

(29)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.260/95

DATE OF ORDER : 16-8-96.

Between :-

B.Seshaiah

... Applicant

And

1. Chief Postmaster General,
A.P.Circle, Hyderabad.
2. The Director General,
Department of Posts,
Dak Bhavan,
New Delhi - 110 001.

... Respondents

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Counsel for the Applicant : Shri P.Rathaiah

Counsel for the Respondents : Shri V.Bhimanna, CGSC

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CORAM:

THE HON'BLE SHRI R.RANGARAJAN : MEMBER (A)

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(Oral Orders per Hon'ble Shri R.Rangarajan, Member (A)).

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Heard Sri P.Rathaiah, for the applicant and Sri V.Bhimanna, for the Respondents.

2. The applicant in this O.A. was promoted on adhoc basis as Asst. Superintendent of Post Offices (ASPO), Khammam by No. ST/2-1/IX Office Memorandum/MR ~~xxxx~~ ~~xxxxx~~ dt. 11-3-81 on adhoc basis (Annexure-I). He was regularised in that post by order No. ST/2-1/IX dt. 4-7-81 (Annexure-2). The regularisation portion of the applicant in that order reads as follows :-

"2. The adhoc promotion of Sri B.Seshaiah as ASPOs, Khammam vide item 3 of para 1 of this office memo of even dated 11.3.81 is regularised consequent on the recommendation of the D.P.C."

The Ministry of Home Affairs issued OM No. F7/1/80-East P.I. dt. 26-9-81 whereby an employee promoted to the higher grade may request for fixation of pay in the higher grade either on the date of his promotion on the basis of FR 22(c) or may request for initial fixation of his pay on the date of accrual of the next increment in the scale of pay of the lower post following FR 22(c). The O.M. dt. 26-9-81 of the Ministry of Home Affairs referred to above ~~was~~ took effect from 1-5-81.

The pay of the applicant was fixed in the cadre of ASPO initially from the date he was regularly promoted to that cadre and his pay later on was drawn on that basis.

3. The applicant by his first representation dt. 6-2-90 (Annexure-IV) requested Respondent No. 1 to re-fix his pay in the grade of ASPO from the date his increment fell in the

post of IPO from which lower post he was promoted as ASPD. That increment date in the cadre of IPO fell on 1-12-1981. He further requested in that representation that after re-fixation of the pay his further increments should be drawn on that basis and arrears accruing on the basis of that re-fixation should be granted to him. There was no reply to that representation. He also filed another representation dt.3-5-91 to respondent No.2. The applicant was instructed by letter No.2-84/91-PAP dt.6-8-92 to send the representation through the proper channel. Accordingly he sent the representation making the above request through proper channel by his representation dt.12-1-92 (Annexure-7) which was forwarded to the Respondent No.2. That representation was rejected by the impugned order No.AC/21/1/20/BS dt.8-6-94 (Annexure A-8), on the ground that he had given option to come over to the scale of pay of the ASPD from the later date after lapse of over 10 years after he assumed charge of the ASPD and the delay in opting cannot be condoned.

4. Aggrieved by the above, he has filed this O.A. for accepting his option to come over to the scale of the pay of the ASPD from 1-12-81 i.e. the date on which his next increment in the scale of the earlier post (IPO) had fallen.

5. There are two main contentions of the respondents in rejecting his prayer. They are (i) the applicant was regularised with effect from 6-4-81 in the post of ASPD i.e. from the date of his adhoc promotion in terms of para-2 of the Memo

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No.ST/2-1/IX dt.4-7-81 (Annexure A-2) extracted above in the previous page. The Department of Personnel circular is dt.26-9-81 took effect from 1-5-81. As the date of regularisation of the applicant is earlier to the date of effect of circular dated 26-9-81, the contents of the circular is not applicable to him; (ii) The applicant is a senior official. Option forms from number of his subordinates for initial fixation of pay, when they were promoted, in terms of Circular of Department of Personnel dt.26-9-81 passed through him to finance department. Hence he cannot claim that he is not aware of the circular earlier to 6-2-90 when he submitted his first representation. As he failed to submit the option form in time knowing the contents of the D.O.P. Circular dt.26-9-81, he cannot claim the benefit of the circular after a lapse of 10 years.

6. On the otherhand, the learned counsel for the applicant submits that in terms of the OM No.18/30/90-Estt (Pay-I) dt.22.11.90 (Annexure-3) it is incumbent on the part of the administration to make a specific mention in regard to the DOP Circular dt.26-9-81 in the posting order itself. But no such mention has been made in his posting order. Further the applicant was not informed at any time in regard to the contents of the Department of Personnel Circular dt.26-9-81. However, he came to know about the circular only in 1990 and immediately thereafter he submitted his representation. Hence he has opted in time and rejection of his option due to delay is not born by facts. In view of the O.M.No.F.13/

26/82-Eatt.(PAY-I) dt.8-2-83 and O.M.No.13/21/82-Eatt (Pay-I) dt.28-1-85 in case of the officials who have not opted, the options should be re-opened and fresh options should be obtained within three months. Since the applicant was not informed of the contents of the OM referred to above he could not opt even in pursuance of the above referred office memorandum.

