

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI
NEW BOMBAY BENCHO.A. No. 16/89
T.A. No.

198

DATE OF DECISION 16-11-1989

Shri Prabhakar Atmaram Damle Petitioner

Petitioner in person Advocate for the Petitioner(s)

Versus

Union of India through The Respondent

Superintending Engineer, Bombay Central

Circle No. II C.P.W.D. Bombay-400-020

Mr. J.P. Deodhar Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S. CHAUDHURI, MEMBER (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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

O.A.No. 16/89

Shri Prabhakar Atmaram Damle

.. Applicant

V/s

1) Union of India, through
The Superintending Engineer,
Bombay Central Circle No.II
Central Public Works Department M.K.Road,
Bombay-400-020.

2) The Chief Engineer(Western Zone),
Central Public Works Department,
101 M.K.Road, Bombay-400-020.

3) The Director General of Works
Central Public Works Department,
Nirman Bhavan,
New Delhi-110-001.

.. Respondents.

Appearances:-

Applicant in person.

Mr.J.P.Deodhar, Advocate
for the respondents.

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

Oral Judgement

Dated: 16-11-1989

(Per Mr.P.S.Chaudhuri, Member(A))

This application was filed on 28-12-1988 under section 19 of the Administrative Tribunals Act, 1985. In it the applicant prays that his pay on promotion as Upper Division Clerk be fixed at Rs.350/- P.M. with effect from 1-7-1982, that he/paid compound interest at 20% per annum on the arrears due and that he be paid costs.

2. In terms of this Tribunal's Chairman's order dated 21-3-1988 this application thus comes within the jurisdiction of a Bench consisting of a Single Member. I have accordingly proceeded to hear and decide it.

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3. The facts may/ briefly stated. The applicant joined service in the office of respondent No.1 on 31-7-1981 as Lower Division Clerk (for short, LDC) in the pay scale Rs.260-6-326-8-390-10-400. By order dated 8-3-1982 he was promoted as Upper Division Clerk(for short, UDC) in the pay scale Rs.330-10-380-12-500-15-560. He took over charge of the post of UDC with effect from 31-3-1982 (FN). By order dated 3-7-1982 his pay as UDC was fixed at Rs. 340/-P.M. with effect from 31-3-1982 (FN), the date of next increment being 1-3-1983 (FN).

4. By office memorandum dated 26-9-1981 issued by the Department of Personnel and Administrative Reforms, Ministry of Home Affairs revised instructions were issued by the President in regard to the selection of a date by an employee for ~~the~~ fixation of pay on promotion. This office memorandum dated 26-9-1981 was circulated to subordinate offices under the Directorate General of Works, Central Public Works Department by their office memorandum dated 31-7-1982 which, as mentioned by the applicant in his letter dated 12-7-1988 at Annexure R-23 to the application, was received in the office of respondent No.1 on 7-8-1982. As the memorandum dated 26-9-1981 is important for our purpose it is quoted in full below:-

"Subject:- Option of date for fixation of pay on promotion-regarding."

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 a person senior to him who though promoted earlier has not drawn at any time pay less than that of his junior in the lower post."

(8)

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 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 FR 22(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 on completion of 12 months qualifying service from the date pay is fixed 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 barred 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.

5. In so far as the establishments under concerned, these orders issue with the concurrence of the Comptroller and Auditor General of India.

6. Ministry of Finance etc. are requested to bring the above decision to the notice of all concerned."

5. It is the applicant's case that he came to know about the contents of this office memorandum dated 26-9-1981 only on 18-1-1983 and that he exercised his option in terms thereof by addressing an application to respondent No.1 on that very day, viz. 18-1-1983, asking him to refix his pay under FR 22 (a) (i) and under FR 22-C. By letter dated 19-2-1983, the applicant was informed that his request could not be acceded to because he had not submitted his application within one month of his promotion (emphasis supplied). Being dissatisfied with this the applicant submitted another representation on 24-2-1983 pointing out,

(a)

inter alia, that the relevant office memorandum had not been circulated in the office. This application was favourably recommended and forwarded to the Chief Engineer (WZ), C.P.W.D. by letter dated 31-3-1984. By an endorsement on a copy of this letter, the applicant was directed to intimate why he could not give his option within 1 month after his promotion. By a reply dated 16-6-1984 the applicant pointed out the impossibility of doing so as the Directorate General of Works had issued their memorandum only on 31-7-1982, i.e. 4 months after his promotion. Even though the applicant addressed numerous reminders thereafter, no final reply has yet been issued to him.

6. Being aggrieved, the applicant filed this application. The respondents have opposed it by filing their written reply. I have today heard the applicant in person and Mr.J.P.Deodhar, learned advocate for the respondents.

7. This case rests on a short point. By the office memorandum dated 26-9-1981 employees were given an opportunity to choose between two possible options in the matter of the fixation of their pay on promotion. This option was required to be exercised within one month of the date of promotion. It cannot be disputed that the office memorandum dated 26-9-1981 was received in respondent No.1's Office on 7-8-1982. It is the applicant's contention that this memorandum was not circulated amongst the staff. Although the respondents have denied this, I do not see any force in their contention as no evidence was forthcoming regarding signatures of the staff in token of acknowledgement of having seen it or any other method for proving circulation. It is the applicant's further contention that he came to know about this memorandum only on 18-1-1983. The respondents have also denied this. But this denial is not material.

There was no way that the applicant could have exercised his option within one month of the date of his promotion. Even assuming it that he came to know about the memorandum on 21-8-1982, i.e. the very day that it was received in his office, it would still have been more than one month after his promotion on 31-3-1982. To reject his option on this ground is obviously arbitrary. In fact, the respondents themselves appear to have felt that some relaxation was essential. In their letter dated 31-3-1984 mentioned earlier they have said " cases of those promoted from 26-9-81 to 31-7-82 are required to be sent to D.G.W. for relaxation." Besides, the impossibility of exercising an option within one month of the date of his promotion was specifically pointed out by the applicant in his reply dated 16-6-1984 to respondent No.1

8. In this view of the matter I have no hesitation in holding that the applicant has not been given an opportunity to exercise the option to which he is entitled in terms of the Department of Personnel and Administrative Reforms, Ministry of Home Affairs' Office memorandum dated 26-9-1981. I do not, however, see any case for allowing the applicant any interest on account of the arrears to which he will be entitled.

9. The application succeeds partially. In the result, I pass the following order:-

(1) The respondents shall refix the pay of the applicant on his promotion as Upper Division Clerk with effect from 31-3-1982 (FN) in accordance with the FR 22 (a) (i) from that date and in accordance with the FR 22-C with effect from 1-7-1982 onwards. All subsequent pay fixations will also be done on that basis.

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(2) The fixation of pay and payment of the arrears due shall be done as expeditiously as possible but in any case not later than 3 months from today.

10. In the circumstances of the case there will be no order as to costs.



(P.S. Chaudhuri)
Member(A).