the Ministry of Finance letter by fortuitous circumstances and immediately thereafter he submitted representation dated 26.5.1989 to the respondents to allow him to exercise the option. 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 by his Headquarter office after repeated representations that he could not be 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 due publicity was given to the Ministry of Finance D.O letter and it was displayed on the Notice Board on circulated among various section in the main office at Rajkot. Efforts were made to ~~as~~ contact the field party's and communicate to them. Because of this 13 members of outside audit parties had exercised their option in time and in a similar way the applicant could also have done. The respondents have therefore pleaded that the applicant has no case and his prayer should be rejected.

5. It is not disputed that the applicant was relieved from the office of the A.G Rajkot on deputation to Gujarat Water Supply and Sewerage Board, Gandhinagar as Divisional Accountant. He was relieved on 31.10.1988. The respondents have not said anything regarding communication of the Ministry of Finance orders to persons on deputation in general and in particular to the applicant. Quite obviously no separate communication was sent to the applicant



and in the absence of any communication the applicant was not in a position to exercise his option within the said date of 1.12.1988. Immediately after he came to know about the letter, he gave representation dated 29.5.1989, Annexure A-3, to allow him to exercise option. It appears that the matter was taken up with the Headquarter office and after about three years he was informed vide Annexure A-5 letter dated 24.1.1992 that his representation was rejected.

6. Mr. Trivedi for the applicant stated that as the applicant was on deputation, he was not aware of the circular and he could not be expected to see the notice board in the Headquarter office where he was not working. 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 where it was held that Administrative instructions should be published in some manner to make it known to 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. 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.

7. Mr. Akil Kureshi for the respondents stated that wide publicity was given to the office staff by putting a circular on Notice Board. He also stated that the applicant had waited for nearly for six months to give his representation and the applicant was barred by delay and he could not claim further time for exercising the option when many other office staff who were affected had come to know about the letter and had exercised option. He therefore, argued that the request of the applicant for extension of time limit should be rejected.

8. After hearing the arguments of both sides I am convinced that the applicant who was on deputation to the Government of Gujarat, 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 ~~not~~ 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 24.10.1988 which the applicant shall do within four weeks date of receipt by him of respondents' communication from the / 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 8.7.1991. Application is disposed of with the above direction. No order as to costs.


(V. Radhakrishnan)
Member (A)

vtc.