

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 61/90
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DATE OF DECISION 18-1-1991

Radhakrishnan Nair P.K. Applicant (g)

Mr. M. Girijavallabhan Advocate for the Applicant (g)

Versus

Union of India represented by Respondent (s)
Secretary, Ministry of Defence, New Delhi and another

Shri N.N. Sugnapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

N. Dharmadan, Judicial Member

The applicant is aggrieved by the denial of further promotion as Office Superintendent, Grade-I in the light of his option already exercised on 23-7-86 for being included in the clerical line of promotion.

2. The case of the applicant is that while he was working as Stenographer Grade-I from 21-3-1975 in the Military Engineering Service (MES for short), he was promoted as PA on 30-10-81 in the pay scale of Rs.425-700

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As per the provisions of Annexure-A Promotion Rules, the PAs who have opted for clerical cadre and have rendered 7 years service are eligible for further promotion towards 5% posts of Office Superintendent Grade-I. The remaining 95% posts are set apart for promotion from Office Superintendent, Grade-II. At the time when the applicant was promoted as PA on 30-10-81, no option was called for from him by the respondents as required under the Rules. So he did not give the option immediately. But he has given the option suo moto on 23-7-1986. This was accepted by the 2nd respondent as per office order at Annexure B-1 dated 30-9-87. Pursuant to this office order, his name was included in Annexure B-2 seniority list of PAs who have opted for the clerical cadre. The applicant's name was at Sl. No.9 in the said list. But later his name was removed from Annexure-B.2 seniority list and included as Sl.No.7 in the seniority list of PAs who have opted for PA's cadre without any notice or prior intimation. This seniority list at Annexure-C dated 3-5-88 was objected by the applicant in the representation but the second respondent rejected the same as per Annexure-D proceedings dated 24-6-88 indicating that option exercised by the applicant on 23-7-86 cannot be

accepted as it is contrary to Annexure-E Recruitment Rules of SPA, dated 16-3-1981.

3. The applicant is seeking to quash Annexure-C, D and E. He is also praying for a direction to include his name in the seniority list for promotion to the clerical cadre ~~xxxx~~ restoring his seniority and rank as granted to him in Annexure-B.2 seniority list.

4. The sole question to be decided is about the validity of the option exercised by the applicant for getting the promotion in the line of clerical cadre.

5. Annexure-A rules provide for two lines of promotions to Stenographer 'OG'; one line of promotions is in the clerical cadre as Office Superintendent Grade-II, Office Superintendent Grade-I etc and the other line of promotion is as PA and further promotions in that line. Relevant portion of Annexure A-1 Recruitment Rules of 1969 pertaining to the post of Office Superintendent is extracted:

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Name of post	No. of posts	Classification	Scale of pay	Period of probation
1	2	3	4	9
Office Superintendent Grade-II	1516	Civilian in defence Gr. 'C' Non-gazetted Ministerial	425-15-500 EB-15-560-20-700	Two years
Method of rectt. whether by direct rectt. or by promotion or transfer and percentage of the vacancies to be filled by various methods			In case of recruitment by promotion transfer grades from which promotion to be made	
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By Promotion

I. XXXXXXXX

II. For MES/CME/Engineer Centres

- (a) 90% from Upper Division Clerks with 5 years service in the grade.
- (b) 10% from Stenographers with 7 years regular service and who have not opted for PA's cadre

III. For the other lower formations

Upper Division clerks with 5 years' regular service in the grade.

Note: Item III will apply only on the services not covered by items I and II above."

....."(Emphasis supplied).

XXXXX	XXXXX	XXXXX	XXXXX		
Name of post	No. of posts	Classifi cation	Scale of pay	whether selection or non-selection	Periof of probation
1	2	3	4	5	9
Office Superintendent Gr-I	397	Civilian in Defence services Gr.C non-gazetted Ministerial	550-20-650-25-700	Non-selection	Two years

Method of rectt. whether by direct rectt. or by promotion or transfer and percentage of the vacancies to be filled by various methods

In case of rectt. by promotion transfer grades from which promotion to be made.

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By promotion

By promotion:-

I. For MES/CME/Engineer Centres/ lower formation of NHQrs

- (a) Office Superintendents Grade-II with 5 years' regular service in the Grade (95%)
- (b) P.As (Rs.425-700) who have opted for clerical cadre and have 7 years regular service in the grade (5%)

II. For the lower formations

Office Superintendent Grade-II with 5 years service in the grade.

Note:- Item II will apply only to the service not covered by item I above.

