

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO:253/2001  
DATED THE 9TH DAY OF JANUARY, 2002

CORAM:HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT, VICE CHAIRMAN  
HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Shrimati Sharda Unnikrishnan,  
P.A. Transportation Branch  
W.Railway, H.Q.Office,  
Churchgate, Mumbai - 400 020.

... Applicant

By Advocate Shri H.A.Sawant

V/s.

1. The Chief Personnel Officer,  
Western Railway H.Q.Office,  
Churchgate, Mumbai - 400 020.

2. The Chief Transportation Manager,  
Western Railway, H.Q.Office,  
Churchgate, Mumbai - 400 020.

3. The Union of India,  
acting through the General  
Manager, Western Railway,  
Head Quarter Office,  
Churchgate, Mumbai - 400 020.

... Respondents

By Advocate Shri Ravi for  
P.M.A.Nair

(ORAL).(ORDEDR)

Per Shri B.N.Bahadur, Member(A)

The Applicant in this case comes up to this Tribunal seeking the relief of stepping up of his pay on par with his junior Smt.V.A.Chary, w.e.f. 1/4/1995. It is stated that the junior is drawing the pay of Rs.2060/- w.e.f. 20/9/95. As the facts of the case are in a short compass, we have taken up the matter for hearing and disposal at the admission stage, with consent of both parties.

*B.N.B.*

...2.

2. The facts are stated by the Applicant are as follows:-

The Applicant states that he was placed on select list for promotion to the post of CAS vide order dated 13/9/95, Annexure A-3 page-19. By the same order her junior, Smt. Chary was also promoted. The learned counsel for Applicant was heard at some length. He drew our attention to this Annexure Order and stated that although the employees had been asked to exercise their option within one month, the Applicant had indeed not done so. It is admitted by learned counsel for Applicant wanted, now, to change the option which got decided by way of default i.e. after about One and half years now. The grounds taken for this delay are that this need for exercising option had gone out of his mind and hence the applicant applicant could not exercise his option at the due time.

3. Learned Counsel, Shri Sawant also argued in a feeble way to defend his delay of One and half years. He argued that the time of one month was indeed short. The point was also raised to the effect that due to this fixation, the Applicant has suffered monetary loss which will continue ahead, and hence it is a continuing cause of action.

4. The Respondents have stated that, on examination, it was seen that anomaly in pay viz.a.viz Mrs.Chary existed in pay on two occasions viz as on the date of increment in scale Rs.1,400/- Rs.2,300/- and as on promotion in Scale Rs.1640/- Rs.2900/-. It is stated that Smt.Chary had exercised her option for fixing the pay from the date of increment whereas the Applicant did not although on clear stipulation regarding liberty regarding option

was incorporated in the promotion order itself. It is further stated that if the applicant had opted for pay fixation on date of increment the anomaly would not have existed. This is the explanation on the part of the Respondents.

5. The learned counsel Shri Ravi, who appeared for Respondents stated that what infact had happened was that applicant had exercised no option. Now it cannot be said that the right to exercise option can be derived by judicial determination. Infact, it is not a case of a short delay as the applicant has admittedly fairly pointed out had gone out of his mind for One and half years, and we cannot help in this regard. Had it been a delay of few days or few weeks and plausible reason given, one could have considered her pleas. However, the period is long and the reasons not plausible.

6. The following case law was cited by Counsel for Applicant:-

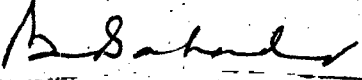
1. E.Sarasian V/s. Secretary, Central Board of Direct Taxes New Delhi and Ors. (1991) 17 ATC 673.
2. T.P.Shyamalan V/s. Union of India and Ors. (1995)31 ATC 701
3. G.Suryanarayana V/s. Telecom Distt. Manager & Ors (1995) 30 ATC 741
4. Sampat Raj Sharma V/s Union of India & Ors. (1995) 30 ATC 479

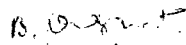
The case of E.Sarasian and Shyamalan are not relevant to the issues involved. In G.Suryanarayana's case certainly the Tribunal had allowed late exercise of option but it was for a specific reason that the junior's promotion order was served

after one year and this fact prevented the applicant in that case for making an application in time. There was a specific reason in that case and the decision given in peculiar facts and circumstances therein cannot become a ratio decided in the present case. Similarly in Sampat Raj Sharma's case also, the weakness on the part of the Government was that a senior could not exercise option because the circular inviting options within the prescribed time was not circulated in the office in which the applicant was working. There again the decision was given in the peculiar facts and circumstances of that case and cannot come to the assistance of applicant in the present case.

7. It is regrettable indeed that in view of the lack of attention to giving option in time, the Applicant has reached a position where he has suffered financially. However, as stated above the reasons do not create any right where help can be provided through judicial determination. We are therefore unable to provide the relief prayed for by the applicant.

8. However, this order will not prevent the respondents from allowing the pay fixation etc under the rules and other judgements, in case they are approached and are so advised. This is a liberty provided and not a direction; nor can it become a cause for further litigation. Subject to above remarks, the OA is dismissed with no orders as to costs.

  
(B.N. BAHADUR)-  
MEMBER(A)

  
(BIRENDRA DIKSHIT)  
VICE CHAIRMAN