

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 88/91 199
J.A. No.

DATE OF DECISION 14.11.91

Smt. P. P. Indiramma and 3 others Applicant (s)

Mr. M. Girajavallabhan Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)
Secretary of Defence, New Delhi and 2 others

Mr. A. A. Abul Hassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. Mukerji, Vice Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *AO*
4. To be circulated to all Benches of the Tribunal? *AO*

JUDGEMENT

N. Dharmadan, M(J)

In this application dated 7-1-91 the four applicants who have been working as U.D.C. in the Naval Base, Cochin under the Southern Naval Command have challenged the impugned order dated 14th September 1990 at Annexure-C by which they were denied the benefit of reoption from the date of their promotion as U.D.C. in accordance with the Department of Personnel's order dated 26th September 1981 at Annexure-B and have prayed that in view of the reoption allowed to them in accordance with the order at Annexure-A they should be declared to be entitled to the option at Annexure-B for re-fixation of their

pay as U.D.C. The brief facts of the case are as follows:

2. The applicants have been working as L.D.Cs in the scale of Rs.110-180 from various dates prior to 1-1-73. On the basis of the recommendations of the Third Pay Commission their pay scale as L.D.C. was revised to Rs.260-400 with effect from 1.1.73. Persons who were expecting to get their increments in the unrevised pay after 1.1.73 would have got pay in the revised scale at a higher stage if they were to be brought over to the revised scale on the date of their earning increment in the unrevised scale instead of with effect from 1.1.73. The Government allowed this concession. This resulted in certain juniors who came over to the revised scale after 1.1.73 by exercising their option, getting higher pay in the revised pay scale than their seniors who got it from 1.1.73. To remove this anomaly orders were issued by the respondents to allow option to come over to the revised scale from a date subsequent to 1.1.73 to the seniors also. The cut-off date for coming over to the revised pay scale was fixed as 31-12-74 and later ^{by} ~~and~~ the order issued on 26-3-84 the cut-off date was extended to 31-12-79 as at Annexure-A. It happened that the Department of Personnel had also issued orders on 26th September 1981 at Annexure-B to remove another anomaly of a senior

person on promotion to the higher grade after earning an increment in the lower post. To remove the anomaly the Annexure-B order gave an option to the senior promotees to opt either (a) to get his initial pay in the higher grade fixed straight-away under FR 22-C fixed at the next higher stage after one notional increment to his pay in the lower pay scale, or (b) to get his pay on promotion fixed on the next higher stage without any increment in the lower scale under FR 22(a) subject to further refixation in the higher scale under FR 22C on the date of accrual of his next increment in the lower post. It was also indicated that this option was to be exercised within one month of the date of promotion. The applicants' grievance is that since they had been promoted as U.D.C. before the issue of the Ministry of Defence OM dated 26th March 1984 granting them an option to come over to the revised pay scale of L.D.C. on any date not later than 31-12-79 they could not avail of the benefit of Annexure-B because by the time Annexure-A order was issued, they had completed more than one month after their promotion as U.D.C. They have argued that the delayed option given in Annexure-A should entitle them to exercise their option at Annexure-B also. Their representations were rejected ^{by} ~~as~~ the concession at Annexure-B cannot be given. They have also stated that there is no provision to relax the provision of Annexure-B order regarding exercise of

option within one month of promotion. They have also indicated that the applicants have not pointed out any anomaly to remove which the Annexure-B order being invoked. They have conceded that the first applicant was promoted as U.D.C. on 11.9.81, the second applicant on 18-3-1983.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicants were regularly appointed as L.D.C. prior to 1.1.73. Admittedly they were also brought over to the revised scale of Rs.260-400 from 1.1.1973 on the basis of the III Pay Commission's Recommendations. It is clear from the statements in the reply statement filed by the respondents that the applicants had also exercised their option. The relevant portion is quoted below:

"Accordingly the applicants had exercised reoption to come over to the revised scale after reaching their pay in the pre-revised scale at Rs.151/- p.m. Accordingly their pay was fixed at Rs.334/- as indicated below:

