

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

CA 1237/92

Original Application No: 1237/92

Transferred to Bombay Bench

DATE OF DECISION 8.10.93

Mrs. L.M. Mahadik Petitioner

Shri R.R. Dalvi Advocate for the Petitioners

Versus

Regional Provident Fund Respondent
Commissioner, Mah. & Goa. Bombay
and others.

Shri B.K. Shetty. Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y. Priolkar, Member (A)

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 ? *No*
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 ? *No*

M.Y. Priolkar
(M.Y. Priolkar)
Member (A)

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1237/92

Mrs. L.M. Mahadik

... Applicant.

V/s.

Regional Provident Fund
Commissioner, Maharashtra
& Goa, 341, Bhavishyanidhi
Bhavan, Bandra (E),
Bombay.

Central Provident Fund
Commissioner, 9th floor,
Mayur Bhavan, Cannought
Circus, New Delhi.

Secretary to the Government
of India, Ministry of Labour
Mantralaya, New Delhi.

Miss L.D. Balwani,
Assistant Accounts Officer
Office of the Regional
Provident Fund Commissioner,
Maharashtra & Goa,
341, Bhavishyanidhi Bhavan,
Bandra (E), Bombay.

... Respondents.

CORAM: Hon'ble Shri M.Y.Priolkar, Member (A)

Appearance:

Shri R.R.Dalvi, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 8.10.93

¶ Per Shri M.Y.Priolkar, Member (A) ¶

Heard Shri R.R.Dalvi for the applicant and
Shri R.K. Shetty for the respondents.

2. All the five applicants in this case have the grievance that though after their promotion as Head Clerks, Respondent No. 4 who was junior to them was drawing more pay than the applicants, the benefit of stepping up of pay to the level of the pay drawn by the junior has not been given to them.

3. Admittedly, all the applicants were regularly promoted to the grade of Head Clerk, applicant No.1 in 1984 and the others in 1989. Respondent No.4 was also

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regularly promoted in 1989 after the applicants, and is admittedly junior to the applicants both in the lower grade of UDC and that of Head Clerk. The applicants claim the benefit of Finance Ministry O.M. dated 4.2.1966 regarding removal of anomaly by stepping up of pay of seniors if on promotion they draw less pay than the junior. This O.M. specifically provides that if a Government Servant who is promoted to a higher post on or after 1.4.61 draws a lower rate of pay in that post than another Government servant junior to him in lower grade and promoted subsequently, then the pay of the Senior Officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, viz:

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre:
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical:
- (c) The anomaly should be directly as a result of the application of F.R. 22 -C.


4. It is clear from the comparative statement showing the details of pay drawn from time to time by the applicants and Respondent No.4, which was specifically compiled at my instance and was produced before me today, that Respondent No.4 though junior to all the applicants has been drawing higher pay than the applicants for certain periods in the year from the date of his promotion. It appears that this anomaly has arisen directly as a result of application of F.R. 22 C since the Respondent No.4 had the benefit of one additional increment just prior to her promotion which was not the case as far as the seniors were concerned. Consequently for short periods every year the Respondent No.4 has been drawing higher pay

than the applicants. Admittedly, all the above three conditions stipulated under O.M. dated 4.2.1966 for entitling the applicants to seek stepping up of pay are fulfilled in this case.

5. The learned counsel for the respondents stated that the request of the applicants for stepping of pay has not been accepted by the respondents in view of the Government of India, Department of Personnel O.M. dated 26.9.81 and 24.2.81 in which it is provided that in such cases as the present one, where the anomaly is due to accrual of the increment in the lower post, the affected employees should be given an option for fixation of their pay on promotion as indicated in that O.M. This option was to be given within one month from the date of promotion and the option once exercised was to be final. It is clear that the applicants were governed by these orders. The learned counsel for the Respondents, however, could not show any evidence to establish that the concerned employees had been asked to give such an option, but had failed to do so. The Government of India, Department of Personnel O.M. dated 8.2.1983 and 28.1.1985 in which certain clarifications were given, state in para 5 of the clarifications that even past cases should be re-opened and an option for pay fixation obtained from the employees concerned within a period of three months from the date of the issue of O.M. viz. 28.1.1985 and their pay fixed wherever necessary, and arrears of pay on account of such re-fixation also allowed in such cases. The learned counsel for the applicant has also brought to my notice the provisions in the Government of India Department of Personnel O.M. dated 22.11.1990 in which it is laid down that in the the promotion order of a Government servant, the

department concerned should make a specific mention to the effect that the concerned government servant should exercise option for pay fixation in terms of the above O.M. within a period of one month. It is reiterated in this circular that it is incumbent on the part of the department concerned to follow this instruction scrupulously. All these orders clearly show that the Department should have taken the initiative to obtain the necessary options from the concerned employees on their promotion.

6. It is evident therefore that though it was the responsibility of the department to obtain the required options from the employees, the department had failed to take any steps in this regard. The applicants cannot be made to suffer on account of this inaction or lapse on the part of the department. The respondents 1 to 3 are therefore directed to ask the applicants now, within a period of two months from the date of receipt of copy of this order, to exercise their option in terms of the Government of India, Department of Personnel O.M. dated 26.9.1981 and 24.12.1981 reproduced at item 14 at page 103 of Swamy's Compilation of F.R.S.R. Part I General Rules 10th edition reprint 1991 (page 9 of the compilation), and refix their pay giving them the benefit of stepping up of pay in terms of the above O.M., according to the options as may be exercised by the applicants. They will also be entitled to any consequential benefits like arrears of difference in other allowances etc. to which they may be entitled as a consequence of refixation of pay. With these directions the O.A. is disposed of, with no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)