6. The applicant contended that the Rules do not prescribe any specific period for exercising the option and Annexure-E, which was issued on 16-7-81, is only a letter and it cannot have the effect of altering the statutory Rule to the disadvantage of the beneficiaries. Hence according to him that portion of Annexure-E which fixes a period of one month from the date of promotion as P.A. for exercising the option to go to the clerical cadre is illegal. The applicant was promoted as PA on 30-10-81. The respondents neither directed him to exercise his option within the

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period of one month of promotion nor was he informed that he will loose his chance of promotion in the clerical cadre unless he gives his option within one month from 30-10-81. In fact xxxx he did not know about the time factor as fixed in Annexure-E. However, he exercised his option suo moto on 23-7-86 to get his promotion in the clerical cadre. This was duly accepted by the Chief Engineer. He issued Annexure-B.1 proceedings on 30-3-87 fixing his place of promotion in the clerical cadre. He was given Sl.No.9 in Annexure B.2 list of PTOs published as on 24-3-87. The respondents should not have deleted his name from the aforesaid seniority list without giving due intimation to the applicant.

7. The ^Supreme Court in N. Lakshmana Rao and others V. State of Karnataka and others, 1975 SLJ 560 held "the form option is the contract. This exercise of option is itself the contract". Therefore, the very basis of option is contractual. But all options are subject to the changes in the conditions of service in accordance with the rules framed under Article 309. However, when the questions of option arise for consideration invariably the obligations of parties to the option viz. the govt. servant and the government, assume importance. The govt. servant is obliged to exercise the option and the govt.

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is bound to accept or reject such option in accordance with the condition relevant to deal with the same including the time factor. For the exercise of the options, the govt. servant may have to be alerted and it would be the duty of the govt. depending upon the provisions of the rules applicable to it. The failure of the govt. to discharge this duty under the relevant rule or regulation dealing with the option may violate the option given after the period fixed for exercise of such option. Such a situation arose in the case of Pritam Lal v. Union of India, 1987(3) SLR 532, and the Jabalpur Bench of the Tribunal held that a belated exercise of option under the rules is valid and 'it is irreversible and has to be accepted as such' by the govt.

8. In the instant case, the position is same. Though under the statutory rules no specific period is mentioned for giving of option to go to the clerical cadre. Annexure-E was issued subsequently fixing a period of one month from the date of promotion of the candidate to exercise his option in this behalf. But it was made clear that the candidates should be 'asked in writing to exercise the said option.' Admittedly, it was not done in this case. Later the applicant gave a suo moto option at a belated stage which was accepted and acted upon by the govt. without raising any objection. Hence, the belated and time barred option exercised by the

applicant in this case is deemed to be a valid option and it cannot be held as an invalid option unilaterally.

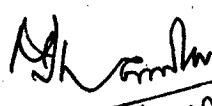
9. Even accepting the contention of the respondents that the option should have been given by the promotee candidate within one month of the promotion as PA, we feel that the applicant has a strong case. It is obligatory on the part of the respondents in the light of the recruitment rules Annexure- A read with Annexure-E to direct to xxxxxxxxxxxx PAs in writing to exercise such an option as indicated above, within the stipulated time. The respondents are also obliged to obtain the option from willing officers who has been promoted as PA within one month from the date of his promotion. The respondents have no case that they have made request in writing to the applicant to exercise his option within the stipulated period and he failed to respond the same. What they have stated in the reply statement and the counter affidavit filed in this case is that there is a general practice of asking the option orally and that the applicant was asked to exercise the option orally, but he did not exercise his option and comply with the requirement and these officers who did not care to exercise the option, for clerical line pursuant to such request are deemed to have opted for PA cadre. No details have been furnished about the date the person who made the request and other relevant particulars

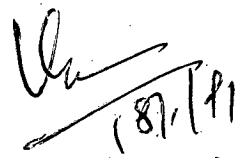
of the request alleged to have been made to the applicant for giving his option. They have further submitted that the belated option cannot be accepted. Thus they have issued this impugned seniority list Annexure-C and passed Annexure-D when the applicant objected to it by filing representation.

10. This contention of the respondents cannot be accepted in the light of our view expressed above after advertng to the clear statement in Annexure-E that they should ask in writing for getting option from the concerned officers when they are promoted as SPA. We are also not prepared to accept the contention of the respondents that there is a general practice in the department to invite option by oral request. Such a practice cannot be recognised as having been accepted by the officers and prevailing in the govt. department. Further, in this case the suo moto option later given by the applicant on 23-7-1986 has been duly accepted and acted upon by the respondents by including his name in the seniority list of persons who have opted for clerical cadre. The respondents cannot cancel this option without giving the applicant an opportunity and telling him the reason for the same. The reason now stated in the counter affidavit for passing Annexure-C and including his name at Sl.No.7 in the seniority list of PAs is unsupportable and we reject the same.

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11. Having considered the matter in detail, we are of the view that the applicant is entitled to succeed. Accordingly, we set aside Annexure-C and D seniority lists so far as the inclusion of applicant's name in the seniority list of PAs who have opted for PA cadre. We further declare that in the light of his earlier option dated 23-7-1986 his name should be included in the seniority list for promotion in the clerical cadre in accordance with his seniority and rank as already indicated in Annexure-B.1 seniority. The application is allowed. There will be no order as to costs.


(N. Dharmadan) 18.1.91
Judicial Member


(N.V. Krishnan)
Administrative Member

18-01-1991

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