

(24)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 124/92

199

T.A. NO:

DATE OF DECISION 4.6.92

SHRI M.W.KIRPALANI

Petitioner

SHRI N.C.SAINI

Advocate for the Petitioners

Versus

THE UNION OF INDIA AND ORS.

Respondent

SHRI P.M.PRADHAN

Advocate for the Respondent(s)

CORAM:

The Hon'ble Ms. USHA SAVARA, MEMBER(A)

The Hon'ble Mr.

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 wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

U. Savara
(MS.USHA SAVARA) 4.6.92
MEMBER(A)

mbm*

(3)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO: 124/92

Shri Moti Wadhupal Kirpalani,
Working as Superintendent,
Central Excise (Grade-B),
In the Office of C.L./P.L.Sectom
Bombay -III Collectorate.

....Applicant

V/s

The Union of India,
through,

1. Collector of Central Excise,
Bombay-III Collectorate,
New Prabhat Chamber,
4th floor, Ranade Road,
Dadar (West),
Bombay-400028

2. Chief Accounts Officer,
Central Excise Bombay-III
Collectorate Nav Prabhat Chamber,
2nd floor, Ranade Road, Dadar(W)
Bombay - 400 028

....Respondents.

CORAM : HON'BLE MEMBER MS.USHA SAVARA, MEMBER(A)

Appearance:

Shri N.C.Saini, Adv.
for the applicant.

Mr.P.M.Pradhan, Adv.
for the Respondents.

JUDGEMENT

DATED: 4.6.92

(PER : Ms.Usha Savara, M/A)

This Original Application has been filed with the prayers, that the respondents be directed to allow the applicant to exercise the option for fixation of his pay under clause - II O.M. dated 26.9.1981 and 24.12.1981 and that after exercise of his option, his pay be re-fixed with effect from 19.8.1983 and arrears be paid to him. The cost of the application is also be prayed for.

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2. The applicant was working as Sr. Grade Inspector of Central Excise in the Central Excise Collectorate. He was promoted, alongwith others, as Superintendent Central Excise (Grade-8) by order dated 19.8.1983. It is ~~the~~ case of the applicant, that at the time of his promotion he was not informed by the respondents, that he was to exercise his option within one month for fixation of his pay, either from the date of his promotion or from the date of his next increment due. On promotion his pay should have been fixed under F.R. 22(C) and in case he exercised an option interms of para 2(b) of O.M. dated 26.9.1981 in which case his pay should be re-fixed under F.R.22(a) (i) with effect from the date of his promotion and then under F.R.22(C) only with effect from the date of accrual of next increment in the feeder post. Mr. Saini, learned counsel for the applicant submitted, that it was not mentioned in the order dated 19.8.1983 by which the applicant was promoted, that he was to exercise the option within one month. Hence, the applicant did not exercise his option. However, although, the applicant is the senior most among the 12 persons promoted by order dated 19.8.1983 yet he is drawing less pay than Shri J.G.Patankar who is junior to him. Shri J.G.Patankar ~~was~~^{by} exercised the option and his pay was re-fixed under F.R.22(a) (i) and thereafter under FR 22(C). It was only because the content~~ion~~ of O.M. dated 26.9.1981 was not brought to the notice of the applicant and other staff of the Collectorate, that he did not exercise his option and lost one increment.

It is therefore, prayed, that the respondents be directed to allow him to exercise option now and re-fix his pay with effect from 19.8.1983 with consequential benefits.

3. Mr.P.M.Pradhan, counsel for the respondents, strongly contested the claim of the applicant ^{on the} preliminary ground, that the present application was hopelessly time barred and therefore not maintainable. It is ~~is~~ case, that the applicant ought to have been aware to the Government instructions on pay fixation at the time of promotion. Since, Shri Patankar had exercised option and received the benefits, the applicant also had knowledge about the said O.M. but he did not chose exercise his option and therefore, the application deserve to be dismissed.

4. I have heard learned counsel for both the parties. The facts of the case are undisputed. The only point of doubt is, whether the option is to be exercised by the employee on promotion or it is to be obtained by the Administration from the employee concerned. Some clarification were given by the Ministry of Home Affairs, Department of Personnel and AR in their letter dated 8.2.1983. It was clarified that "In the order promoting the Government servant it may be mentioned that he has to exercise the option within one month". The applicant who was working as Inspector of Central Excise was promoted and appointed as Superintendent of Central Excise Group 'B' by order dated 19.8.1983. In that order it was not mentioned that he was to exercise the option within one month and hence he did not exercise the option.

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On the contrary, his junior Shri J.G.Patankar was promoted as Superintendent Central Excise Gr.'B' in August 1983, but he joined in December 1983. He did exercise the option and his pay was re-fixed under FR 22(a) (i) and then under F.R. 22(C) with effect from the date of accrual of the next increment in the feeder post, which has resulted in the pay being more than that of the applicant.

5. As the facts and the provision are undisputed, I am disposing the application at admission stage itself. Admittedly, in the promotion order dated 19.8.1983, it was not mentioned that the applicant was to exercise the option within one month, as the applicant is drawing less pay than his junior, as a result, of having lost ~~up~~ ^{up} one increment due to the failure on the part of the respondents to mention in the order of promotion, that the option was to be exercised within one month, I am inclined to allow the application. The facts of this case are on four, with the facts in the case of Shri J.U.Bhatia V/s Collector of Central Excise and another O.A.No.524/89 decided on 19.10.1989 by the New Bombay Bench. In that case also, the application was allowed on the ground that the respondents have failed to mention in the order of promotion that the option was to be exercised within one month.

6. (i) In the result, the respondents are directed to allow the applicant to exercise the option under Clause II of the Government of India, Ministry of Home Affairs, Department of Personnel and AR O.M. dt.26.9.1981 and 24.12.1981 within one month from the date of the receipt of a copy of this order.

ii) After he exercises his option his pay should be re-fixed and he should be given all arrears due to him according to rules.

iii) With these directions the application is disposed of with no order as to costs.


(Ms. USHA SAVARA)^{4.6.92}
MEMBER (A)