

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 553/94

Transfer Application No.

Date of Decision : 18-7-95

N.M.Jadhav

Petitioner

in person

Advocate for the
Petitioners

Versus

Union of India & 2 Ors.

Respondents

Shri S.S.Karkera

Advocate for the
respondents

C O R A M :

The Hon'ble Shri M.R.Kolhatkar, Member(A).

The Hon'ble Shri

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal? ✓

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.553/94.

N.M.Jadhav

... Applicant.

V/s.

Union of India

1. through Chief Post Master General ()
Maharashtra Circle, ()
Bombay - 400 001. ()

2. Shri S.R.Mundle, ()
Accounts Officer(Postal), ()
NAGPUR - 440 001. ()

O/O.Director of Accounts(P)NP. () .. Respondents.

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

APPEARANCES:

Applicant in person.

Shri S.S.Karkera for Shri P.M.Pradhan,
Counsel for Respondents.

JUDGEMENT:

DATED : 18/5/95

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

In this OA, the applicant is claiming the relief of proper pay fixation consequent on recommendation of the fourth Pay Commission. In particular, the applicant challenges Annexure A-6 order dt. 29/10/91 on the subject of "fixation of pay on regular promotion/revised option case of Shri N.M.Jadhav, Chief PM" and subsequent letter dt. 29/4/93 at Annexure A-11 in which he was informed that his representation against the earlier letter dt. 29/10/91 has been rejected and his request for fixation of pay cannot be acceded to.

2. The facts of the case are as follows:-

The applicant reached the maximum of his scale i.e. Rs.900/- in the scale Rs.700 - 900 of the HSG I cadre of the Postal Department on 1/10/83. He was given stagnation increment as Personal Pay of Rs.35/- on 1/10/85. He was promoted to Grade B Cadre on 22/10/85

...2/-

in the scale of Rs. 650 -1200. While fixing his scale in Grade B, the personal pay of Rs.35/- has been ignored as stagnation increment does not count for benefit of fixation of pay on promotion. On 28/6/90, Government issued orders regarding fresh options for those promoted between 2/1/85 and 31/12/85 and in whose cases the date of next increment in lower post fell on or after 1/1/86. He purported to give option for fixation of pay in Grade-B Cadre on date of his next increment to re-fix his pay. Initially, this option was accepted, vide Annexure A-3, the letter dt. 3/4/91 from the Accounts Officer, (Posts) Nagpur. Subsequently, the same was held to have been wrongly accepted. The applicant stands superannuated w.e.f. 30/6/94. He has challenged the action of the department in declining to accept the option and fix the pay.

3. In order to understand the case of the Applicant, the letter dt. 29/10/91 is reproduced below:-

"The case of Shri Jadhav has been reexamined w.r.to the proviso of OM dt. 28.6.90 and the other orders and it was noticed that the option allowed wef 1.1.87 is not in order for the following reasons:-

1) Under GOI decision No.14 below FR-22C an official can opt for fixation of pay on promotion from his DNI of the lower post. This benefit has been allowed even after the introduction of revised pay vide Minst. personnel OM No.16/24/85 Estt(Pay-I) dt. according to which an official can opt fixation on promotion from the DNI of the lower post, even if such DNI falls after 1.1.86.

2. a) The officials who are at the maximum have no DNI. This has also been made clear in the example at item 5 of MF OM.No.7(21)-EIII/87 dt. 4.5.87 and para 3 of the OM No.F.7(ii)/E

11/3/11

III/90 dt. 3.8.90. For such officials one or two increments are to be allowed under proviso 3 & 4 of Rule 8 of CCS(HP) Rules 86 and entirely new DNI is arrived at for them. Thus new DNI 1.1.86 in the revised pay as per proviso 3 of Rule 8 ibid and subsequent increment is allowed wef 1.1.87. The fresh date of increments has no connection at all with the original DNI of the prerevised pay (here 1.10.83).

b) The benefit of option under OM dt. 28.6.90 is open for them only who were promoted between 1.1.85 to 21.12.85 and have a definite predetermined date of increment before introduction of CCS(RP) Rules '86.

c) In the instant case of Shri Jadhav his normal DNI of the prerevised lower post was October each year. However, this DNI ceased to be operative after 1.10.83 when he reached maximum of the HSG-I post is Rs. 900/- for him, therefore, there is no DNI for opting the pay fixation under FR 22C under provisions of OM dated 28.6.90.

