

(2)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 524/89.

Shri J.U.Bhatia.

... Applicant.

V/s.

Collector of Central Excise & Anr.

... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:

Applicant in person.

Mr.S.R.Atre (for Mr.P.M.Pradhan),
advocate for the respondents.

Oral Judgment:

Dated: 11.10.1989.

For understanding the dispute and for disposing of this case it is necessary to refer to some Circulars and clarifications. The Government of India, Ministry of Home Affairs, Department of Personnel and AR Office Memorandum No.F.7/1/80-Estt. P.I., dt. the 26.9.1981 and 24.12.1981 reads as follows:

"(15) Option for choosing date for fixation of pay under F.R. 22-C on promotion - A reference is invited to the existing provisions regarding the manner of fixation of pay of a Central Government employee on his promotion to the next higher grade/post under F.R. 22-C. A point was raised by the Staff Side in the 25 th Ordinary Meeting of the National Council (JCM) that under the above provisions promotion of a junior person to the higher post, after accrual of his increment in the lower post, gives 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). It has

been decided 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 F.R. 22-C straightway without any further review on accrual of increment in the pay scale of the lower post, or
- (b) his pay on promotion, may be fixed initially in the manner as provided under F.R.22(a)(i) which may be refixed on the basis of the provisions of F.R. 22-C on the date of accrual of next increment 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.

In cases of employees who were promoted during the period from 1.5.1981 to 25.9.1981, the employees concerned should exercise the option on or before 31.3.1982.

3. In the event of an officer refusing promotion even after the above concessions become available, he would be debarred from promotion for a period of one year instead of six months, as at present.
4. These orders take effect from the 1st May, 1981.

2. Regarding the implementation of the directions in the above Office Memorandum, some clarifications were given by the Ministry of Home Affairs, Department of Personnel and AR in their letter dt. 8.2.1983. The first point of doubt was 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 was, " In the order promoting the Govt.

servant it may be mentioned that he has to exercise the option within one month. On his promotion, the pay should be first fixed under FR 22C and in case he exercises an option in terms of para 2(b) of O.M. dated 26.9.1981 within the prescribed period of one month his pay should be refixed under FR 22(a)(i) w.e.f. the date of his promotion and then under FR 22C only with effect from the date of accrual of next increment in the feeder post".

3. The applicant who was working as Inspector of Central Excise was promoted and appointed as Superintendent of Central Excise (Grade 'B') by order dt. 13.7.1983. In that order it was not mentioned that he was to exercise option within one month and hence he did not exercise the option. On the contrary, his junior Mr.J.G.Patankar was promoted as Superintendent Central Excise(Grade 'B') in August, 1983 but he joined in December, 1983. ~~In that order also~~ It is not clear whether in that order it was mentioned that he was to exercise the option within one month. But he did exercise the option ~~above~~ and hence his pay was re-fixed under FR 22(a)(i) and then under FR.22C w.e.f. the date of accrual of the next increment in the feeder post. This has resulted in the pay of Mr.Patankar being more than that of the applicant. The applicant has filed this application for removal of that anomaly.



4. We have heard the applicant in person and Mr. S.R. Atre (for Mr. P.M. Pradhan) for the respondents. As the facts and the provisions are not in dispute we are admitting the application and disposing it of finally.

5. Admittedly in the promotion order dt. 13.7.1983 by which the applicant and 3 others were promoted it was not mentioned that the applicant was to exercise the above option within one month. It is the case of the applicant that because of non-mention and because he was not aware of the provisions he did not exercise the option and in result he has lost one increment while his junior Mr. Patankar is getting more pay because he had exercised the option. As this has happened due to failure on the part of the respondents to mention in the order of promotion that the ~~above~~ ^{option} was to be exercised within one month we are inclined to allow the application. In result we pass the following order:

O R D E R

(1) The respondents are directed to allow the applicant to exercise the option under Clause II of the Government of India, Ministry of Home Affairs, Department of Personnel and AR O.M. dt. 26.9.1981 and 24.12.1981 within one month from the date ^{of} receipt of a copy of this order.

(6)

(2) After he exercises his option his pay should be refixed and he should be given all arrears due to him according to rules.

(3) With these directions the application is disposed of with no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(M.B. MUJUMDAR)
MEMBER (J).