

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.780/2001.

Thursday, this the 20th day of June, 2002.

Hon'ble Justice Shri Birendra Dikshit, Vice-Chairman,
Hon'ble Shri M.P.Singh, Member (A).

K.O.George,
Flat No.19,
"Sunita",
Road No.3,
Pestonsagar,
Chembur,
Mumbai - 400 089.
(In person)

...Applicant.

v.

✓ 1. Union of India,
(Through The Secretary to the Govt.
of India, Department of Revenue,
Ministry of Finance, Central Secretariat,
North Block,
New Delhi - 110 001.

2. The Commissioner of Central Excise,
Mumbai - II Commissionerate,
Piramal Chambers,
9th Floor,
Jijibhoy Lane,
Lalbaug, Parel,
Mumbai - 400 012.

(By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna)

...Respondents.

: O R D E R (ORAL) :

M.P.Singh, Member (A).

By filing this OA under section 19 of the Administrative Tribunals Act, 1985, the applicant has sought for a direction to refix his pay in Grade 'A' w.e.f. 1.11.1990 under F.R. 22 (a)(1) (a).

2. The brief facts of the case are that the applicant was working in the Central Excise Department and was promoted from the Grade of Supdt. Group 'B' to the Grade of Group 'A' Officer

...2.

vide Ministry of Finance Order dt. 10.9.1990. According to the applicant, he was appointed on ad hoc basis because of pending litigation before the Hon'ble the Supreme Court. After the Judgment of the Hon'ble Supreme Court delivered on 22.11.1996 {All India Federation of Central Excise v. Union of India & Ors. (1996 (67) ECR 685 (SC)}], the Officers were appointed on regular basis. The applicant made a representation stating that since his increment in the feeder grade was due from 1.11.1990, he should be allowed to exercise his option under F.R. 22 (a) (1) (a). To support his claim, he has relied upon the letter dt. 3.12.1993 issued by the Ministry of Finance which provides that the benefit of split option is admissible in respect of Officers promoted on ad hoc basis. Respondents have rejected his representation vide letter dt. 21.12.1994 on the ground that the benefits of split option are not applicable to cases of ad hoc promotion. A decision has also been taken at the level of MOS (PP) that case of retired officials are not to be re-opened. Aggrieved by this, the applicant has filed this O.A.


3. Heard the applicant in person and Shri V.D.Vadhavkar for Shri M.I.Sethna for the Respondents.

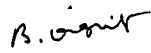
4. During the course of the argument, Learned Counsel for Respondents has submitted that the applicant is not entitled to the benefit of pay fixation under F.R. 22 (a) (1) (a) as per the clarification No.4 of Government of India Order No.(15) under F.R. 22. He has also submitted that the applicant was promoted only on ad hoc basis and before he could be considered for regular appointment, he retired on superannuation on 31.3.1992.

5. After perusing the relevant papers and records, we find that the Respondents by their letter dt. 21.12.1994 have rejected the claim of the applicant only on the ground that he has since retired. The letter dt. 3.12.1993 issued by Ministry of Finance makes it clear that the benefit of split option is admissible even in respect of Officers who are appointed on ad hoc basis. Therefore, the rejection of the claim of the applicant on the ground that he has retired from service is discriminatory, arbitrary and is not legally sustainable. We are of the considered view that the applicant is entitled to the benefit of split option under F.R. 22 (a) (1) (a) as provided in the aforesaid letter dt. 3.12.1993. In the circumstances, we direct the respondents to allow the applicant the benefit of split option for fixation of his pay in the grade of Group "A" w.e.f. 1.11.1990.

6. The OA is disposed of in the above circumstances.

7. No costs.


(M.P. SINGH)
MEMBER(A)


(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

B.