

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 60/97

DATE OF DECISION: 27/7/2000

Shri S.D.Londhe & 2 Ors.

Applicant.

Shri B.Ranganathan

Advocate for
Applicant.

Versus

Union of India & Anr.

Respondents.

Shri S.S.Karkera

Advocate for
Respondents.

CORAM:

Hon'ble Shri B.S.Jai Parameshwar, Member(J)
Hon'ble Shri Govindan.S.Tampi, Member(A)

1. To be referred to the Reporter or not?] X
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.

(GOVINDAN.S.TAMPI)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:60/97
DATED THE 27TH DAY OF JULY, 2000.

CORAM: HON. SHRI B.S. JAI PARAMESHWAR, MEMBER (J)
HON. SHRI GOVINDAN. S. TAMPI, MEMBER (A)

1. Shri S.D.Londhe,
Section Supervisor, MTNL
Mumbai Staff No.8841
2. Shri V.R.Patil,
Section Supervisor,
Staff No.9831, MTNL,
Mumbai.
3. J.T.Arkad,
Section Supervisor,
Staff No.9838
MTNL, Mumbai

By Advocate B.Ranganathan

V/S.

1. Union of India, through
Secretary to the Govt.
of India, Department of
Telecommunication,
Ministry of Communication,
Sanchar Bhavan,
New Delhi-110 001.
2. Chief General Manager,
MTNL, Mumbai,
Sanchar Bhavan,
M.G.Road,
Flora Fountain,
Bombay - 400 001.

By Advocate Shri S.S.Karkera

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ORDER

Per Shri Govindan.S.Tampi, Member(A).

Applicants in this case seek the refixation of their pay following the adoption of the Third Pay Commission recommendations in terms of the circular dated 28/8/90 and the rejection of the respondent's letter No.3-26/81 PAT, circulated on 26/2/92. The pay of the applicants who were LDCs, recruited during 1963-64, was revised from Rs.110-Rs.180/- to Rs.260/- to Rs.400/- w.e.f. 1/1/73. Government Servants were to exercise the option, on their continuing in the old scale till the date of next increment or till they vacate the post. Government of India had been repeatedly extending the date for exercising the above option, but the last of their letters No.7(56)BIII/83 dated 13/3/84 (Annexure A-3) had not been circulated, with the result many could not exercise their option. However, by a communication No.3-76/81-PAT dated 28/8/90 - 1/10/90 (Annexure A-4) consolidated list of belated options were called for being sent to the Department of Telecommunications. Applicants opted to come over to the revised scale w.e.f. 1/3/78 but they were informed by the impugned letter dated 26/2/92, that the Ministry of Finance had not agreed to the proposal with the result a few of their juniors who exercised their option earlier came to draw higher pay. Applicants' representation for stepping up the pay, in those cases was also rejected on the ground that option had not been exercised by them in time. Respondents action in declining to consider their case for refixation of pay as decided on 28/8/90 was incorrect and needed to be set right, plead the applicants.

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2. Respondents in their reply dated 10/4/97, pointed out that

- i) in the matter related to fixation of pay in terms of Pay Commission Recommendations of 1973 the Tribunal has no jurisdiction.
- ii) the applicants have not produced proof that they have exercised their option on time.
- iii) order dated 28/8/90 had been widely circulated and the applicants had not shown when they exercised the option.
- iv) the application is barred by limitation as the request for the stepping up of pay has been rejected as far back as November, 1985 and the application has been filed only in 1996.

3. In their rejoinder, the applicants argued that the whole matter arose from the non-circulation of the communication dated 13/3/84, as brought out in the letter dated 28/8/90 and hence their fresh options. Rejection of the same was improper. Their case was well within the period of limitation and the plea by the respondent that the letter dated 26/2/92 was inapplicable in their case was incorrect. It was for the respondent to convince the Finance Ministry on the need for re-fixation. Applicants had not kept the record of the date of their option as they had not expected its denial and records show that the revised options were forwarded on 2/11/95. Respondents were only attempting to deny them their dues.