1st applicant	w.e.f.	30.10.77
2nd applicant		1.11.75
3rd applicant		2.6.78
4th applicant		5-8-78

It is true that considering some anomaly in the revised pay fixation formula after discussion in the JCM, the executive order Annexure-A was issued to rectify the anomaly by extending the time for option. Probably this was intended only to rectify anomalous positions prevailing at that time. It is not pointed out in the original application that the applicant's pay suffers from any

such anomaly warranting a re-option. So long as there is no case of any anomaly regarding the pay position of the applicants it is not necessary for them to wait ~~ing~~ till 26-3-84, the date on which Annexure-A was issued, for exercising their options after their promotion to the post of U.D.C.s based on Annexure-B.

2. It does not appear from the pleadings that Annexure-B is a consequential order and it is connected with Annexure-A. Admittedly the applicants were promoted as U.D.C. between September 1981 to March, 1983. They were obliged to exercise their option under Annexure-B either within the time stipulated therein or before the expiry of the extended period on the basis of further clarification or other orders. Admittedly the applicants failed to exercise this option. Hence they are defaulters and not entitled to any indulgence from this Tribunal particularly in the light of the clarification given by the respondents in the reply statement. It is clarified in the reply statement that "at the time of their promotion the applicants had no benefit if they had exercised option and as such they had not exercised option. Accordingly their pay was fixed as U.D.C. in the normal course." It is further clarified that "applicants had no anomaly consequent on introduction of CDS(RP) Rules 1973."

3. In so far as the pay position of the applicants are concerned no specific anomaly has been pointed out

by them. The respondents have stated that Annexure-A had been issued only as a concession and not to remove any anomaly. Under these circumstances there is nothing wrong in assuming that Annexure-A has no legal impact on their pay except some additional benefit by way of concession which the applicants want to be extended to the next higher post also. The applicants have no legal right to seek for an extension of this benefit further while they started working as U.D.C. because of their default in giving option under Annexure-B. The failure to submit their option within the stipulated time in terms of Annexure-B makes them defaulters. They have no valid and acceptable explanation for this failure except a statement that they waited for issue of Annexure-A order which they need not have waited particularly when they were all aware of the decision of the JCM and exercised the option earlier and got the benefit of refixation of the salary.

4. Though the wordings of Annexure-C order disposing of the claim of the applicants are not very happy enough it can be sustained in the light of the statement and the position explained in the reply statement. Having regard to the facts and circumstances of the case, the failure of the applicant to exercise the option within the stipulated time after their promotion is fatal to their claim. The obligation of the Govt. servant under the orders granting the

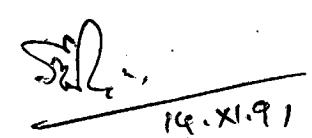
benefit of such options should be complied with strictly in accordance with the provisions contained therein for an option generally when exercised by a Govt. servant is treated as valid and irrevocable and is deemed to have been given with the full knowledge of the consequences of such option. Hence a strict interpretation of the provisions dealing with the options are called for. Justice T. Kochuthomman, as he then was, held in C.K. Kuriakose V. Deputy Director of Collegiate Education, Kottayam and others, 1982(3) SLR 61 as follows:

"...The petitioner had been offered full opportunity to exercise the option under statute 4 as it originally stood. He had six months's time from the date of commencement of the statute to exercise the option. He did not exercise any option as a result of which clause(4) of statute operated. The petitioner is thus deemed to have opted for Chapter-II. The petitioner who had failed to exercise the option and who thus fall within the ambit of Clause(4) by his own inaction or indecision, cannot now be heard to complain if similar benefit has been conferred some years later on a new class of people. I see no substance in the challenge against the impugned orders.."

5. In this view of the matter on merits this applicants have no case and the application is dismissed without any order as to costs.


(N. Dharmadan)
Member (Judicial)

14/11/91


(S.P. Mukerji)
Vice Chairman

14/11/91