

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO:1094/98  
DATED THE 3RD DAY OF DECEMBER,2002

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)  
Hon'ble Smt.Shanta Shastry, Member(A)

Smt.Manisha Madhav Kukade,  
Staff No.2160,  
R/o.Palam Acre Co-op. Housing Society,  
A/56, Mahatma Phule Road,  
Mulund (E), Mumbai - 400 081. .... Applicant

(Applicant in person)

V/s

The Union of India - Through:

1. The Chief General Manager,  
M.T.N.L. Mumbai  
Telephone House, Prabhadevi,  
V.S.Marg, Dadar(W),  
Mumbai.
2. The General Manager(Admn) AI,  
Telecom Building,  
Mumbai - 400 028.
3. The General Manager(Long Distance)  
Telecom Building,  
Fountain  
Mumbai - 400 001.
4. The Accounts Officer(Cash),  
M.T.N.L.,  
Mumbai - 400 028. .... Respondents

By Advocate Shri R.C.Kotiankar

ORAL ORDER

Hon'ble Smt.Shanta Shastry, Member(A)

The grievance of the applicant is that while her pay was fixed in the revised payscale in terms of the recommendations of the IVth Pay Commission with effect from 1/1/1986, her pay came to be fixed lower than that of her juniors. She has impugned the order dated 5/3/1998 issued by the respondents rejecting her claim for stepping up of her pay at par with the pay of her junior.

2. The brief facts are that consequent upon the acceptance of the recommendations of the IVth Pay Commission, the respondents before fixing the pay of the employees in the revised payscale called for options from the employees wherein it was stipulated that in case no option is exercised by the employee, he would be deemed to have opted to fix his pay in the revised payscale w.e.f. 1/1/1986. The applicant submits that she was on long leave at the time the option was offered and in the absence of exercising of the option by her, her pay came to be fixed in the revised payscale at a lower stage than that of the stage in which her juniors' pay was fixed.

3. According to the applicant, she was appointed on 11/11/1958 whereas one Mrs.Das, the alleged junior came to be appointed on 6/5/1961. Thereafter, the applicant was confirmed in 1961 whereas Smt.Das was confirmed in 1962. The applicant was at serial no.181 in the gradation list whereas Smt.Dast was at serial no.218. Thus, the applicant was senior and yet the applicant's pay was fixed at Rs.1900/- as against the pay of Rs.1950/- fixed in the case of Smt.Das. The applicant therefore has prayed to step up her pay on par with that of her junior.

4. The applicant submits that she should have been given a further opportunity to opt for pay fixation. She submits that she made several representations but no cognizance was taken. She has enclosed the representations made by her. She again represented on 11/2/1998 and for the first time she states that she got a reply by way of the impugned order.

5. The respondents have justified their action by stating that this is not the case of stepping up of pay. The applicant's pay was fixed in terms of the revised pay rules pursuant to the recommendations of the 4th Pay Commission. In the case of the juniors of the applicant namely Smt.Das, Smt.K.S.Ahuja and Shri E.G.Narkhede, the pay was fixed with effect from the date of next increment for which they had exercised their option. The applicant had failed to exercise her option and therefore her pay was rightly fixed from 1/1/1986. In fact, sufficient time was granted to exercise the option to come to the revised scale of pay up to 31/8/1988. The applicant according to the respondents did not deliberately opt for her pay fixation with effect from date of next increment with a view to avoid refund of arrears and pay and allowances which she had already drawn for the period from 1/1/1986 to 31/5/1987. Refund would have been necessary in the event of her opting for the revised scale with effect from the date of her next increment falling after 1/1/1986. Thus, it is only because she did not opt for her pay fixation in the revised scale from the date of her next increment falling before 31/12/1986 that the anomaly has arisen in the pay fixation of the applicant and her alleged juniors.

6. The applicant has stated that she sent several representations. However, she failed to approach this Tribunal in time. She should have approached when she found that her juniors were drawing more pay than herself. The respondents have also pointed out that time for exercising the option was further extended upto 31/8/1988 but the applicant did not exercise the option as offered under GI MF OM dated 27/5/1988.

For all these years since 1986 she kept drawing lower pay than her juniors in the revised scale of pay with effect from 1/1/1986 and has now approached this Tribunal after her superannuation on 28/2/1997. The cause of action arose way back in 1987-88. Further, the applicant has not made the alleged juniors as party respondents in this case. The applicant herself is to be blamed for her pay fixation from 1/1/1986 as she herself had not opted to come over to the revised scale from the date of next increment after 1/1/1986.

7. We have heard the applicant in person and the learned counsel for respondents. It is seen that the applicant's pay was rightly fixed with effect from 1/1/1986 in the revised payscale. She failed to exercise the option to get her pay fixed with effect from the date of her next increment as was done by her alleged juniors after the pay fixation with effect from 1/1/1986. Though she made representations, she failed to approach this Tribunal within the prescribed time of one year from the date of cause of action. Thereafter the recommendations of the 5th Pay Commission also became available and they were implemented and her pay was also fixed in the revised payscale. She did not approach this Tribunal even then. Her application suffers from delay and laches. It is not that the pay was not fixed properly. It is because the applicant did not give the option, that she suffered. The reason given by the applicant that when the offer of option was made, she was on long leave is not acceptable as the respondents had extended the date for exercising the option up to 31/8/1988. Nothing prevented her from exercising the option. As pointed out by the \_\_\_\_\_

respondents her non exercising of the option appears to be deliberate and not through any inadvertance on her part.

8. We are therefore unable to condone the delay for filing of the application in the present case, nor can we offer any relief to the applicant.

9. In the facts and circumstances of the case, the OA is dismissed. However, we make it clear that this shall not come in the way of the applicant making a representation to the respondents with full details and the respondents deciding the representation suitably by taking a sympathetic view of the matter, as, had she exercised her option, she certainly would have become entitled to her pay fixation from the date of her next increment as in the case of her alleged juniors. No costs.

*Shanta*  
(SMT. SHANTA SHAstry)  
MEMBER(A)

*Lakshmi*  
(SMT. LAKSHMI SWAMINATHAN)  
VICE CHAIRMAN

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