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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 853/89.

198

~~XXXXXX~~

DATE OF DECISION 7.11.1990

Shri Y.A.Chaudhary Petitioner

Shri S.R.Atre. Advocate for the Petitioner(s)

Versus

The Director General(Post) & Ors Respondent

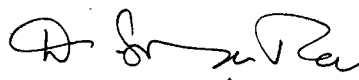
Shri P.G.Godhangaonkar. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. D.Surya Rao, Member(J),

The Hon'ble Mr. P.S.Chaudhuri, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? NO
2. To be referred to the Reporter or not ? NO
3. Whether their Lordships wish to see the fair copy of the Judgement ? NO
4. Whether it needs to be circulated to other Benches of the Tribunal ? NO


(D.SURYA RAO)
MEMBER (J).

(06)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY,
CAMP AT AURANGABAD.

Original Application No.853/89.

Shri Y.A.Choudhary.

... Applicant.

V/s.

The Director General (Post),
Sanchar Bhavan,
New Delhi. & 4 others.

... Respondents.

Coram: Hon'ble Member(J), Shri D.Surya Rao,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:-

Applicant by Shri S.R.Atre.
Respondents by Shri P.G.Godhangaonkar.

JUDGMENT:-

[Per Shri D.Surya Rao, Member(J)]

Dated:

7/11/90

The applicant herein is now working as a Sorting Assistant in the office of the Railway Mail Service, SRO(L) Division, Nanded. He is aggrieved by the inaction of the respondents in not giving him the benefit of opting for the revised pay scales as prescribed under the Pay rules of 1973. It is his case that under the pay rules of 1973 pursuant to the recommendations of the IIIrd Pay Commission options were given to staff to opt for the revised scales. Consequent on demand by employees and as a result of a meeting between the employees and the Government at the National Council (JCM), Government extended the date for exercise of option till 31.5.1984, this extension was ^{granted &} ~~accorded~~ pursuant to an Office Memorandum dt. 13.3.1984 enclosed as (Annexure A-1). The applicant alleges that this Memorandum dt. 13.3.1984 was never circulated in the office of the Superintendent of RMS, Nanded and hence the applicant could not exercise his option within the due date. The applicant made representations on

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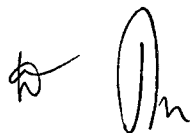
16.11.1985 (Annexure A-2) after coming to know about the Circular dt. 13.3.1984 ^{and on 3.12.1985} ~~(Exhibit A-3)~~. As no action was taken he made subsequent representations on 3.12.1985 (Annexure A-3), 21.4.1986 (Annexure A-4), 20.9.1986 (Annexure A-5) and 24.9.1986 (Annexure A-6). Thereafter, he received a letter on 17.10.1986 enclosing a copy of the option from Respondent No.4 (Annexure A-7) calling upon the applicant to submit his option on or before 22.10.1986. The applicant accordingly submitted his option form. Respondent No.4 by letter dt. 23.11.1986 (Annexure A-8) informed the applicant that his case has been considered by the authorities and rejected since the option was belated. The applicant made further representations on 28.1.1987 (Annexure A-9), 5.6.1989 (Annexure A-11) and 16.6.1989 (Annexure A-12) but no action has been taken thereupon. Applicant alleges that in the case of one V.J.Kapatkar, Sorting Assistant of Pune the benefit of opting for the revised scale beyond the period of time prescribed was given since the Memorandum dt. 13.3.1984 had not been circulated within time. It is alleged that the said Kapatkar had filed an application before this Tribunal and was successful therein. The applicant ^{contends that he} pressed on the same analogy ^{that} relief should be granted to him, viz. that the respondents should be directed to fix the pay of the applicant as per the option preferred by him on 22.10.1986 and that he should be paid all arrears which accrued by virtue of such pay fixation.

2. On behalf of the respondents a reply has been filed contending that applicant had not preferred the option within the time prescribed viz. 31.5.1984. It is stated that even prior to extension of time on 31.5.1984 options had been called for and persons similar to the applicant who had been working at Nanded had submitted their options. While admitting that the applicant had made several representations for extension of time limit ^{it is stated that} ~~and~~ his case was taken up by the Post Master General, Maharashtra Circle with the Director General of Posts

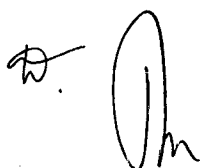
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in New Delhi in the month of October, 1986. The Director General by letter dt. 23.7.1986 intimated that options were exercisable latest by 31.5.1984, that the date of option was not extended thereafter and that therefore, the belated option exercised by the applicant cannot be accepted. In support of the reply documents dt. 23.11.1986 and 13.3.1984 have been enclosed as (Annexures R-3 and R-4). It is contended that the order of the Government rejecting the plea of the applicant to exercise option for the revised scale was communicated on 19.12.1986 and received by the applicant on 22.12.1986. Since the applicant has filed the present application in the Month of December, 1989, it is time barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. The respondents do not admit that the Circulars extending options till 31.5.1984 ^{was} not circulated among the staff members of Nanded or that the applicant was deprived of the benefits of the said Circular. The contention of the applicant that it was not circulated was denied as being not correct. It is also denied that Circular dt. 13.3.1984 extending options upto 31.5.1984 was received in the Nanded Office only on 16.6.1984 i.e. after the last date for submission of options. It is stated that the representation of the applicant was duly and properly considered and that there is no provision under the rules to accept belated claims and hence request for extension of time for exercising his option was rightly rejected. It is stated that the case of Shri V.J.Kapatkar referred to by the applicant has no relevance, to his case. It is therefore prayed that the application should be dismissed with costs.

