

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CAMP: NAGPUR

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O.A. No. 1112/92

T.P. Deshpande

.. Applicant

V/s

Union of India & Ors.

.. Respondents

Coram: Hon'ble Shri M.R. Kolhatkar, M(A)

JUDGMENT:

DATED: 14-1-94

(Per: M.R. Kolhatkar, Member (A).)

Mr. R S Deshpande counsel for the applicant

Mr. M G Bhangade, counsel for the respondents

This is an application by 12 telephone Supervisors working at Telephone Exchange Akola. Their case is that after introduction of the IVth Pay Commission the pre-revised scale of Rs.425-640 was revised to Rs.1400-2300 and in terms of OM No.7(52)E.III/86 dated 27.5.1988 from the Ministry of Finance, Govt employees drawing their increments annually who opt to switch over to the revised scale of pay from the date of their next increment or subsequent increment falling after 1.1.1986 but not later than 31.12.1987 were given the facility of exercising their option prior to 31.8.88.. However, this memorandum which extended the earlier date in terms of increment falling due from 31.12.86 to 31.12.87^{was} not circulated by their immediate superior. Respondent no.5. They came to know some time in the month of January 1991 about this circular and they, therefore, sent a representation on 6.2.91 (Annexure IV) requesting respondent no.4 to permit them to exercise their option. All these options were forwarded by the Assistant Engineer (Trunk), Respondent no.5, under the letter dated 7.2.1991, Annexure V, in which it is stated that the letter

under reference interms of which the option was being exercised by these employees does not appear to have been received in the office and the representation being genuine the same may be considered. The employees received reply on 21.1.92, Annexure II, intimating that the case was considered in consultation of the Ministry of Finance but that the proposal has not been agreed to. The employees have challenged this letter rejecting the belated option exercised by the employees. Their prayer is to set aside the order rejecting the representation and to ask the respondents to fix the pay of the petitioners on the basis of the increments falling during the year 1987 along with grant of arrears. The main ground for the prayer is that not permitting them to exercise the option amounts to discrimination and that the office memorandum in question was never communicated or brought to the notice of the petitioners.

2. Respondents opposed the admission of the Original Application on the ground that the said memorandum of Ministry of Finance according to which the option was to be exercised by 31.7.88 was circulated by C.G.M. Maharashtra Circle on 4.8.88 and that the TDE Akola had circulated the same under the endorsement dated 8.8.88 of which Sr. No. 3 relates to AE Trunk Akola (Respondent No.5) who in his turn had put up the same on notice board on 9.8.88 with the remarks "urgent notice board" and that there is no discrimination or lack of communication.

3. This tribunal in its order dated 22.2.93 directed that the applicant's counsel should see the original record in the office of TDE (Trunks) Akola

and AE Akola on the basis of which the respondents are opposing admission. It is conceded by the applicant that he has inspected the documents in question but according to him the say of the respondent No.5 that the circular in question has been notified is an after thought and that it was the duty of the respondents nos. 4 and 5 to obtain the signatures of the employees in token of having seen the circular. Further, the letter dated 7.2.91 contains the admission on the part of the respondents that the circular was not received in their office. The respondents countered this by stating that the representations were required to be forwarded immediately and at that time the respondents had not scrutinised the record and therefore the admission which is also qualified by the word "appears" cannot be held against them.

4. During the course of the arguments the advocate for the applicant further stated that [redacted] [redacted] the Assistant Engineer (Trunks) Akola was competent to reject the representation of the applicant. Instead of this he has chosen to forward the applicant^{ion} to his higher authorities, which indicates the genuineness of the application.

5. We have considered the matter carefully. It is not denied that Finance Ministry OM dated 27.5.88 at Annexure III was received by AE (Trunks) Akola under endorsement dated 8.8.88 i.e., well before the date^{of} option viz. 31.8.88. The only question which has to be decided as a matter of fact^{is} is whether the same was circulated by the A.E. (Trunks) Akola or not. The endorsement on the circular in question "urgent notice board" has also not been disputed. But it is the contention of the applicants

that the endorsement is an after thought. It is a well settled principle that in official matters when some-
things are supposed to be done in accordance with the drill,
they are presumed to be done and a very strong case has to
be set up to hold that the things did not follow the usual
official course of action. In this particular case the
applicants have set up no such case to rebut the presumption
that the circular in question was in fact circulated and
made known to all the employees concerned.

6. There is also another consideration viz., the
precise time of the knowledge of the applicants as to the
revised date of option. The applicants state that although
the last date for exercising the option was 31st August 88
they came to know about it only in January 1991 i.e., to
say about two and ^a/₂ half years after the expiry of the date
of option. How exactly they came to know about this circular
is not clarified and their knowledge therefore appears to be
purely fortuitous. It was January 1991, but it could as well
have been a longer or shorter date depending on their source
of knowledge. This has reference to the effective date of
cause of action which is August 1988 rather than January 1992
when the Applicant received the impugned reply. The applicant
ought to have given a satisfactory explanation for the delay
from August 1988 to January 1991. It is indeed difficult for
this Tribunal to consider any relief under such circumstances.

7. We are, therefore, not inclined to grant relief to
the applicants. We, therefore dispose of the case by passing
the following order.

ORDER

Application Dismissed. No order as to costs.

(M.R. Kolhatkar)
Member (A)