In view of the positions explained above the case of Shri Jadhav Chief PM, Mandvi HO is not covered by the OM dt. 28.6.90 and as such he is not entitled to exercise option under this OM dt. 28.6.90 either from 1.1.86 as from 1.1.87. Hence this office Lr. No. even 2647 dt. 22.2.91 and the Due Drawn Stt. forwarded with this office letter No. 3128 dt. 3.4.91 may be treated as cancelled."

4. It would thus be seen that if the option of Shri Jadhav was accepted, pay fixation of Shri Jadhav would have been as below:-

1.1.86/30.1.86	2600	Pay in Lower Post corresponding to 900/-
" "	75	D.N.I. in the Lower Post under proviso 3 to Rule 8.
" "	75	Additional increment under proviso 4 to Rule 8.
" "	75	Notional increment of Lower post.
=====		
	2825	
	2900	Pay fixed in P.S.S. Group 'B' under the provision of FR 22(c).

5. The basic case of the department is that Shri Jadhav does not have date of next increment in the

new pay scale. Let us consider what the circular dated 28/6/90 states.

"(29) Fresh option for those promoted between 2.1.1985 and 31.12.1985 and in whose case DNI in lower post fell on or after 1.1.1986.-GID(28) above provides that when a Central Government employee is promoted to the next higher grade or post, where pay has to be fixed under the provisions of F.R.22-C, he may be given an option for fixation of his pay on promotion as indicated therein. The said orders are applicable with effect from 1.1.1986.

2. The Staff Side in the National Council (JCM) have made the following suggestions for consideration by the National Anomaly Committee:-

(i) Government servants promoted before 1.1.1986 should be given another opportunity to give fresh option to get their pay fixed in the promoted post, in view of the introduction of the revised pay scales with effect from 1.1.1986.

(ii) The benefits contained in GID (28) should also be extended to those for whom the date of next increment in the lower post falls on 1.1.1986.

3. The matter has been considered in the National Anomalies Committee and it has been decided that the employees promoted after 1.1.1985, but before 1.1.1986 and whose date of next increment in the lower posts falls on or after 1.1.1986, may be allowed another option to get their pay fixed in the promoted post under F.R. 22-C, either from the date of promotion or date of next increment in the lower post falling on or after 1.1.1986.

4. It has also been decided to extend the provision of para-2 of GID (28) to persons whose date of next increment in the lower post falls on 1.1.1986.

5. All other existing conditions regarding exercise of option for such pay fixations will, however, continue to be applicable.

6. Option in terms of para. 3 above shall be exercised within three months of the date of issue of these orders. Option once exercised shall be final.

7. In so far as the application of these orders to

the employees belonging to the Indian Audit and Accounts Department is concerned, these orders have been issued in consultation with the Comptroller and Auditor-General of India.

8. Ministry of Finance, etc., are requested to bring the above decisions to the notice of all concerned.
(G.I., Dept. of Per. & Trg. O.M.No.16/24/88-Estt.(Pay-I), dated the 28th June, 1990)."

6. According to the Applicant the Government's intention of giving fresh option to those promoted between 2/1/85 and 31/12/85 must be implemented, otherwise, Officers who were promoted ^{during} ~~of~~ this period would be at a disadvantage compared to the Officers promoted on or after 1/1/86 and ^{in other words} the seniors would be at a disadvantage vis-a-vis Junior Officers. The contention of the department that there is no date of next increment (DNI) is based on the mis-reading of the rules. In this connection, he also relies on Rule 8 of the CCS Rules 1985.

"8. Date of next increment in the revised scale.

