

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1032/92

XXXXXXXXXXXXXX

DATE OF DECISION 15.4.1994

Shri R.G. Joshi Petitioner

Shri S.P. Kulkarni Advocate for the Petitioners

Versus

Union of India & Another Respondent

Shri S.S. Karkera for Mr. Pradhan Advocate for the Respondent(s)

COURT:

The Hon'ble Smt. LAKSHMI SWAMINATHAN, MEMBER (JUDL.)

The Hon'ble Shri

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

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (Judl.)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

D.A. No. 1032/92.

Shri R.G.Joshi.

... Applicant.

V/s.

Union of India & Another.

... Respondents.

Coram: Hon'ble Member (J), Smt. Lakshmi Swaminathan.

Appearances:

1. Shri S.P.Kulkarni,
Counsel for the Applicant.
2. Shri S.S.Karkera, for Mr.P.M.
Pradhan, Counsel for the
Respondents.

ORAL JUDGMENT :

Date: 15-4-1994.

(Per: Hon'ble Smt. Lakshmi Swaminathan, Member (J))

This application has been filed by the applicant under Section 19 of the Administrative Tribunal's Act, regarding his claim for refixation of his pay on his promotion as Jr. Accounts Officer, on 21-4-1981. The applicant has since retired from service on 31-7-1990. According to him he had made several representations while in service to accept his option for fixation of his pay under FR-22-C which was not replied by the Respondents.

2. In accordance with the then existing orders, the applicant's pay on promotion as JAO was fixed under FR-22-C in the scale of Rs. 425-15-500-EB-15-560-20-700. According to him, in the appointment order as JAO no mention had been made that he could exercise option for fixation of pay as given in OM No.F-13/96/82-Estt.P.I. dated 8-2-1983. The learned Counsel for the applicant has submitted that by Govt. of India, Ministry of Home Affairs, Department of Personnel & Administrative Reforms O.M.No.F-7/1 80-Estt.P.I. dated 24-12-1981, which refers to the earlier Department of Personnel O.M. dated 26-9-1981 on the same subject of exercising option, clarification had been issued that the employees who were promoted during the period from 1-5-1981

(a)

to 25-9-1981, this option shall be exercised within one month of the promotion. The O.M dated 26-9-1981 was circulated on 16-2-1982 after the promotion of the applicant. The learned Counsel for the applicant submitted that these O.M.s giving an option to the promotee were issued by the government in cases where anomalies arose because of the pay fixation under FR-22-C whereby juniors were getting higher pay than the senior persons. In the instant case, it is an admitted fact that the applicant's case does not come within the anomalies situation referred to in the 1981 O.M. However, attention was also drawn to the subsequent O.M.No.13/26/82-Est.P.I. dated 8-2-1983 in which further clarifications were issued by the Ministry of Home Affairs Department of Personnel. This O.M. was circulated on 14-6-1984, by which the following clarifications were given viz. (1) in the order of promotion it may be mentioned that the Government servant has to exercise the option within one month; (2) the option shall be allowed only in cases of promotion to higher posts in the normal line in a cadre/department; (3) in case of the Officer refusing promotion; (4) that the option may be uniformly allowed in respect of all promotions effected on or after 1-5-1981 where the fixation of pay is to be made under FR-22-C irrespective of the fact whether there is an impending anomaly or not; (5) the option is not admissible in respect of adhoc promotions; (6) not applicable if in case the initial fixation of pay under FR-22(a)(i) and FR-22-C are the same (7) promotion in the case from class II post to class I post and (8) position regarding protection of officiating pay.

3. The learned Counsel for the applicant submitted that the clarification regarding ^{allowing} exercising option uniformly whether there is any anomaly or not, had been given only vide O.M. dated 8-2-1983 which was actually circulated on 14-6-84.

J.S.

He has also mentioned that in another similar case of one Shri V.T.Salve who had been promoted on 24-8-1983 but had exercised the option later, the department had allowed him to exercise the option of pay fixation as a 'special case'. The learned Counsel for the Respondents sought to draw a distinction between that case and the instant case, on the ground that the Junior of Shri Salve was drawing more pay and hence his case was allowed as a special case. He has also opposed the acceptance of the option dated 3-9-1983 stating that it is time barred and this Tribunal has no jurisdiction to entertain the application. He has relied on the judgment in S.S.Rathore V/s. State of Madhya Pradesh (1989(5) SLR 779 SC). The learned Counsel for the applicant has on the other hand relied upon the judgment of this Tribunal in Locanathan V/s. Union of India & Others (1989) 9ATC 611.

4. At the time when the applicant retired from service, no such option for fixation of pay was open to him, and his grievance, therefore, that his promotion order did not mention the possibility of exercising the option does not have any force. However, it is irrelevant to note that after the clarifications in the order dated 8-2-1983 was issued, the applicant has exercised his option on 3-9-1983 requesting that his pay be fixed under FR-22 (a) (i) initially. In the light of the clarification issued by the Ministry of Home Affairs vide O.M. dated 8-2-1983 the distinction between cases where there was an anomaly or otherwise has been removed and there appears to be no justification in allowing the option in Salve's Case, but denying the same to the applicant.

5. In Locanathan's case, the Tribunal has held that the salary and allowances as well as pension are payable to a public servant month after month. Right to receive salary

or pension is a recurring right. This being a recurring right, the cause of action to claim these amounts arises from month to month. Hence, merely because the applicant was entitled to claim this amount from 1969 to 1973, the claim for the period prior to 1-11-1982 cannot be entertained and the right to claim arrears of more than three years prior to the filing of the application is barred by time, the application itself cannot be declared as not entertainable or time barred. The applicant's right to receive the amounts which are within the limitation is entertainable. In this case the applicant was held entitled to receive all amounts of arrears of pension for three years immediately prior to the filing of the application before the Tribunal.

The learned Counsel for the Respondents, however, relied on the judgement in N.Lalitha V/s Union of India [(1992) 19 ATC 569] and submitted that on the question of limitation the applicant's claim for arrears should be restricted to one year prior to the filing of this application and not three years.

6. Having regard to the facts and circumstances of this case and the aforesaid judgment in Locanathan's case, since the O.M. dated 8-2-1983 had been circulated only on 14-6-1984 and the applicant had in fact exercised his option under FR-22-C well before this date, I am of the view that the option exercised should be accepted. ~~The application is allowed.~~ The respondents are directed to refix the applicant's salary notionally from the date of his promotion and also refix his pension and other pensionary benefits according to the rules. No doubt there has been some delay on the part of the applicant but this being a recurring right to receive salary and pension, I am not inclined to dismiss this application on this score.

However, having regard to the provision of Section 21(1) of the Administrative Tribunals Act, 1985, the benefit of revised pension so fixed shall be restricted to one year immediately prior to the filing of this application. The respondents are directed to implement this order within a period of four months from the receipt of this order.

The Application is allowed as directed above.

No order as to costs.

Lakshmi Swaminathan
(SMT. LAKSHMI SWAMINATHAN)
MEMBER (JUDL.)