

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: **755 of 1989**

Transfer Application No:

DATE OF DECISION: 16-11-94

Shri. B.O. Patil

Petitioner

Shri. C.B. Kale

Advocate for the Petitioners

Versus

Chief Post Master General
Maharashtra Circle & Ors.

Respondent

Shri. S.S. Karkera for
Shri. P.M. Pradhan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri **M.R. Kolhatkar, Member (A)**

The Hon'ble Shri

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

J*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 755 of 1989

Shri. Baburao Onkar Patil ... Applicant

Vs.

1. Chief Post Master General
Maharashtra Circle
Bombay - 400 001.

2. The Director General
Department of Posts
New Delhi - 110 001.

... Respondents

CORAM : Hon'ble Shri.M.R.Kolhatkar, Member (A)

APPEARANCE

1. Shri. C.B. Kale, Counsel for applicant
2. Shri. S.S. Karkera for Shri. P.M. Pradhan, counsel for respondents.

JUDGMENT

DATED : 10-11-94.

X Per. Shri.M.R.Kolhatkar, Member (A) X

This application is under section 19 of the Administrative Tribunals Act, 1985. The facts of the case are as under :

2. The applicant was recruited as ^a/Clerk in Postal Department on 2-6-1953. He was promoted to the post of Inspector of Post Offices in May 1964 and he was promoted in Higher Selection Grade I in July 1976.

and as Asstt. Supdt. of Post Offices in May 1979. He was promoted to Higher Selection Grade I on ad-hoc and temporary basis from 25.11.1981, which promotion was regularised with effect from 3.2.1986. The applicant was approved for PSS Group B on All India Basis and after completion of training, he was promoted in Group-B from 27-2-1986. He retired on 1/9/1989. The matter in issue is regarding pay fixation of the applicant on the basis of the option given by him first on 9.2.82 and thereafter on 18-7-1986. The option was exercised with reference to orders dated 28-9-1981 on the subject "Option of date of fixation of pay on promotion - regarding". As these orders fall for interpretation, the same may be reproduced in full :

"The undersigned is directed to refer 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 FR-22-C. A point was raised by the Staff Side in the 25th 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 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 straightaway 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 FR. 28(a)(i) which may be refixed on the basis of the provisions of FR.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.

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 day of May, 1981."

3. According to the applicant, the first option given by the applicant in terms of the memorandum dated 9/2/82 was not accepted by the Respondents. The second option given on 18/7/86 was accepted by the respondents on 13/11/87 but he was not given benefit of the option on the ground that he was not reverted to HSG-I after 26-2-82 and as such there was no occasion to refix his pay as per his option. In this connection, reference is invited to the letter dated -8-88 at Annexure 'A12'.

4. The applicant states that it is unjust to expect him to revert for the purposes of fixation of pay, In particular he has stated that the implications of the rule which has been operated in his case are as below :

"It suggests that to put himself within the four corners of the option, the Applicant should have played some trick. He could have postponed his promotion to Group B, which was on ad hoc basis till his date of increment i.e. 1-5-82 or got himself reverted on or after 1-5-82. Had he fallen sick during this period and produced medical certificate or had he managed to get the orders issued or implemented after 1-5-82 he would have got the benefit. Even had there been any occasion, for the Respondents to revert him, on Administrative or technical ground he would have got the benefit of option. But because he was straightforward, sincere and honest and was under the strong impression that the Respondents would not misinterpret the option to his disadvantage, he accepted the higher promotion as and when given and continued to officiate therein without any break. To reward his honesty, submissiveness in obedience of the orders, without hesitation and shouldering higher responsibility by putting him to great monetary loss, would be the climax of injustice."

5. He further submits that

"His first option given on 9-2-82 was not accepted on the ground that his promotion to H.S.G.I was adhoc promotion and his substantive post was in the lower cadre. On the same analogy, on 1-5-82, he ought to have been presumed to be in H.S.G.I, but for his ad hoc promotion in Group B and given the benefits of the said concession of increment under option B as per his request, as he was not at fault in continuing in Group B in obedience of the orders of his higher authority "

6. The applicant also relies on the letter dated 12-3-83

in the case of fixation of pay on promotion of Shri.Patil, Post Master - Group B, which is reproduced below :

" I am directed to refer to your letter No.Staff-A/AP-1482 dated 18.2.83 on the above subject and to say that the option is not admissible in respect of ad-hoc promotions. However in cases where such a promotion is followed by regular appointment to the higher post without break, the option may be allowed as from the date of initial appointment to the higher post, to be obtained within one month from the date of such regular appointment. The pay of the officer may be regulated accordingly. "

7. He also refers to clarifications under FR.22 at page 64 in Swamy's Compilation which is reproduced below :

"The option may be uniformly allowed in respect of all promotions effected on or after 1st May 1981, where the fixation of pay is to be made under F.R 22C, irrespective of the fact whether there is an impending anomaly or not "

8. Applicant also refers to the case of Shri. T.N. Gosavi, Dy. Chief Post Master, Kalbadevi which relies on the clarifications given above.

9. The respondents, however did not accept the contention of the applicant and state that the case of T.N. Gosavi was decided wrongly and the applicant cannot be given the benefit of pay fixation as requested by him. According to them, the initial appointment of the applicant to H.S.G-I was on ad-hoc basis and the regularisation took place only on 3/2/86. We had specifically asked the counsel for respondents as to the reason for delay in regularisation. He stated that the delay was due to the fact that the Recruitment Rules in this regard were being finalised. Thus, it is clear that the delay in regularisation of the applicant to H.S.G-I was purely fortuitous. In such a situation, as held in the case of Shri.Patil referred to above, the date of regular appointment by the operation of doctrine of ^{“relaxation-back”} _{from} should be taken as the date of appointment on ad-hoc

basis. On this footing, the option exercised by the applicant on 9/2/1982 should be treated as a valid option and his pay is required to be fixed on the basis of this option. We therefore dispose of this application by passing the following order :

O R D E R

O.A is allowed. The respondents are directed to accept the option of the applicant exercised on 09/02/1982 in terms of Government of India, Ministry of Home Affairs Memo dated 26.9.1981 and fix the pay accordingly. The benefit of pay fixation may be given to the applicant for the purpose of pension. The arrears of pay fixation may, however be confined to one year prior to the date of filing of the O.A, namely 12/10/1989. The action in this regard should be completed within three months of communication of this Order. No orders as to costs.

M.R.Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)