

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 991/95  
Transfer Application No.

Date of Decision : 8-3-96

Krishna Gangaram Khade.

Petitioner

Shri S.S.Karkera.

Advocate for the  
Petitioners

Versus

Union of India & Ors.

Respondents

Shri V.S.Masurkar.

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 ? X

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

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH, BOMBAY.

ORIGINAL APPLICATION NO. 991 / 1995. *much*

*Pranav* this the 8<sup>th</sup> day of Feb 1996.

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

Krishna Gangaram Khade. ... Applicant.  
(By Advocate Shri S.S.Karkera)

V/s.

Union of India & Ors. ... Respondents.  
(By Advocate Shri V.S.Masurkar).

O R D E R

¶ Per Shri M.R.Kolhatkar, Member(A) ¶

The applicant has been working as L.S.G. Clerk with the Respondent No.3 since 1986. By an order dt. 11.3.1991 at (Ex. 17) he was promoted under the biennial cadre review scheme, his name figures at Sl.No.25. At the end of this order it is stated that the above mentioned officials should submit their options for fixation of pay within One Month from the date of issue of this order direct to Accounts Section, C.T.O. Bombay. It is not disputed that the applicant did not exercise such an option. However, he represented on 19.7.1991 (page 29) that due to second time-bound promotion he is getting less salary than his junior and the name of his junior is mentioned viz. R.K.Bate and R.W. Adhangale. The applicant continued to pursue the matter by representations dt. 2.4.1992, 20.7.1992 (addressed to C.G.M.), 12.10.1992 addressed to Director, Telecommunication and 6.2.1993 and 7.5.1993 (Director, Telecommunications). The reply

...2.

which is  
dt. 12.4.1992/is impugned/at page.16 (Ex. 'B') and which  
states as below :

"With reference to his application dt.9.8.91,  
it is intimated by the circle office vide  
his letter No.Tfc/ATE-451/step-up of pay/I/33  
dt. 9.4.1992 that the stepping up of pay is not  
permissible as he failed to exercise the option  
within the stipulated period."

2. The applicant has prayed for quashing the  
impugned order dt. 21.4.1992 and subsequent order  
dt. 30.9.1994 and to direct the respondents to decide  
earlier representations of the applicant or to permit  
the applicant to make a fresh representation as per  
rules. Q

3. The respondents have opposed the prayer of the  
applicant. According to respondents the representation  
of the applicant was vague, lacking in essential  
particulars. There are no specific reasons mentioned  
for condoning the delay and therefore, the request  
of the applicant could not be considered. The counsel  
for the applicant urges that it is not the fact that  
the representation <sup>lacked</sup> (L) material particulars. The  
representation dt. 19.7.1991 did give particulars and  
this representation was required to be read with  
subsequent representation dt. 2.4.1992 in which the  
applicant had taken the following stand :

" In the past there have been instances  
where officials were allowed to exercise  
options at later dates, whenever monetary  
losses were suffered by officials due to  
non-option. This chance may please be given  
to me.

I was confounded to the implications of the  
orders and impacts of non-options, for which  
I pray to please condone and reckon this as  
option."

4. The counsel for the applicant has also

invited our attentions to provisions of F.R.5-A

which reads as below :

"Where any Ministry or Department of Government is of opinion that the operation of any of these rules may cause undue hardship to any person, that Ministry or Department, as the case may be, may, by order, for reasons to be recorded in writing, relax the requirements of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner :

Provided that no such order shall be made except with the concurrence of the Ministry of Finance."

The counsel for the applicant also stated at the bar that in such matters the interaction with the colleagues is important and since the applicant was working in the night shift he did not receive proper guidance as to the position of rules by exchange of views with his colleagues.

5. It appears to me that the applicant did fail to exercise option within one month. I have, however, held in another case that such time limit of exercising option is of directory nature and in the facts and circumstances of the case the delay in exercising option ~~was not~~ can be condoned vide the decision in O.A. No.1044/94 R.Ramakrishnan V/s. Ministry of Defence. I have discussed in that order Supreme Court Judgment, as to what provisions can be considered mandatory and what provisions can be considered as direct, <sup>have in this case</sup> I also noted that the applicant was vigilant in pursuing the case i.e. within four months of passing of the order (11.3.1991) he made a representation (19.7.1991) and the department ought to have linked

up the first representation dt. 19.7.1991 with his subsequent reminder representation dt. 2.7.1992. I am therefore, inclined to allow the O.A. by issue of appropriate directions.

O R D E R

The O.A. is allowed to the following extent. The applicant may make a representation to the respondents within a fortnight of the receipt of this order and the respondents may consider the same in the light of contents of the representation, also keeping in view the powers of the Respondents in F.R. 5-A. The representation may be disposed of within three months after the receipt of the representation by means of a speaking order. There would be no orders as to costs.

*M.R. Kolhatkar*

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(M.R. KOLHATKAR)  
MEMBER (A)

B.