

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 12.1.1990

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 340/89

K. Sivasankara Memon

Applicant

Vs.

1. The Regional Director,
Regional Office,
E.S. I. Corporation,
Trichur-680020

&

2. The Director General,
E. S. I. Corporation,
Kotla Road,
New Delhi-110002

Respondents

Mr. K. A. Abdul Gafoor

Counsel for the
applicant

Mr. C. S. Rajan

Counsel for the
respondent

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant after his retirement from the service approached this Tribunal with the grievance that his pay in the revised scale in the category of Manager Grade II, has not been correctly fixed in accordance with his option.

2. According to the applicant, while he was working as Manager Grade II in the scale of Rs. 550-900 (pre-revised)

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w.e.f. 1.1.1986, he opted in accordance with law for the revised scale of pay of Rs. 1640-2900 to be granted with effect from 1.7.1986. His option was acted upon by the respondents and Annexure A-1 was passed fixing revised pay at Rs. 2600 as on 1.7.1986. But since the applicant's last pay revision became effective from 1.7.1986 a mistake was crept in with regard to the effective date of crossing of efficiency bar when Annexure A-2 order was issued on 8.10.1987 fixing the salary. The date was mentioned as 1.6.1986 instead of 1.7.1987. So the pay in the revised rate was not fixed pending clarification Annexure A-3.

3. In the meantime the applicant was promoted as Selection Grade Insurance Inspector cum Manager as per Annexure A-4 order dated 23.10.1987 with retrospective effect from 25.6.1986. But as on 25.6.1986, the date on which the promotion took effect, the revised pay scale was not fixed on account of the above mistake. However, on the basis of his option, which was accepted by ^{the concerned authority} stated to be ^{the} passing Annexure A-1, he was ^{not} given the revised pay scale w.e.f. 1.7.1986. But this was not given. After the promotion his pay was fixed at Rs. 2525 from 25.6.1986. Annexure A-5 shows that Regional Accounts Officer has ordered the fixation of the pay in the promoted post at Rs. 2500 provisionally w.e.f. 25.6.1986.

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4. This being illegal and unfair and there is a drop in the emoluments, the applicant filed Annexure A-6 memorandum before the Director General. Pending consideration of this representation, the provisional fixation of the applicant's pay has been finalised as per Annexure A-7 and he was requested to exercise option in terms of Annexure A-9 O.M. after the promotion with an application to condone delay for getting the revised scale of pay in the promoted post. The applicant submitted Annexure A-10 representation and Annexure A-11 option in obedience of the request of the respondents. But by order Annexure A-12 the applicant was informed that the option for fixation of pay in the post of Selection grade Insurance Inspector cum Manager cannot be accepted. Hence, the applicant filed this application challenging Annexures A-5, A-7 and A-12 and for issue of a direction to accept Annexure A-11 option and fix his pay in the post of Selection Grade Insurance Inspector cum Manager w.e.f. 1.7.1986 in the revised scale of pay of Rs. 2000-3200 with all consequential benefits including arrears.

5. In the course of the argument, the learned counsel for the applicant, Sri Abdul Gafoor, very fairly submitted that his client is entitled to the benefit of one of the options viz. the option accepted by passing Annexure-A-1 or Annexure A-11. But the respondents are not recognising

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the benefits of both. The applicant has not been given the benefit of revised scale. Even after the promotion there is drop in the emoluments and comparable loss is shown by the applicant in the following manner:

" The applicant's pay on the relevant dates

<u>Without Promotion</u>		<u>With Promotion</u>	
1.7.1986	Rs. 2600	25.6.1986	Rs. 2525
1.7.1987	Rs. 2675	1.6.87	Rs. 2600
30.4.88	Rs. 2675	30.4.88	Rs. 2600Rs- ¹¹
(date of retirement)		(date of retirement)	

6. The respondents in the counter affidavit has admitted that consequent on the implementation of the Recommendation of the Fourth Pay Commission, the applicant opted for the revised scale of pay w.e.f. 1.7.1986 and his pay as Insurance Inspector-cum- Manager Grade II was fixed at Rs. 2600 as per Annexure A-1. But according to the respondents subsequently the applicant was promoted as Selection Grade Manager Grade II by Annexure A-4 with retrospective effect from 25.6.1986. Thereafter since a doubt arose regarding the fixation of the pay of the applicant in the selection grade the question was referred to the second respondent, who clarified that the option be treated exercised by the applicant w.e.f. 1.7.1986 is to/invalid since he has given Selection Grade w.e.f. 25.6.1986. There is no satisfactory reason supporting this stand. However, his pay has been revised in the scale at Rs. 1640-2900 w.e.f. 1.1.1986 and thereafter refixed in the selection grade w.e.f. 25.6.1986. The respondents produced Ext. R-1(a) to support the contention;

7. We see no reason why the earlier option exercised by the applicant w.e.f. 1.7.86 which had been acted upon by issuing Annexure-I was categorised as invalid on account of the creation of selection grade. The option once given by a servant when acted upon by the employer ~~xx~~ becomes effective for all purpose unless specific rule, regulation or order dealing with the same states that it becomes subsequently invalid on account of certain change or occurrence of certain events. No such rule, order or regulation or even a letter to that effect had been produced before us for our perusal.

8. The subsequent conduct of the respondents shows that they are willing to give the benefit of option of the applicant. By Annexure-8 the applicant was requested to give his option with an application for condonation of delay in terms of the O.M. Annexure-9. In the light of Annexure-I, it is not obligatory on the part of the applicant to submit any fresh option. But the applicant without realising the fact of his earlier option and grant of the revised scale, again submitted a fresh option with an application for condonation of delay strictly in accordance with Annexure-8. But this has been rejected by a laconic order without stating any reason or even adverting to the statements made by the applicant in Annexure A-10 representation.

9. It is true that filing of the second option in terms of Annexure-9 may have the effect of substituting or wiping off the effect of the earlier option, but the

applicant cannot be blamed in this behalf. Left to himself he would not have given such an option. He was called upon to give the same with an application for condonation of the delay as per Annexure-8. In fact the applicant was compelled to give Annexure-11. When the respondents wanted a fresh option for granting the financial benefits due to the applicant and the applicant has acted upon the same the respondents should have considered the matter taking into consideration the drop in the emoluments which adversely affected him after his retirement on 30.4.1988. The order at Annexure A-12 is unsatisfactory and it cannot be supported. It is cryptic one without giving any reason. So on this sole ground itself it is liable to be set aside. The respondents have also not adverted to the statement of the applicant in his representation.

10. We are satisfied that the applicant is entitled to the benefit of the earlier option which has been duly acted upon by the respondents and they have revised the scale of pay w.e.f. 1.7.1986. He is also entitled to get the continuation of the benefit of revised scale of pay in the higher post i.e. in the next promoted post notwithstanding Annexure-9. It does not state anything about the earlier options and its effect given by the officers. So long as it does not prevent the continuance of the option earlier given by a public

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servant as has been done in this case by the applicant we are of the view that the benefit of such options would not be curtailed by the respondents on technical grounds.

11. Having regard to the facts and circumstances of the case, we feel that justice in this case will be better served by disposing the application with the direction that the applicant should be given the benefit of earlier option and the revised salary as accepted by the respondent in Annexure-1 and he should be given the same benefit in the promoted post of selection grade Manager Grade II. He shall also be paid his pensionary benefits on that basis with all arrears due to him notwithstanding Annexure A-9.

12. The Original Application is allowed.

13. There will be no order as to costs.


(N. Dharmadan)

Judicial Member

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(S. P. Mukerji)

Vice Chairman

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