7. The applicant is entitled for fixation of pay initially in the post of ASPD in terms of the Department of Personnel OM dt.26-9-81, only if he had been regularised with effect from 1-5-81 or later. If he had been regularised earlier to 1-5-81, the OM dt.26-9-81 will not be of any use to him. Through the learned standing counsel submits that in terms of para-2 of the memo No.ST/2-1/IX dt.4-7-81 (Annexure A-2) extracted above, the applicant was regularised in the post of ASPD on 6-4-81, ~~But~~ he is not sure of his grounds. Hence the Respondents should check the correct date of regularisation of the applicant in the post of ASPD and if that date falls on or after 1-5-81, ^{only} then the applicant is eligible to get the benefit of Department of Personnel circular dt.26-9-81. If it is earlier to 1-5-81, the applicant is not entitled to the benefit of DOP circular dt.26-9-81. In case the date of the regularisation of the applicant falls earlier to 1-5-81, a detailed reply should be given to him as to why his date of regularisation as ASPD effected from that date.

8. In case the applicant is regularised as ASPD on or after 1-5-85 the contention raised by the applicant's counsel

has to be looked into. In the first instance it is to be observed that the issue of circular of DOP dt.26-9-81 is later than the adhoc/regular promotion of the applicant. From the date of adhoc/regular promotion of the applicant till 26-9-81 or even up to the date of issue of the circular dt.22.11.90 (Annexure A-3) there is no procedure to call for option from the promoted officials for fixing the initial pay in the promoted cadre. Hence for those promoted during the intervening period as above a circular should have been issued to all the employees to opt for the initial fixation in terms of the DOP Circular dt.26-9-81. But it is evident that no such circular has been issued. Hence the applicant may have a genuine grievance that he was not informed of the option condition when he was promoted to the post of ASPD. But there is force in the contention of the Respondents when they state that a number of option forms from promoted lower grade employees have gone through him to the Ministry and hence it cannot be said that the applicant is unaware of the option condition. In any case the applicant had submitted his first representation on 6-2-90 though it is belated. Instead of advising him to submit his representation to Respondent No.2 through proper channel by the letter dt.6-8-82, his case could have been rejected at the first instance itself for delay and laches. But for some unknown reasons his representation was entertained and he was given hope that his case will be considered by Respondent No.2 if he submits a representation through proper channel. Having given that hope it is not advisable now to reject his case altogether

due to delay.

9. This Tribunal is consistently holding the view that whenever there is a continuous cause of action, the employees are entitled to get the benefit of arrears, if any, from one year prior to filing of the O.A. In this case also the above law of this Tribunal holds good. Hence in view of the law laid down by this Tribunal as above, the applicant is atleast entitled for payment of arrears due to the re-fixation as prayed for in this OA atleast from one year prior to the filing of this OA. In view of the discussion in forgoing paras, the case of the applicant for refixation of pay though opted belatedly has to be considered ~~for~~ in view of the reasons namely (i) for non-issuance of any circular in the intervening period as observed in para-8 above and (ii) that there was a legitimate expectation by him to get the higher fixation in view of the instructions to forward his representation through proper channel by the letter dt.6-8-82. But he is entitled for arrears due to refixation on the basis of the option only from one year prior to the filing of this OA.

10. In the result, the following direction is given :-

"The applicant is not entitled to the benefit of the circular of the Department of Personnel OM No.F.7/1/80-Estt.P.I dt.26-9-81 if he has been regularised earlier to 1-5-81. If he is regularised on or after 1-5-81, he is entitled for notional fixation of his pay in the post of ASPD from the date of accrual of next increment in the scale of pay in the lower post he


held at the time of his promotion to the post of ASPD. His further pay in that grade and in the higher grades if he is promoted further, shall be fixed on that basis. However, the applicant is entitled for arrears, if any, due to the re-fixation as above, only from one year prior to the filing of this OA i.e. from 22.2.94 (This OA filed on 22.2.95).

11. Time for compliance is four months from the date of receipt of a copy of this order. OA is ordered accordingly. No costs.



(R.RANGARAJAN)
Member (A)

Dated: 16th August, 1996.
Dictated in Open Court.

Avil
Dr. Registrar 

avl/

OA.260/95.

Copy to:-

1. Chief Postmaster General, A.P.Circle, Hyd.
2. The Director General, Department of Posts, Dak Bhavan, New Delhi.
3. One copy to Sri. P.Rathaiah, advocate, CAT, Hyd.
4. One copy to Sri. V.Bhimanna, Adl. CGSC, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED:

16/8/96

ORDER/JUDGEMENT
R.A./C.D./M.A.NO.

O.A.NO.

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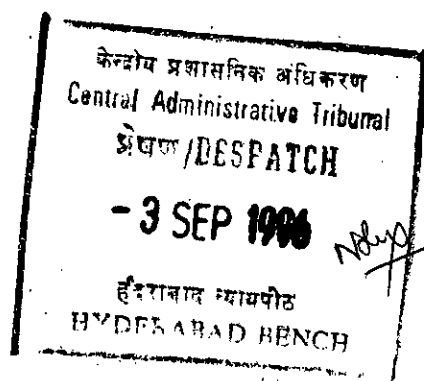
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ADMITTED AND INTERIM DIRECTIONS ISSUED
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NO ORDER AS TO COSTS.

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II COURT

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