

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No. 284/89 199  
T.A. No.

DATE OF DECISION 5.7.90

C.K.Thomas Applicant (s)

M/s P.Radhakrishnan &  
V.J.Mathew Advocate for the Applicant (s)

Versus  
Scientific Adviser to  
Minister of Defence and  
another. Respondent (s)

Mr. N.N.Sugunapalan, ACGSC Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. A.V.Haridasan, Judicial 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. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

The short point in this application dated 20th February, 1989 filed under section 19 of the Administrative Tribunals Act is whether the applicant who had been working as Senior Administrative Officer in the Naval Physical & Oceanographic Laboratory (NPOL) and retired on 30th September, 1987 should be given the benefit of the Department of Personnel and A.R.'s O.M. of 26.9.81, a copy of which is at Annexure-1.

The brief material facts of the case are as follows:

applicant  
2. Having entered the Department as L.D.C, the was <sup>b</sup> promoted as Stenographer in 1957 and as P.A. in 1972 and posted at NPOL, Cochin. He was further promoted on 3.11.79

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as Steno, Grade-I. From that post he was promoted as Administrative Officer at Cochin itself on 22.6.81 and later promoted as Senior Administrative Officer, Grade-II on 28.4.86 from which post he retired on 30th September, 1987. In August 1985 he came to know that his junior, one Shri Rajappan working at Bangalore, was drawing higher salary than that of the applicant, even though he had been promoted as A.O. later with effect from 21.9.82. This anomaly had arisen because Shri Rajappan, even though promoted as A.O. more than a year later than the applicant, opted to get promotion to the higher scale of A.O. after he had earned the next increment in the lower scale with effect from 1.11.82. Thus, while the pay of the applicant remained at Rs 710 as on 1.11.82, Shri Rajappan's pay had risen to Rs 740.

3. In order to remove such anomalies whereby a junior, if promoted later after earning increment in the lower scale, gets higher pay in the promoted post than his senior who might have been promoted earlier, the Department of Personnel had issued order dated 26.9.81 (Annexure-1), the relevant portions of which read as follows:

"The undersigned is directed to refer to the existing provisions regarding the manner of fixation of pay of a Central Govt. employee on his promotion to the next higher grade/post under FR 22-C. A point was raised by the Staff side in the 25th ordinary meeting of the National Council that under the above provisions promotion of a junior person

to the higher post, after accrual of his increment in the lower post, give rise to an anomaly in pay of a person senior to him who though promoted earlier had not drawn at any time pay less than that of his junior in the lower post.

"2. The demand of the Staff side has been considered by this Department in consultation with the Ministry of Finance and the matter was also discussed in the National Council (JCM). The President is pleased to decide that in order to remove the aforesaid anomaly the employee may be given an option for fixation of his pay on promotion as under:-

- (a) Either his initial pay may be fixed in the higher post on the basis of FR 22-C straight away without any further review on accrual of increment in the pay scale of the lower post;
- (b) his pay on promotion, may be fixed initially in the manner as provided under FR 22(a)(1) which may be refixed on the basis of the provisions of FR 22-C on the date of accrual of next/in the scale of pay of the lower post.

If the pay is fixed under (b) above, the next date of increment will fall due on completion of 12 months' qualifying service from the date pay is refixed on the second occasion.

Option may be given within one month of the date of promotion. Option once exercised shall be final.

(emphasized added)

4. The applicant has contended that since on his promotion as A.O. he was working as Estate Officer in addition to his own duties 6 Kilometers away from the Headquarters and since the respondents did not bring the contents of the aforesaid O.M. to his notice, he could not exercise the option given in the aforesaid order even though it came into force with effect from 1st May, 1981 whereas he was promoted as A.O. on 22.6.81. His representations to get the benefits of the aforesaid O.M. were rejected even though his immediate superior officers had recommended his case. The applicant has annexed the copies of his

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representations and the recommendations of his immediate superior officers. Disappointedly he had to retire without getting the benefits of the O.M. His last representation dated 28.9.87 on the eve of his retirement was rejected on 19.2.88 (Annexure-8) intimating him that the Ministry of Defence have turned down the representation. His further representation dated 2nd April 1988 was also rejected on 23rd May, 1988 (Annexure 8(a).indicating that the Ministry was not prepared to condone the delay in his exercising the option. His representation to the Minister of State for Personnel and Public Grievances was also rejected on 1st February 1989 (Annexure-9).

5. The respondents have taken the stand that it was for the applicant to exercise his option within the period prescribed in the O.M. of 26.9.81 and the respondents were not in obligation to invite him to exercise his option.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The crucial point to decide is whether the respondents had any responsibility to invite the applicant to exercise the option or it was for the applicant to exercise the option. The wording of the O.M. of 26.9.81 regarding option gives us the impression that the Government had distinguished between 'giving option'

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and 'exercising option'. The relevant portion of the O.M. reads as follows:

"Option may be given within one month of the date of promotion. Option once exercised shall be final."

From the above it is clear that the promotee will have to be given the option within one month of the date of promotion by the Department and if the promotee 'exercises' his option it shall be final. Without the offer of option the question of the applicant's exercising the option would not arise.

7. Further, it may be noted that the O.M. was issued on 26.9.81 while it was to take effect from 1st May 1981. The applicant was promoted as A.O. on 22.6.81 and the question of giving or exercising the option within one month of his promotion, i.e. on or before 22.7.81, cannot arise because the O.M. itself was issued in September, 1981. From that angle also it was incumbent upon the respondents to invite the applicant who had been promoted before the order was issued with retrospective effect, to give his option. We are fortified in our aforesaid presumption by the following extracts from DOP's another O.M. dated 24th December, 1981, a copy of which has been appended by the respondents themselves as Annexure-R-2:

"Attention is invited to the provisions contained in para 2 of this Department O.M. No.F.7/1/80-Estt.P.I dated the 26th September, 1981, on the above subject. Doubts have been

raised as to the time limit within which the option should be obtained from the employees who were promoted during the period from 1.5.81 to 25.9.81."

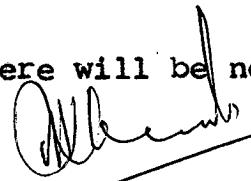
(emphasiz added)

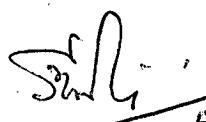
It is thus clear that, for the promotees like the applicant, it was for the respondents to obtain the option and not for the promotees to exercise the option suo motu. Thus, the case of the applicant cannot be said to have suffered by the default of the applicant.

He was not given the benefit of the O.M. for no fault due to of his but/<sup>the</sup> lapse on the part of the respondents.

He cannot be made to suffer because of the lapse on the part of the respondents. Accordingly, we allow this application, set aside the orders at Annexures 8 & 9 and direct the respondents to allow the applicant to exercise the option contemplated in/<sup>the</sup> O.M. of 26.9.81 at Annexure-1 within a month <sup>from</sup> ~~of~~ the date of communication of this order. If he exercises such an option, we direct the respondents to re-fix his pay with effect from 22.6.81 and give him all consequential retirement benefits including pension. The payment of arrears of the re-fixed pay, pension and other retirement benefits should be made good to the applicant within a period of 4 months from the date of communication of this order.

There will be no order as to costs.

  
(A.V. Haridasan)  
Judicial Member

  
(S.P. Mukerji)  
Vice Chairman

5.7.90