

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 326 of 1992

~~Exhibits~~

DATE OF DECISION 4-11-1993.

Shri J.N. Kappe & Ors. Petitioner

Shri M.D. Rana Advocate for the Petitioner(s)

Versus

Union of India & Ors Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.E. Patel

Vice-Chairman

The Hon'ble Mr. W. Radhakrishnan

Member (A)

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 ?

No.

1. Shri J.N. Karpe,
Tech. Supervisor,
2. Shri K.M. Patel,
Tech. Supervisor,
3. Shri K.G. Devlekar,
Tech. Supervisor,
4. Shri B.J. Chauhan,
Tech. Supervisor,

In the Office of

The Asstt. Engineer (ELE),
C.T.O., Bhadra,
Ahmedabad

..... Applicants

Shri M. D. Rana

..... Advocate

Versus

1. The Chief General Manager,
Telecom, Gujarat Circle,
Khanpur Post Office,
Ahmedabad.
2. General Manager,
Telephones, Ramnivas Bldg.,
Khanpur, Ahmedabad.
3. Union of India through Director
Deptt. of Telecommunication,
Sanchar Bhavan, Ashoka Road,
New Delhi.

..... Respondents

Shri Akil Kureshi

..... Advocate

J U D G M E N T

IN

O.A. 326 of 1992.

Date:- 4 - 11 - 1993.

Per Hon'ble

Shri N.B. Patel

Vice-Chairman

Applicants challenge the decision whereby the option exercised by them on 16-3-39 for fixation of their pay in accordance with the provisions of Rule 7 of the Central Civil Services (Revised Pay) Rules, 1986 was rejected on

.....3/-

the ground that the option was exercised beyond 31-8-88 which was the last date for exercise of the option.

2. They have prayed for a direction to the respondents to accept the option exercised by them on 16-3-89 and to fix their pay in the revised pay scales on the basis of their option.

3. All the four applicants were working as Technical Supervisors in the Office of the Assistant Engineer(Electrical) C.T.O., Ahmedabad at the relevant time. One of the applicants has since retired and the other three applicants are still in the service of the Telecommunication Department. On the revision of the pay scales w.e.f. 1-1-86, the applicants had opted to switch over to the revised pay scales from the respective dates of their next increment falling between 1-1-86 and 31-12-87. By the O.M. dated 27-5-88 (Annexure A-1) option was offered to the applicants and the similarly situated persons, whether their pay should be fixed in accordance with the Fundamental Rules or under Rule 7 of the Central Civil Services (Revised Pay) Rules, 1986. The option was required to be exercised by 31-8-88. It was specifically stated in the O.M. dated 27-5-88 that the option once exercised shall be final. The applicants exercised option for fixation of their pay under Rule 7 of the Central Civil Services (Revised Pay) Rules, 1986 on 16-3-89 and the option exercised by them is rejected solely on the ground that it was exercised beyond the prescribed period, that is, after 31-8-88.

4. The applicants have made a grievance that, though they had exercised option on 16-3-89, that is, beyond the stipulated date, it was un-just on the part of the respondents to

reject their option in the facts and circumstances of the case. According to the applicants, the O.M. dated 27-5-88 was not circulated in their office till 16-3-89 or a few days prior thereto and, therefore, they could not exercise the option till 16-3-89. The applicants have said that there was a default on the part of their Department in not circulating, in time, the O.M. dated 27-5-88 and they should not be penalised for the default committed by the Department.

5. There is no controversy about the fact that the O.M. dated 27-5-88, whereby the last date for exercising the option was fixed as 31-8-88, was not notified in the office where the applicants were working at the relevant time. The respondents have also stated that the case of the applicants ^{the} and other similarly situated persons was taken up with the M/o Finance for relaxation of the time-limit within which options were required to be exercised but the Finance Ministry had turned down the request for relaxation of the time-limit and hence the applicants' option could not be accepted. Annexure A-2, which is a letter addressed by the Assistant General Manager (A) Ahmedabad to the C.G.M. Telecom Gujarat Circle dated 1-12-89, clearly bears out the truth of the version of the applicants that the O.M. in question was not notified in the office of the applicants as it was not received by that office from the DET, Ahmedabad. It is also clear from this letter that, ^{though} the O.M. was circulated by the DET, Ahmedabad, under endorsement No.A-29/CCS RP/Rules dated 29-7-88 to all subordinate units, there was an inadvertent omission to include A.E. Electrical, Sub-Division, Ahmedabad where the applicants were working. In this letter, it is also candidly admitted that it was thus due to administrative

