

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.357/94

Friday this the 20th day of December, 1996.

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

T.M. Kshemavathy,
U.D.C. INS Garuda,
Naval Base, Cochin.4. .. Applicant

(By Advocate Mr. M. Girijavallabhan)

Vs.

1. The Flag Officer Commanding-in-Chief,
Headquarters, Southern Naval Command,
Cochin-682 004.
2. The Chief Staff Officer (P&A),
Headquarters Southern Naval Command,
Cochin-682 004.
3. The Controller Materials,
Naval Store Depot,
Cochin-682 004. .. Respondents

(By Advocate Mr. K.S.Bahuleyan for TPM Ibrahim
khan, SCGSC)

The application having been heard on 13.12.1996, the
Tribunal on 20.12.1996, delivered the following:

O R D E R

The applicant being aggrieved by the denial of stepping up of her pay to that of her junior T.Sathy, UDC seeks to declare that A-9 is illegal and discriminatory, that failure or mistake of third respondent to give an option to her when her junior T.Sathy, UDC was given such an opportunity is discriminatory and illegal and to direct respondents to step up her pay to that of her junior T.Sathy in accordance with A-5 and A-6 and also to direct respondents to give her a fresh opportunity to

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exercise option in terms of A-1 and A-2.

2. Applicant and certain others who were promoted on provisional basis as UDC were converted as temporary with effect from 27th July, 1987 as per A-2. At the time of issuance of A-2, applicant was already officiating in the said post of UDC and was working under 3rd respondent. In A-2 it is stated that the individual concerned may be directed to exercise option in terms of A-1 within one month. Third respondent failed to direct the applicant to exercise option and simply published the promotion order after one month. The failure on the part of third respondent to invite option in A-3 as directed in A-2 has resulted in an anomalous situation of the applicant getting less pay than that of her junior T.Sathy, UDC who was promoted as UDC on 3.8.87 and given an opportunity to exercise option. On coming to know that her junior T.Sathy, UDC is drawing more pay than her, she submitted A-4 representation on 7.1.91. Exercise of option was not necessary. According to applicant, the said anomaly of junior drawing more pay than the Senior could also be rectified by stepping up of the pay of seniors to that of the junior as per A-5 and A-6, provided the conditions stated therein are satisfied. According to applicant it was under this circumstance her junior T.Sathy, UDC is drawing more pay than her. A4 representation of the applicant was rejected by the second respondent as per A-9 on the ground of non-exercising of the option by the applicant on promotion.

3. According to respondents, on promotion to higher posts provision has been made to exercise option for fixation of pay under FR 22-C after earning increment in the lower grade. As per A-1 it has been clarified by the

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Department of Personnel and ARs that in the order promoting a government servant, it may be mentioned that he/she has to exercise option within one month. The applicant did not submit any option for refixation of pay under FR 22(a)(i) and FR 22-C after earning increment in the lower grade. Hence no refixation was done. The contention of the applicant that she was not aware of option to be given on promotion to the post of UD Clerk is not tenable. Respondent -3 published the Naval Store Depot (Cochin) Order No.116/II/87 dated 21.8.87 with a direction to exercise option by the promotees, including the applicant. The statement of the applicant that she was not aware of exercising option is not correct since she has stated in para-2 of A-4 that no option is necessary, whereas such other employees have exercised options. The anomaly in pay arose as a result of non-exercising of option by the applicant. There is no provision for stepping up of pay to remove the anomaly and so the request of the applicant was turned down. A-5 and A-6 have been superseded by R-5 and R-6. Respondents had given opportunity to the applicant to exercise option as per the existing orders.

4. Applicant has sought for a direction to the respondents to give stepping up of her pay to that of her junior T.Sathy in accordance with A-5 and A-6. A-5 is Government of India, Ministry of Finance Memo No.F.2(78)/E.III(A)/66 dated 2nd February, 1966. A-6 is the O.M. of the Ministry of Defence No.3(2)66/D(Civ-I) dated 4.4.1966. Both A-5 and A-6 deal with anomalies arising in fixation of pay. R-5 is the O.M. of the Ministry of Defence No. 2(24)/74/D(Civ.P) dated 27th of September,


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1974. R-6 is the O.M. of the Ministry of Defence dated 29th of August, 1977. Both deal with anomalies with regard to the fixation of pay. From R-5 and R-6 it is abundantly clear that A-5 and A-6 have been superseded by R-5 and R-6. That being so, there is no question of directing the respondents to step up the pay of the applicant to that of her junior in accordance with A-5 and A-6.

5. The other reliefs sought in the O.A. are on the ground that the applicant was not directed by the third respondent to exercise option. According to the applicant, third respondent failed to give direction to exercise option and instead simply published the promotion order as per Order A-3. As per A-1, provision is made for exercising option for fixation of pay under FR 22-C. According to the respondents it is for the government servant who is promoted to exercise option within one month of the promotion. R-1 is the clarification regarding option on the point of doubt 'whether the option is to be exercised by the employee on promotion or it is to be obtained by the Administration from the employee concerned'. The clarification issued is 'in the order promoting the Government servant it may be mentioned that he has to exercise the option within one month'. So, from the clarification issued as per R-1 it is quite clear that it is enough to mention in the order promoting a government servant that he has to exercise the option and it is not incumbent or mandatory that the administration should inform the incumbent personally or direct the incumbent and obtain option from the government servant promoted. Once it is mentioned in the order promoting the government servant that he has to

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exercise option within one month, it is upto the government servant promoted to exercise the same and the duty on the part of the administration is only to the extent of mentioning in the promotion order that the government servant promoted has to exercise the option within one month.

