

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. /112/93
T.A. No.

DATE OF DECISION 29-4-1993

M.B.Tripathi Petitioner

Shri K.V.Oza Advocate for the Petitioner(s)

Versus

Union of India & others Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Judicial Member

The Hon'ble Mr. M.R.Kolhatkar : Administrative Member

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 ?

Mahendra Bhalchandra Tripathi,
Near Chorawali Mata, Kharwad,
at & post : Sarkhej,
Ahmedabad.

....applicant.

Advocate : Mr.K.V.Oza

versus

1. The Secretary,
Central Board of Excise & Customs,
Ministry of Finance, Department of Revenue,
Government of India, New Delhi-110 001.

2. The Collector,
Central Excise & Customs,
Customs House, Navrangpura,
Ahmedabad. 380 009.

3. The Addl. Collector, (Personnel &
Vigilance), Central Excise &
Customs, Customs House, Navrangpura,
Ahmedabad-380 009.

.....respondents.

O R A L O R D E R

O.A./112/93

Date : 29-4-93

Per : Hon'ble Mr.R.C.Bhatt,
Judicial Member.

None is present for the applicant.

Hence, the application ~~is~~ is dismissed for default.

M.R.Kolhatkar
(M.R.Kolhatkar)

Member (A)

R.C.Bhatt
(R.C.Bhatt)

Member (J)

*SS

Date	Office Report	Order
13.12.93		<p>Mr.K.V.Oza, learned advocate for the applicant, in the circumstances explained by him, M.A. 662/93 admitted and the order of dismissal of the O.A. is set aside. O.A restored to file. M.A. 662/93 is disposed of. Notice pending admission. Respondents to file reply within four weeks. Call on 17th January, 1994.</p> <p style="text-align: right;"><i>MR</i></p>
		<p>(V.Radhakrishnan) Member (A)</p> <p>vtc.</p> <p>Mr.K.V.Oza is present for the applicant. At the request of Mr.Variava, adjourned to 01-2-94.</p> <p style="text-align: right;"><i>MR</i></p>
17.1.94		<p>(V.Radhakrishnan) Member (A)</p>
1-2-94		<p>*ssh*</p> <p>Mr.Oza is present for the applicant. Adjourned to 21-2-94, at the request of Mr.Variava for filing reply. No further time will be given.</p> <p style="text-align: right;"><i>MR</i></p>
		<p>(V.Radhakrishnan) Member (A)</p> <p>*ssh*</p>

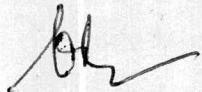
21-2-94

Learned advocates are present. At the request of Mr. Variava, adjourned to 28-2-94 for filing reply. Mr. Oza says that inspite of repeated adjournments, the respondents has not filed reply till today. Last chance is given to them to file reply before 28-2-94. No further time will be given.

Reply
not filed.

CBhagen
25-2-94

Call on 28-2-94.


(V. Radhakrishnan)
Member (A)

ssh

28-2-94

Learned advocates are present. Inspite of repeated adjournments, the respondents have not filed reply till today. Matter is admitted. Final hearing will take place on 16-3-94.


(V. Radhakrishnan)
Member (A)

ssh

Date	Office Report	Order
16-3-94	<i>Report filed 16-3-94</i>	<p>Learned advocates are present. Reply filed by Mr. Variava taken on record. Adjourned to 30-3-94, at the request of Mr. Oza for filing rejoinder.</p> <p><i>Or</i></p> <p>(V.Radhakrishnan) Member (A)</p>
		"ssh"
30-3-94		<p>Rejoinder filed by Mr. Oza taken on record.</p> <p><i>in Council</i></p> <p>At the request of <u>Mr. Variava</u>, the matter is fixed for final hearing on 15-4-94.</p> <p><i>Or</i></p> <p>(V.Radhakrishnan) Member (A)</p>
		"ssh"
15-4-94		<p>Learned advocates are present. Adjourned to 29/4/94.</p> <p><i>Or</i></p> <p>(V.Radhakrishnan) Member (A)</p>
		"ssh"