lapse that the officials could not exercise the option in time. The Assistant General Manager has, therefore, requested the C.G.M. Telecom, Gujarat Circle to obtain necessary approval of the competent authority for relaxation of the time-limit to accept the option of the applicants after the due date, i.e., 31-1-88, up to 16-3-89. The C.G.M. then took up the matter with the Ministry (vide Annexure A-3 dated 13-2-90) with a recommendation that the option exercised by the applicants and the other officers, though belated, may be accepted as the said officers had not been able to exercise the option in time because of administrative lapse in not notifying the O.M. dated 27-5-88 in their office in time. It appears that the Department of Telecom took up the matter with the Finance Department but, by its letter dated 27-11-91 (Annexure A-7), the Finance Ministry has turned down the proposal. It is thus abundantly clear that there was absolutely no lapse on the part of the applicants in not exercising the option in time and the delay in the exercise of option had occurred solely on account of default or omission committed by the Department. We are clearly of the opinion that the applicants cannot be denied the benefit contemplated by the O.M. dated 27-5-88 because of ^{the} ~~the~~ default committed by the Department. As held by us in our decision dated 23-9-93 in O.A. 195 of 1993, the authorities have the power to relax time-limit in such cases and the action of the Finance Ministry in declining to relax the time-limit, in the facts and circumstances of the case of the applicants, was un-just and cannot be sustained. We, therefore, allow this application and direct the respondents to re-fix the pay of the applicants on the basis of their option dated 16-3-89

treating the said option as accepted and to grant all consequential benefits of pay and retiral benefits consequent upon the pay fixation of the applicants on the basis of the option dated 16-3-89 exercised by them. Re-fixation of pay and retiral benefits (in the case of one of the applicants) is ordered to be made within two months hereof.

No order as to costs.



(V. Radhakrishnan)
Member (A)



(N.B. Patel)
Vice-Chairman.

'pkk'

- OA 326/92

Mr. Rave Vs. Mr. ~~Mr.~~ ^{Kuranki}

All to applicants Tech, Surveying

1-1-86 Revision came into
force

27-5-88 Memorandum by
Jin Ministry
(Para 3, 4)

31-8-88 Last date
Final

16-3-89 option exercised

A/1 ~~1-12-89~~

1-12-89

Shows O.M not
circulated as not
received by A. E.
Elect. (Submitted A/100)
For extension

A/3

C. C. M. Div. Officer,
Telecom Dept.

Date	Office Report	Order
18-2-1994		<p>Bar Association has resolved to abstain from work as a measure of condolence on the death of Mr. Chimanbhai Patel, Chief Minister of Gujarat State, Adjourned to 4-3-1994.</p> <p style="text-align: right;">(K. Ramamoorthy) Member (A)</p> <p style="text-align: center;">*x</p>
4-3-94		<p>Mr.Kureshi states that a copy of this M.A. is furnished to Mr.M.D.Rana. However, Mr.Rana is not present.Adjourned to 09-3-94. Mr.Kureshi undertakes to inform Mr.Rana.</p> <p>(K.Ramamoorthy) Member (A)</p> <p style="text-align: right;">(N.B.Patel) Vice Chairman</p> <p>AS</p>
4-3-94		<p style="text-align: center;"><u>M.A.77/94 IN O.A.326/92</u></p> <p>Heard Mr.Kureshi and Mr.Rana. M.A.allowed and extension of time granted till 31-3-94 to implement the judgment in O.A.326/92. M.A. stands disposed of accordingly.</p> <p>(K.Ramamoorthy) Member (A)</p> <p style="text-align: right;">(N.B.Patel) Vice Chairman</p> <p>AS</p>

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