6. It is the admitted case of the applicant that Respondent-3 published the promotion order as per which the applicant was promoted, but according to the applicant the publication was only after one month. There is presumption that the official acts have been regularly performed. It is true that it is a rebuttable presumption. The burden on the applicant is to rebut that A-3 was not published in time and was published only after one month. There is no material to rebut the presumption. It is the admitted case that no option was exercised by the applicant. If it is a case that third respondent published the promotion order only after one month, then the applicant could have submitted her option stating the reason for not exercising it within one month.

7. According to applicant, though the first respondent directed the third respondent and others as per A-2 that the promotees may be directed to exercise option, the third respondent simply published the promotion order as per A-3 without informing the promotees about their right to exercise option. It is enough as per R-1, if it is mentioned in the order promoting the government servant that he has to exercise the option. No further information is required or is necessary. Applicant has also got a case that as borne out from A-4 that no option is necessary. That would

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imply that she was aware of her right to exercise option. If it is mentioned in the order promoting the government servant that option is to be exercised within one month, that is sufficient compliance of directing the individual concerned to exercise option as stated in A-2.

8. Learned counsel appearing for the applicant argued that A-3 order dated 21.8.87 was published without mentioning that the promoted government servants have to exercise their option within one month and therefore, the right to exercise the option was denied to the applicant. R.2 is the order dated 21.8.87 promoting the applicant and certain others including the incumbent who has exercised the option as per R-3 on promotion. From R-2 it is seen that the promotion order is dated 21.8.87 and the authority who has signed the same below the promotion order has stated that:

"The above individuals may be asked to exercise option in terms of Min. of Home Affairs, Department of Personnel & A.R. O.M.No.F-7/1/80-Estt.P.I dated 26 Sep. 81, copy forwarded under HQSNC Memo No.CS 2181/43 dated 06.Feb.82 within one month of the date of promotion. Min. of Home Affairs, Deptt. of Personnel & A.R. O.M.No.13/26/82-Estt. PI dated 08. Feb.83, copy forwarded under HQSNC Memo CS 2181/43 dated 17 May 83 also referred."

That endorsement is dated 29.8.87. R2 was sent to the Establishment Officer. So it is to be presumed that R-2 was sent to the Establishment Officer on or after 29.8.87 mentioning that the promoted government servant has to exercise option within one month. As there is presumption that official acts have been regularly performed, it is to be presumed that the promotion order contained not only the names of the government servants promoted, but

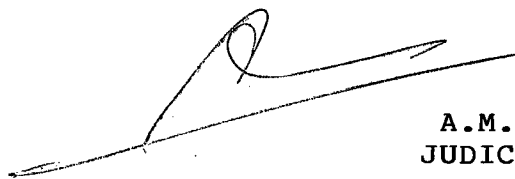
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also contained the direction that the government servants promoted have to exercise their option within one month. It is for the applicant to rebut the presumption. There is no material to rebut the presumption. Since the incumbent at Sl.No.5 in R-2 has exercised her option as per R-3, it is only to be presumed that R-2 when published contained not only the names of the government servants promoted, but also contained the direction that the promoted government servants have to exercise their option within one month. So it is to be presumed that the government servants promoted, including the applicant, were appropriately appraised of the fact that they have to exercise their option within one month. That being so, there is no ground to declare that A-9 is illegal and discriminatory, that there was failure or mistake on the part of the third respondent to give option to the applicant and to direct the respondents to give fresh opportunity to the applicant to exercise option.

9. Accordingly, the original application is dismissed. There will be no order as to costs.

Dated the 20th day of December, 1996.



A.M. SIVADAS
JUDICIAL MEMBER

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List of Annexures

- Annexure A1: True copy of OM No.F7 1-80 Estt. (P-1) dated 26.9.81 of the Department of Personnel & Administrative Reforms
- Annexure A2: True copy of memorandum No.CS 3542/44 dated 23.7.87 of the 1st respondent.
- Annexure A3: True copy of Depot order No.116/11/87 dt. 21.8.87 of the 3rd respondent.
- Annexure A4: True copy of representation dated 7.1.91 of the applicant
- Annexure A5: True copy of OM No.F2 (78)/E-III(A) 66 dated 2.2.66 of the Ministry of Finance.
- Annexure A6: True copy of O.M. No.3 (2)66/D(Civ-I) dated 4.4.66 of Min. of Defence.
- Annexure A-9: True copy of order No.CS 2695/43/380 dated 25 Nov. 1993 of the 1st respondent.
- Annexure R1: True copy of the OM No.13/26/82-Estt P-I dated 8.2.93 submitted by the Ministry of Home Affairs, Dept. of Personnel & Administrative Reforms.
- Annexure R2: True copy of the Order No.116/11/87 dt. 21.8.87 submitted by the Naval Store Depot, Cochin.
- Annexure R3: True copy of the Option letter Dt.5th February, 88 submitted by Smt. C.Valsala.
- Annexure R5: True copy of the office Memorandum No.2(24)/74/D(Civ-P) Dt. 27.9.74 issued by the Ministry of Defence, Govt. of India, New Delhi.
- Annexure A6: True copy of the office Memorandum No.PC toM.F. 67202/CAO/IS-II/7751/D(Civ-1) Dt.29.8.77 issued by the Ministry of Defence, Govt. of India, New Delhi.