Date	Office Report	Order
29.4.94		<p>Learned advocates are present. Adjourned to 9-5-94, at the request of Mr. Kureshi for filing reply to the M.A.</p> <p><i>DRS</i></p> <p>(Dr. R.K. Saxena) Member (J)</p>
		<p><i>VRK</i></p> <p>(V. Radhakrishnan) Member (A)</p>
9/5/94	<p>Reply to M.A. now filed.</p> <p><i>Blr</i></p> <p>5/7/94</p>	<p>ssh*</p> <p>Adjourned to 6/7/94, at the request of Mr. Variava to enable him for filing reply to the M.A.</p> <p><i>VRK</i></p> <p>(Dr. R.K. Saxena) Member (J)</p>
6-7-94		<p><i>VRK</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p>ssh*</p> <p>Formal reply ¹³ has been filed by Mr. Kureshi, today only, which may be taken on record. Heard the learned Counsel. Delay condoned. M.A. allowed. M.A. stands disposed of, accordingly.</p> <p><u>O.A. 112/93</u></p> <p>Adjourned to 9-8-1994.</p> <p><i>DRS</i></p> <p>(Dr. R.K. Saxena) Member (J)</p> <p><i>KR</i></p> <p>(K. Ramamoorthy) Member (A)</p> <p>*AS.</p>

OA 112/93

Date	Office Report	ORDER
09-884		HEARD LEARNED ADVOCATE FOR THE APPLICANT & RESPONDENTS JUDGEMENT RESERVED <i>DR R K SAXENA</i> (Dr R K Saxena) member (T) <i>PHR</i> PHR CO II
17-884		<p>The common Judgement is pronounced in open court. Original Judgement Dated with OA 110/93</p> <p><i>DR R K SAXENA</i> (Dr R K Saxena) member (T)</p> <p><i>PHR</i> PHR CO II</p> <p><i>R</i> (K Ramamirthy) member (T)</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 110/93, 111/93, 112/93, 113/93

T.A. NO.

DATE OF DECISION 17/8/94

Mr. N. Panjwani and others **Petitioner**

Mr. K.V. Oza **Advocate for the Petitioner (s)**

Union of India and Others **Respondent**

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

CORAM

The Hon'ble Mr. K. Ramamoorthy **Member (A)**

The Hon'ble Dr. R.K. Saxena **Member (J)**

Shri Nebhan Panjwani
Room No.9 Opp. Railway Station
P.O. Saijpur Bogha, Ahmedabad.

Applicant in O.A. 110/93

Shri Ram. Laxmandas Ochani
A-32 Matruchhaya Society
Behind Maya Cinema, Kuber Nagar,
Ahmedabad.

Applicant in O.A. 111/93

Shri Mahendra Bhalchandra Tripathi
Near Chorawali Mata, Kharwad
At and Post, Sarkhej, Ahmedabad.

Applicant in O.A. 112/93

Shri Vinayak B. Karalaneker
M-64 K.K. Nagar, Opp Ranna Park,
Sector No.1, Ghatlodia, Ahmedabad.

Applicant in O.A. 113/93

Advocate Shri K.V. Oza

Versus

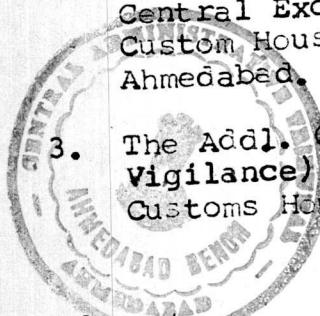
1. The Secretary
Central Board of Excise and Customs
Ministry of Finance,
Department of Revenue, Government of
India, New Delhi

2. The Collector
Central Excise and Customs
Custom House, Navrangpura,
Ahmedabad.

3. The Addl. Collector (Personnel) &
Vigilance) Central Excise and Customs,
Customs House, Navrangpura, Ahmedabad.

Respondents.

Advocate Shri Akil Kureshi



JUDGMENT

Date: 17/8/94

In

O.A. 110/93, 111/93, 112/93, 113/93

Per Hon'ble Dr. R.K. Saxena

Member (J)

These applications are related to the interpretation and decision of the date of option for fixation of salary

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on the basis of the Fourth Pay Commission can be extended now and therefore these four applications are taken up for consideration together and are being disposed of by common judgement.

