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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 12.07.2000

OA 427/94

1. M.C.Sukumaran s/o Late Shri M.K.Velayudhan c/o Chief Engineer, Jaipur Zone, Jaipur.
2. Smt.Santha Chandran w/o Late Shri N.Chandran c/o Chief Engineer, Jaipur Zone, Jaipur.

... Applicants

Versus

1. Union of India through Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Chief Engineer, HQ Southern Command, Pune.
3. Chief Engineer Jaipur Zone, M.E.S., Power House Road, Banipark, Jaipur.
4. Smt.Shobana Angajan, Stenographer (S.G.) (Now O/S Goe.11) GE (Ey) (Indep), Yidcumalaram (P.O) Modak Distt. (Andhra Pradesh).

... Respondents

CORAM:

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

HON'BLE MR.N.P.NAWANI, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.U.D.Sharma

For the Respondents ... Mr.K.N.Shrimal

O R D E R

PER HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

This application is filed for a direction to the respondents to provide the benefits of stepping up of pay to the applicants from the date the applicants' junior have got the pay fixed at Rs.500/- as on 17.7.83 with DNI as on 1.7.84 with all consequential benefits. The applicants also have prayed for quashing of the order dated 25.6.94 (Annexure A/1).

2. It is the case of the applicants that the applicant No.1 was appointed as Stenographer w.e.f. 19.5.65 and applicant No.2 was appointed as Stenographer w.e.f. 17.11.64 and the private respondent (respondent No.4) was appointed as Stenographer w.e.f. 24.5.65. This is also their further case that both the applicants and the respondent No.4 got promoted as Selection Grade Stenographer in the pay scale of Rs.425-15-560-EB-20-640 by a common order but on receipt of part-II proceedings they noticed that the pay scale of respondent No.4, Smt.Shobana Angajan, was fixed at Rs.500/-p.m. in the pay scale of Rs.425-640 w.e.f. 1.7.84, whereas the pay scale of the applicants is fixed at Rs.425-640. In these

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circumstances, the applicants made representations to the concerned respondent to fix the pay scale of the applicants also at Rs.500/- at initial pay, as it has been done in the case of respondent No.4, who was admittedly junior to the applicants. On those representations the respondents have issued the impugned order dated 25.6.94 (Annexure A/1) stating that respondent No.4 has started to draw more pay by grant of increment in the lower post and as well as an increment due on promotion at par RPR-86. They stated that antedating of increment in such cases is not covered under the existing rules/government orders on the subject. Annexure A/1 also refer to a clarification against Point No.3 of the Government of India decision dated 26.9.81. This order is seriously challenged in this application.

3. By filing counter, the respondents supported the impugned order (Annexure A/1). It is further stated at the bar that in terms of Government Order dated 26.9.81, filed at Annexure R/3, which is referred to in the impugned order, the private respondent No.4 had opted the pay scale in terms of para 2(b) of that order. Therefore, she got increment in the lower pay scale and she also got the increment in the promotional pay scale. Consequently, her initial pay was fixed at Rs.500/- and the applicants did not give their option in terms of para 2 of that order. Therefore, their pay scale was fixed at Rs.425-640. As against this contention, the learned counsel for the applicants contended that the applicants have not been informed of any option being exercised by them in terms of para 2 of that order and if any option was sought from them, they could have opted for the benefit under para 2(b) of that government order. From this argument, we find that the area of dispute between the applicants and the respondent No.4 stands narrowed down to the option to be exercised by them in para 2 of the said government order.

4. The learned counsel for the applicants submitted that after promotion of the applicants, they have not been given any option to be exercised in para 2 of the government order vide Annexure R/3, whereas, on the other hand, the learned counsel for the respondents submitted that the applicants should have opted suo-moto in terms of that order. But, in our opinion, it is a common knowledge that if an option is to be exercised by the employees, the Head of Department issues a letter to them for exercising such option within a particular time. Even otherwise para 2 of the said government order dated 26.9.81 (Annexure R/3) states as under :-

"2. The demand of the Staff Side has been considered by this Department in consultation with the Ministry of Finance and the

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matter was also discussed in the National Council (JCM). The President is pleased to decide that in order to remove the aforesaid anomaly the employee may be given an option for fixation of his pay on promotion as under :-

(a) Either his initial pay may be fixed in the higher post on the basis of FR 22-C straightaway without any further review on accrual of increment in the pay scale of the lower post; or

(b) his pay on promotion, may be fixed initially in the manner as provided under FR 22(a)(i) which may be refixed on the basis of the provisions of FR 22-C on the date of accrual of next increment in the scale of pay of the lower post.

If the pay is fixed under (b) above, the next date of increment will fall due on completion of 12 months qualifying service from the date pay is refixed on the second occasion.

Option may be given within one month of the date of promotion. Option once exercised shall be final."

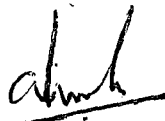
(Emphasis supplied)

From the above paragraph it is clear that for removal of an anomaly; "the employee may be given an option for fixation of his pay on promotion". From this it follows that the department has to give a letter of option to the concerned employee directing him to indicate his option within one month from the date of promotion. It appears that no such letter of option was given to the applicants. From the promotion order, vide Annexure R/1, we find that the applicants and respondent No.4 have been promoted by this common order to the post of Selection Grade Stenographer with the pay scale of Rs.425-640. The name of applicant No.1 is at Sl.No.5 and name of applicant No.2 is at Sl.No.3 and the name of private respondent No.4 is at Sl.No.7. In column No.2, the effective date on the promotion post is also given. So far as the applicant No.1 is concerned, the promotion is given w.e.f. 29.10.82 and in case of applicant No.2, it has been given w.e.f. 17.9.82 and in case of respondent No.4 it has been given w.e.f. 17.7.83. From this promotion order it is clear that the respondent No.4 is junior to the applicant. It is not the specific case of the department that any notice of option was given to respondent No.4 also. It appears, however, that respondent No.4 might have come to know that she could indicate her option in terms of para 2(b) of the government order dated 26.9.81 (Annexure R/3) but unfortunately the applicants could not know of it till they are issued that form-II


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statements in respect of the applicants and the respondent No.4. In these circumstances, the respondent No.4 though being junior, is now getting more pay than the applicants and in fact to remove such anomaly, only the government order dated 26.9.81 (Annexure R/3) states that the employees may be given option for fixation of their pay on promotion. If the respondents were to give a letter of option to the applicants, perhaps this anomaly could not have been there. Prima-facie we find that giving higher pay scale to a junior than the seniors though promoted by the common order would be a discriminatory situation. In these circumstances, we find that the applicants also are entitled to exercise option in terms of para 2(b) of the said government order. No material is produced by the respondents to show that at any point of time any letter of option was given to the applicants. Hence we have to take that the applicants have not been given any option in terms of para 2 of the said government order. In these circumstances, we think it appropriate to pass the order as under :-

The impugned order dated 25.6.94 (Annexure A/1) is hereby quashed and the respondents are hereby directed to give a letter of option in terms of para 2 of the government order dated 26.9.81 (Annexure R/3) and accordingly decide the matter afresh. If the applicants also exercise their option, similar to one exercised by respondent no.4, the applicants' pay scale also shall be fixed at par with that of respondent No.4 with effect from the date the respondent No.4 had been given such a higher pay scale. Accordingly, the OA is allowed but in the circumstances without costs.


(N.P.NAWANI)

MEMBER (A)


(B.S.RAIKOTE)

VICE CHAIRMAN