

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

O.A. No. 62 of 1993

C.G.D. Nair ..Applicant

v/s.

Union of India & Ors. ..Respondents

Coram: Hon. Shri Justice M.S. Deshpande, V.C.

APPEARANCE:

Applicant present
in person

Mr. V S Masurkar
Counsel for the
respondents

JUDGMENT: DATED: 7th March 1994
(Per: M.S.Deshpande, Vice Chairman)

By this application the applicant
questions the order passed by the respondents
dated 5.3.1991 and the Appellate Authority order
dated 27.7.1992 by which the applicant's request
for accepting a fresh option given on 9.10.1989
came to be rejected.

2. The applicant was employed as a
Combatant Clerk (GD) in the Army on 18.9.1957 and
was appointed as Lower Division Clerk in Navy (Civil)
on 10.4.1962. He was promoted as Upper Division Clerk

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in the scale Rs.330-560 on 1.12.1969. He came to be promoted as Office Superintendent Gr.II with effect from 10.1.1986 in the old scale of Rs.425-700 which is equivalent to new scale of Rs.1400-40-1560-40-1800-EB-50-2300. He came to be promoted as Office Superintendent Gr.I in the new scale of Rs.1600-50-2300-EB-60-2600. He gave an option upon his promotion as Office Superintendent Gr.I for fixing his pay with effect from 1.21.86 i.e., the date of drawal of the annual increment in the existing grade in terms of F.R.22(c) and his pay came to be fixed accordingly. He gave a fresh option on 9.10.1989 pursuant to the letter of the Ministry of Personnel, Public Grievances & Pension dated 17.5.1988 and 1.9.1989 for fixing his pay in the revised scale effective from 1.1.1986, that will give him a benefit of minimum of Rs.25/- as well as other benefits consequent upon the exercising a fresh option.

3. There is no dispute about the (position) that the applicant had initially opted to come into revised scale of Office Superintendent Gr.II from 1.12.1986 and that his pay came to be fixed accordingly. According to the respondents it was not permissible for the applicant to withdraw that option, since emoluments came to be fixed on the basis of that option and since the applicant had

come over to the revised scale from 1.12.1986 on the accrual of normal increment and the fixation was done in accordance with that option, the latter concession would not apply to him.

4. The entire matter rests on interpretation of the letter dated 10.7.1989, Exhibit A-2. The relevant paragraph may be quoted thus:

"2. A necessity has now arisen for review of option for pay fixation in the cases of Central Govt. employees who were promoted to posts involving higher duties and responsibilities after 1.1.1986 and upto 17.5.1988 because of the decision that the amount to be added to pay in the lower post before fixing pay at the next stage in the higher post should not be less than Rs. 25/-.

3. The matter has been carefully examined and the President is pleased to decide that in the case of those Govt. servants who were appointed/promoted 1.1.1986 and 17.5.1988 and whose pay is to be fixed under FR 22-C (read with orders contained in this Deptt's OM No. 1/2/86-ESTT (Pay-1) dated 17.5.1988, they may be given another opportunity for exercising fresh option under this Deptt's OM No. 1/2/87-ESTT (Pay-1) dated 9.11.87.

4. Option in terms of para 3 above shall be exercised within a period of three months from the date of issue of these orders. Option once exercised under this OM shall be final."

5. It is apparent that what the applicant was asking for was in consonance with the letter dated 9.11.1987, Exhibit A-3 and the aforesaid letter. The applicant is right in submitting that there is no restriction whatsoever any longer in these orders that this provision will not be applicable to the

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Govt. servants whose pay was fixed earlier in accordance with the then existing order and, therefore, he was entitled to be fixed with the pay adding Rs. 25 being the minimum in his lower post and that the relief which as a result of the fresh option exercised from 7th October 1989 would be admissible to him and the applicant could not have lost his rights merely because he had earlier exercised the option to retain his pay scale upto 1.12.1986.

6. Respondents have not raised any plea besides that the applicant was barred by his earlier option from exercising a new option and I find that there is no justification for taking that view.

7. In the result the application is allowed. The respondents are directed to fix the applicant's pay on the basis of his option dated 9.10.1989 as per O.M. dated 1.2.1987 as on 9.11.1987. The pay shall be fixed and the financial benefits to which the applicant would be entitled shall be paid to him within two ^{three} months from the date of communication of this order to the respondents.

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(M.S.Deshpande)
Vice Chairman

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

BOMBAY BENCH, BOMBAY.

Contempt Petition No.110/94 in
Original Application No.62/93

C.G.D.Nair.

... Applicant.

v/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande,
Vice-Chairman,
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant present in person.

Respondents by Shri V.S.Masurkar.

Tribunal's Order:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 17.2.1995.

The only question is whether there was ~~not~~ any wilful disobedience on the part of the Respondents in complying with the order passed in OA No.62/93 on 7.3.1994. The direction was to fix the applicant's pay on the basis of his option dt. 9.10.1989 as per O.M. dt. 1.2.1987 as on 9.11.1987. The pay shall be fixed and the financial benefits to which the applicant would be entitled shall be paid to him within three months from the date of communication of this order to the Respondents. There is no dispute before us that the applicant's pay has ~~not~~ been fixed in accordance with the directions in para 7 of the order in the O.A. The applicant is not satisfied with the refusal on the part of the Respondents to pay the arrears. The Respondents have pointed out that in view of the calculations worked out at Ex. R-3 and R-4 to the reply the applicant would not be entitled to any arrears.

2. We find that there was no wilful disobedience

in implementing the orders passed by the Tribunal. Should the applicant have any grievance about the arrears which should have been paid to him, he may proceed by challenging the orders passed by the Respondents on 24.12.1994 if so advised. The Contempt Petition is dismissed.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

u
(M.S.DESHPANDE)
VICE-CHAIRMAN

B.