3. We have heard the learned counsel for the applicant Shri S.R.Atre and Shri P.G.Godhangaonkar, Central Government Counsel on behalf of the respondents. The first point that arises for determination is whether the O.M. dt. 13.3.1984 (Annexure A-1) extending time for exercise of options under the



Revised Pay Rules, 1973 was circulated to the staff of the Railway Mail Service at Nanded. The applicant asserts that it was not circulated, whereas the respondents in their reply assert that it was circulated. However, Exhibit R-2 enclosed by the respondents to their reply viz. letter dated 16.10.1986 from the Senior Superintendent, R.M.S.(L) Division, Bhusaval to the Assistant Post Master General (Staff) Maharashtra Circle specifically states that the IRM Aurangabad who was asked to inquire into this aspect has stated that the then S.R.O. Shri G.D.Deshpande had failed to circulate the said memo among the staff. This report also discloses that since the said Shri Deshpande had already retired on superannuation w.e.f. 31.12.1985 no action can be taken against him. It is clear therefore, that the O.M. dt. 13.3.1984 was not circulated in the office where the applicant was working and therefore, he could not exercise the option within the time prescribed. Apart therefrom the claim of the applicant is that, one Shri V.J.Kapatkar who was similarly situated and who could not opt, had represented for permission to opt after the due date, on the ground that there was an administrative lapse in circulation of the circular to the staff by the Senior Superintendent of the R.M.S. at Pune. This matter was referred for adjudication before the Central Government Industrial Tribunal and thereafter the letter dt. 10.10.1988 was issued to the effect that the President is pleased to accept the delayed option dt. 15.6.1984 exercised by Shri Kapatkar for fixation of the pay under C.C.S. (Revised Pay) Rules, 1973 in relaxation of the Ministry of Finance O.M. dt. 13.3.1984. Shri Kapatkar had filed Original Application No.256/88 before this Tribunal and it was during the pendency of those proceedings that the relief by way of letter dt. 10.10.1988



had been granted to him. It is clear that the case of the applicant and that of Shri Kapatkar are identical. There is no reason why the applicant should be discriminated against and not given the right to exercise his option beyond the prescribed date as contained in Ministry of Finance O.M. dt. 13.3.1984 since the delay in exercising option was due to no fault of the applicant. On this ground also the application is liable to be allowed.

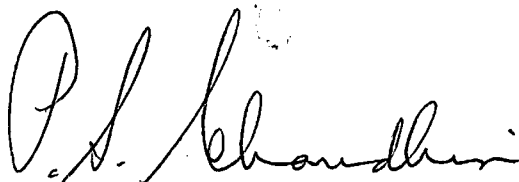
4. It is however, contended by Shri Godhangaonkar that the rejection of the claim for exercising a revised option was ordered as long back as on 17.12.1986 and communicated to the applicant on 22.12.1986 (Exhibit A-8). It is contended that the application should have been filed within one year from 22.12.1986, whereas it has been filed on 6.11.1989 i.e. after a delay of nearly 23 months. It is prayed that the application should be dismissed in limine on the ground that it is time barred under section 21 of the Administrative Tribunals Act, 1985. We are unable to agree with the contention that the application is to be dismissed in limine. The applicant was prevented from exercising the option because of the respondents having not circulated the relevant circular to the employees of the office in which he was working. The respondents have thus contributed to the non-submission of the option by the applicant. No doubt, after rejection of his representation the applicant should normally have approached this Tribunal within one year of the said rejection. However, non-fixation of pay in accordance with the Revised Pay Rules affects the applicant every day and as a result of such non-fixation he stands to lose in regard to each increment which has to be granted to him annually. Thus the loss to the applicant as a result of non-fixation of pay in accordance with the revised option is a continuing loss which causes irreparable damage to the applicant. We are therefore, of the opinion that this is a fit case for condoning delay on

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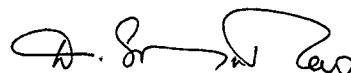
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suitable terms. As a result of accepting the applicant's option and refixation of pay no other party's rights are affected and as such there is no harm caused in condoning the delay. We would accordingly direct that the applicant's pay should be refixed in terms of the revised option preferred by the applicant on 22.10.1986 under the Revised Pay Rules, 1973. Such revision of pay and the consequential increments which the applicant would receive year to year shall be fixed proforma from 1973 till 1.11.1988 i.e. one year prior to the filing of the application. The applicant would be entitled to the higher scale of pay fixed as a consequence thereof including arrears only from 1.11.1988 i.e. he would not be entitled to arrears as a result of the revised option ^{proforma} and fixation of pay for the period 1973 to 1988. Subject to this condition, the application is allowed.



(P.S. CHAUDHURI)
MEMBER (A).



(D. SURYA RAO)
MEMBER (J).