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4. It was further stated by the Respondent that the

- i) Ministry of Finance who had taken the policy decision in the matter had not been impleaded.
- ii) the application was hit by lack of jurisdiction and limitation.
- iii) the exercise of the option in terms of fixation formula following III Pay Commission would have been beneficial, only if it had been done before 27/2/75 on reaching Rs.151/- in LDC scale but that he had ceased to be so with promotion on 15/7/74.
- iv) Circular issued by the Department was duly circulated and the applicant had not exercised their options on time. First Applicant representation for stepping of his pay vis-a-vis his junior was duly disposed of 2nd and 3rd Applicant had not exercised the option. Further circular dated 28/8/90 was conditional that, DOPT's clearance was required for condonation before approaching Finance Ministry and no promise was made by it.
- v) the allegation that the applicants were denied justice was wrong and that the alleged delay in circulating the communication had resulted in the miscarriage of justice.

5. Contesting the above, the applicants argue that it was only on account of the delay in circulating the communication dated 13/3/84, as brought out the the Communication dated 26/8/90

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they could not exercise their option in time and the option exercised by them after that has been incorrectly and illegally turned down. Since delay had been caused by the respondents' administrative lapse, it was for them to have moved with the Finance Ministry and got the matter settled.

6. Heard the Counsels, Shri Ranganathan, the Learned Counsel for the applicants reiterates his pleas and requested for the grant of relief in equity. Shri Karkera, the learned counsel for the respondents indicated that at this late stage, after a policy decision has been taken by the Finance Ministry, nothing can be done more so as the applicants had not exercised their options on time.

7. We have considered the rival pleas. While the applicants plead that the delay in their filing the options was directly relatable to the non-circulation of the communication dated 13/3/84 and their options exercised after the receipt of the communication dated 28/8/90, was ^{here} pre-emptorily dismissed by the Department by their letter dated 26/2/92, the respondents' argue that the applicant No.1 had only asked for stepping up of pay which was disposed of in 1985 itself and applicants had not exercised their option time. On examination of the issues, we are convinced the appellants have no case. The matter relates to the fixation of pay, following the adoption of the recommendations of the Third Pay Commission, w.e.f. 1/1/73. The applicants had not done anything concrete to exercise their

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option to adopt the new scale and as per implied pleas were waiting for the Government to give extension for doing it. The same cannot be countenanced. A person who has to obtain certain benefits, contingent on fulfillment of certain conditions cannot sleep over the responsibilities cast on him and expect the Government to come to his/her rescue and condone the delay. That is what has happened in this case. Their pleas that the non-circulation of the communication dated 13/3/84 has led to their discomfiture and that their options exercised after receipt of the letter of 28/8/90, was summarily disposed of by the letter dated 26/2/92, do not merit acceptance. Nothing is brought on record to show that the applicants had exercised the option for refixation on time. First applicants' letter for stepping up of pay was not an exercise of any option, and it had been disposed of in 1985 itself. None of the applicants had been able to show that they had exercised their option on time. When they did it ultimately after 1990, it was rightly turned down by the Finance Ministry. The Respondents had tried to help the applicants but it could not succeed as considerable time had lapsed and the Government had taken a policy not to revive such cases or accept the proposals for such revivals. The same cannot be faulted. And this Tribunal cannot, re-open such cases, at this distant date, especially as the applicants have not shown that they had acted correctly and properly. *promptly*

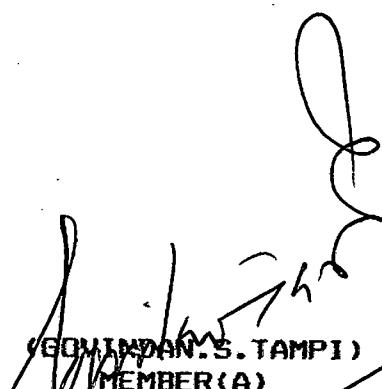
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8. In the result, we are not convinced that the applicants have a case.

9. The application is therefore dismissed. No order as to costs.


(GOVINDAN S. TAMPI)
MEMBER (A)


(B.S. JAI PARAMESHWAR)
MEMBER (J)
27.7.2000

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