The next increment of a Government servant whose pay has been fixed in the revised scale in accordance with sub-rule (I) of Rule 7 shall be granted on the date he would have drawn his increment, had he continued in the existing scale:

Provided that in cases where the pay of a Government servant is stepped up in terms of Note 3 or Note 4 or Note 7 to sub-rule (I) of Rule 7, the next increment shall be granted on the completion of qualifying service of twelve months from the date of stepping up of the pay in the revised scale:

Provided further that in cases other than those covered by the preceding proviso, the next increment of a Government servant, whose pay is fixed on the 1st day of January, 1986, at the same stage as the one fixed for another Government servant junior to him in the same cadre and drawing pay at a lower stage than his in the existing scale, shall be granted on the same date as admissible to his junior, if the date of increment of the junior happens to be earlier.

(Provided also that in the case of persons who

had been drawing maximum of the existing scale for a year or more as on the 1st day of January, 1986, next increment in the revised scale shall be allowed on the 1st day of January, 1986:

Provided also that in the case of Government servants who were in receipt of an ad hoc increment on their stagnating for two years or more at the maximum of the existing scale of pay as on the 1st day of January, 1986, in addition to the increment already allowed under the preceeding proviso.)"

7. The department appears to rely on the incidental remarks in Ministry of Finance O.M. No.7(21)-E-III/87 dated 4/5/87 which is reproduced as below:-

" "A Government servant who has already reached maximum of the pre-revised scale has no date of next or subsequent increment in the pre-revised scale and as such he has no option to opt for the revised scale of pay from the date of subsequent increment after 1/1/86 as stagnation increment allowed in terms of OM dtd. 27/7/83 is in the form of Personal Pay."

8. However, according to the Government of India O.M. dt. 3/7/87 produced by Applicant at Annexure-22, the scheme of stagnation increments will apply to employees the maximum of whose scale of pay does not exceed Rs.6700/- per month and the increment shall be treated as Personal Pay.

9. The Applicant also relies on the Supreme Court judgement in Union of India V/s. Shyama Pada Sidhanth 1991-16-ATC 942 decided on 21/1/91 in which the Supreme Court had occasion to interpret the OM dt. 9/1/84 which was contrary to FR-23, 22a(ii) and 26(b)(i) and the Supreme Court held that the OM being contrary to FR cannot be given effect to. On the other hand the respondents rely on the case of Shri B.S.Rahi V/s. ESI Corpn.

10. In our view there is no dispute that the applicant was promoted in the period between 2/1/85 and 31/12/85 in terms of OM dt. 28/6/90. The only question is whether the Officer can be denied the benefit conferred by this OM on the ground that there is no DNI in his case. According to the applicant, in his case the DNI falls on 1/1/86 and the next DNI falls on 1/1/87 and therefore his option should be accepted and his pay fixation should be done on that footing. We are of the view that the applicant cannot be denied the benefit of pay fixation in accordance with memorandum dt. 28/6/90 merely on the ground that he has reached the maximum of the pay scale. In our view the fact that an Officer reaches the maximum of the pay scale does not change the date of his next increment in the lower post. The date of next increment remains but it is the quantum of increment which is affected. What happens in the case of an Officer getting the maximum of the pay scale is that his quantum of the increment is reduced in the limit to zero, his date of next increment remaining the same. In the case of the applicant, the DNI in the lower scale remains October. The option is to be allowed either from the date of promotion or the date of next increment falling on or after 1/1/86. In the case of the applicant, there should be no difficulty in permitting the option to the applicant from the date of promotion viz. 27.10.1985.

11. The Counsel for respondents has in the end tried to argue that the applicant was promoted on 22/10/85 but only on a local basis and the regular promotion took place later on and therefore the circular dt. 28.6.90 does not apply. In this connection, the respondents rely on the judgement of Ashok Mehta

V/s. Regional Provident Fund Commissioner decided by Full Bench on 5/2/93 and reported at page-118 of Kalra's Volume of Full Bench judgements. The Applicant contends that the applicant was promoted to PSS Group B cadre in October, 1985 after due consideration by the D.P.C. w-e-f. 21/10/85.

12. On a perusal of records, there is no doubt that regular promotion of the applicant took place on 21/10/85. The pay fixation of the applicant has to be allowed on this basis and the benefit of the exercise of option should be given to the applicant in terms of circular dt. 28/6/90 as indicated by us. *OA is thus allowed*
All consequential benefits should also be allowed to the applicant. There will be no order as to costs.

abp.

M.R. Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A)