

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.1462 of 1996

Present : Hon'ble Mr. Justice G. L. Gupta, Vice-Chairman

Hon'ble Mr. B.P. Singh, Administrative Member

Bibhuti Bhusan Chowdhury, Working as Senior Auditor in the Office of the Accountant General (Audit)-I, West Bengal, Calcutta, residing at IA & AD Quarter Complex, Flat No.128, 1/5, C.I.T. Scheme VII M, Bidhan Nagar Calcutta-67

... Applicant

VS

1. The Comptroller and Auditor General of India, 10 Bahadur Shaw Zafar Marg, Indra Prastha Head Post Office, New Delhi-110 002

2. The Accountant General (Audit)-I, West Bengal, 4, Brabourne Road, Calcutta

3. The Principal Director of Audit (General), 18, Rabindra Sarani, Poddar Court, Calcutta-1

4. The Deputy Director of Audit, Port Blair, Andamana & Nicobar Islands, SP-1 South Point, P.O. Sadhipur,

... Respondents

For the Applicant : Mr. S.K. Dutta, counsel
Mr. T. K. Biswas, counsel

For the Respondents: Mr. B. Mukherjee, counsel

Heard on 3.05.2001

: : Date of order: 15-05-2001

O R D E R

G.L. Gupta, VC

Through this application under Section 19 of the Administrative Tribunals Act, 1985 the applicant seeks the quashment of the order of the respondents rejecting the claim of the applicant for exercising option in terms of Ministry of Finance (Department of Expenditure) dated 24.10.1988 read with circular dated 13.3.1984 and further, the direction to the respondents to refix the pay and allowances of the applicant with effect from 1.1.1973.

2. The facts, as stated in the application, are that the

applicant was Senior Auditor E.C.P.A. Section in the office of the Accountant General (Audit), Calcutta. He was deputed to work under the Deputy Director of Audit, Port Blair, Andaman & Nicobar Islands during the period from November, 1987 to December, 1991. When he rejoined his post at Calcutta on repatriation, he noticed that one Shri Monotosh Sarkar who was contemporary to the applicant was drawing more pay than the pay he was drawing. He, therefore, made a representation on 14.11.1992 before the Accountant General Audit-I, West Bengal, Calcutta, who in his turn informed that the anomaly was due to exercise of option by Shri Monotosh Sarkar in terms of the circular dated 13.3.1984. The applicant's case is that he was not aware of the order of the Government issued in 1988 as neither the copy of the order was supplied to him nor anyone informed him about such order and therefore, he could not exercise option for a scale from a particular date. His further case is that he made representation after representation but sometimes reply was not given and at others the representation was rejected. It has been prayed that it was not the fault of the applicant that he did not exercise the option in time and he should be given an opportunity to exercise the option as per the circular.

3. In the reply it has been stated that all the circulars were notified on the notice Board and copies of these circulars were sent to all the offices and the applicant did not choose to exercise the option by the closing date. It has been further stated that the claim of the applicant is a belated one as his first representation was rejected in 1992.

4. We have heard the learned counsel of both the parties and perused the documents placed before us. It is now admitted position of the parties that the applicant was posted at Port Blair during the period the circular of 1988 was issued. It is further not disputed that a copy of the circular was not

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personally served on the applicant. We do not mean to say that the copy of the circular was required to be served on the applicant personally, but only the fact has been noticed. It is however, clear that the respondents have not brought any fact on record which may prove that the applicant had an opportunity of knowing about the circular. What has been stated in the reply is that the Calcutta Office had sent the copy of the circular to the Port Blair Office. But this does not establish that the Port Blair Office had notified the circular to all concerned or that a copy of the circular was placed on the notice board. It is significant to point out that the applicant made representation before the Port Blair authority to intimate him whether the circular was received in that office and but no reply was given to him. It is significant to point out that even the respondents made attempts to know about the factual position from the Port Blair office, which fact is evident from the averments made in para 17 of the reply. It is stated in that paragraph that the reply received from the Port Blair office in this regard was not very clear. Therefore, it is evident that there is nothing on record to believe that the Port Blair Office had notified the relevant circular and the applicant had an occasion to read the contents of this circular.

5. It is significant to point out that in the affidavit filed along with the reply it has not been stated that the factum of notifying the circular by the Port Blair Office was in the personal knowledge of the deponent. What has been stated is that the facts stated in the reply are true to the personal knowledge and on the basis of the service record. As already stated no record has been filed before this Tribunal showing that the Port Blair Office had notified the circular of 1988 and the applicant had an opportunity to know about the contents of the circular. It is obviously not the case of the deponent that he had the personal knowledge about the factum of notifying the

circular by the Port Blair Office. When the applicant stated in the affidavit that he did not know about the circular it has to be accepted that he did not know about the circular while he was posted at Port Blair upto December, 1991. This shows further that the applicant was never in know of these circulars.

6. Now the next question that arises for consideration is that whether the claim of the applicant should be thrown away on the ground of delay. First it may be stated that the loss of the applicant is of recurring in nature and therefore, it cannot be said that the application is barred by time. Secondly, the first representation of the applicant was rejected vide order dated 31.12.92 (Annexure 'A/2'). By this letter the applicant came to know about the existence of any circular of 1988. He, therefore, made a representation that he was not aware of any circular as he was posted in Port Blair and none of the two orders of 1984 and 1988 were brought to his notice. When the applicant made the second representation on 2.2.93 (Annexure 'A/3') he was informed vide reply dated 26.2.93 that Shri Monotosh Sarkar, Sr. Auditor was not allowed to exercise option for fixation of pay in relaxation of provisions as contained in Govt. of India, Ministry of Finance (Department of Expenditure) U.O. No.1(2)EII/88 dated 24.10.88. Thereafter the applicant made an application before the Andaman and Nicobar Administration authorities to supply him information but no information was supplied to him. Then he made a representation to the Comptroller and Auditor General of India. It is only on 22.3.95 that the applicant was informed that his representation was considered and rejected by the competent authority. In our opinion, it cannot be said that the applicant was negligent in making representation. The claim of the applicant, therefore, cannot be defeated on the ground of delay.

7. For the reasons stated above the application succeeds. We direct the respondents to allow the applicant to exercise the

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option in terms of the circulars of 24.10.1988 read with
13.3.1984 with effect from 1.1.1973 and grant him consequential
reliefs. No order is passed as to costs.

D. P. Singh

(B. P. Singh)

MEMBER (A)

15052001

G. L. Gupta

(G. L. Gupta)

VICE-CHAIRMAN