2. O.A. 110/93 has been filed by Shri N. Panjwani, O.A. No. 111/93 has been filed by Shri Ram Laxmandas Ochani, O.A. No. 112/93 has been filed by Shri M.B. Tripathi and O.A. 113/93 has been filed by Shri V.B. Karalaneke. All these applicants were working as Superintendent Central Excise and Customs, Head Quarters, Ahmedabad. They could not file their option of revised pay scale according to the Fourth Pay Commission, during their active service and even after their retirement. They made representation after the expiry of the last extended date, i.e. 31-8-1988. The said representation was rejected. In the meantime one O.A. 238/90, was decided by the Tribunal on 17-3-1992, giving a chance of option to the officers belonging to the Central Excise, Nadiad, Anand and North Gujarat Divisions because the order of exercising option was not communicated to them. It is on the basis of the said judgment that these applicants also approached the Tribunal with the same prayer. It is admitted by them that the original date for filing option was 31-12-1986. It was then extended upto 31-12-1987 and then again extended upto 31-8-88. The respondents also contested the case on the ground that maximum time was given to all the Government employees including the applicants and if they failed to exercise their option, they cannot be allowed now to exercise the said option. As regards the decision of the Tribunal in O.A. 238/90 is concerned, it has been urged on behalf of the respondents that the decision was rendered in peculiar circumstances because those officers of Nadiad, Anand, and North Gujarat Divisions were in Audit Department and they had been on tour. Therefore, the circular of exercising option could not be communicated to them. In these circumstances, the decision of the Tribunal in O.A. 238/90 cannot be made a precedent.

3. After hearing the learned counsel for the applicants as well as the respondents, we find that the period of exercising the option which was fixed upto 31-12-86, was extended for the first time upto 31-12-1987 and for the second time upto 31-8-1988.

In this way, the extended period itself was of twenty months. It is really strange that the applicants who were posted not in any interior place but at Ahmedabad, could not know as to what was the last date for exercising the option. It appears from the papers brought on record by the applicants themselves that due care was taken to bring the circular to the notice of all the employees of the Government, and particularly of the department of Customs. Besides, when declaration of Pay Commission is made, every employee starts calculating as to what pecuniary gain shall be available to him on the implementation of the report. The applicants on the other hand, did not care for such a long period. It appears that actually they did not want to exercise the option.

4. The arguments of the learned counsel for the respondents, has got a merit when he says that the judgement of the Tribunal in C.A. 238/90, cannot be made a precedent. In that case, it was admitted by the department that those officers were posted in interior places and they could not be communicated about the circular of option of salary. It was in these peculiar circumstances that the Tribunal had decided to give a chance to them. In such circumstances the judgement of Tribunal in C.A. 238/90 is not of general application.

5. The learned counsel for the applicants, drew our attention towards the circular dated 31-12-1991, about the last date of pay fixation. This circular is based on the judgment of the Tribunal, because it specifically mentioned the officers who were at Nadiad, Anand and North Gujarat Divisions. It is, therefore, incorrect to interpret that it was an independent circular, and available to all persons. The case of the applicants is, therefore,

not governed by the said circular. The question, however, raised is as to how long the period of exercising option shall be extended. The report of the Fourth Pay Commission was implemented with effect from 1-1-1986 and the first date of exercising option was 31-12-1980. It was then extended upto 31-12-1987 and, thereafter, again extended upto 31-6-1988. The fixation of date has got definite nexus to the object ~~xxx~~ sought to be achieved by giving of the option. If the option is not exercised during that period, the concerned employee has to blame himself and to bear the consequence. Their lordships of Supreme Court in the case Krishna Kumar Vs. Balbir Singh & others AIR 1990 SC 1782 dealing with the cases of option of the Government servants from Provident Fund ^{to pension} had held that the specified date bears a definite nexus to the object sought to be achieved by giving the option.

6. Looking to all these facts, we come to the conclusion that there is no merit in the applications and they are therefore rejected.

Sd/-

(Dr. R.K. Saxena)
Member (J)

Prepared By K. Balaji
Compared by R. Balaji
TRUE COPY

(K. Ramamoorthy)
Member (A)

*AS.

Chhalan
Section Officer (J)
Central Administrative Tribunal
Ahmedabad Bench

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No. 041112193 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 : 26.09.94

Countersigned :


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cecelay
Signature of the Dealing
Assistant

Section Officer/Court officer

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE 04/112/93 OF 19

NAME OF THE PARTIES MD. M. B. TEPATHI

VERSUS

U. S. I. 2 520.