

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(7)

O.A. No. 140/96 199
T.A. No.

DATE OF DECISION 4.4.97

Gurdas Petitioner

The applicant in person Advocate for the Petitioner (s)

Versus

Union of India and others Respondent

Mr. M. Rafiq Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. RATAN PRAKASH, MEMBER (JUDICIAL)

The Hon'ble Mr.

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement? ^{Yes}
- ✓ 2. To be referred to the Reporter or not? ^{Yes}
- ✓ 3. Whether their Lordships wish to see the fair copy of the Judgement? ^{Yes}
4. Whether it needs to be circulated to other Benches of the Tribunal?


(RATAN PRAKASH)
MEMBER (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.NO.140/96

Date of order: 4.4.97.

Gurdas S/o Shri Thakurdas, Head Clerk, O/o the Regional Director, National Savings, Govt. of India, Rajasthan, Jaipur.

: Applicant

Versus

1. Union of India through the Secretary, Government of India, Ministry of Finance (Department of Economic Affairs), North Block, Central Secretariat, New Delhi.
2. The National Savings Commissioner, 12, Seminary Mills, Nagpur.
3. The Regional Director, National Savings, (Govt. of India), Rajasthan, Vitta Bhawan, C-Block, 4th Floor, Jyoti Nagar, Jaipur.

: Respondents.

The applicant in person
Mr. M.Rafiq, counsel for the respondents

CORAM:

HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O-R-D-E-R

The applicant herein Shri Gurdas has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 to seek a direction against the respondent No.2, National Savings Commissioner, Nagpur and respondent No.3, the Regional Director, National Savings, Jaipur to fix up his pay at appropriate stage and to allow him to cross the Efficiency Bar with a further prayer to make payment of the resultant balance amount with interest @ 18% from the date of his acquittal by the Special Court till the date of payment. He has also claimed a sum of Rs. 10,000/- from respondents Nos. 1,2 & 3 by way of damages for lapses on their part for putting the applicant to unwarranted harassment, mental torture, hardship, financial loss and humiliation.

2. Facts which are not in dispute are that while the applicant was working as Head Clerk with the respondent department, he was placed under suspension by the Deputy National Savings Commissioner vide order dated 4.6.1986 on the charge that a criminal case was

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contemplated against the applicant. This order was delivered to him on 12.6.1986. On the basis of a criminal case registered against him, a charge-sheet was filed by the C.B.I. Jaipur against the applicant on 19.12.1986 in the Court of Special Judge, (CEI Cases), Rajasthan, Jaipur. The applicant was acquitted in the criminal case vide order dated 12.8.1994 by the Special Judge, the result of which was communicated by the applicant to respondents Nos. 2 & 3 vide letter dated 16.8.1994 (Annexure A/2). He submitted a copy of the judgment in the criminal case to the respondents vide his letter dated 23.8.1994 (Annex.A/3). His order of suspension, thereafter was revoked vide order dated 12.12.1994 (Ann. A4) and delivered to him on 14.12.1994 where after he joined his duties on the same date in the office of Regional Director, National Savings, Rajasthan, Jaipur vide Annexure A/5. He made requests to the respondents for regularizing his period of suspension as duty period under Rule FR-54 and also served a notice under Section 80 CPC on 17.5.1995 (Annex.A/12). Ultimately vide letter dated 2.1.1995 (Annex.A/7), respondent No.3 informed the applicant that his period of suspension would be treated as period spent on duty.

3. It is the case of the applicant that immediately after his reinstatement he submitted a Revised Option under Central Civil Service (Revised Pay) Rules, 1986 vide letter dated 16.12.1994 (Annex.A/14) opting for the new scale of pay from 1.11.1986 i.e. the date of his next increment as contained in letter dated 1.1.1987 (Annex.A/15) of the National Savings Commissioner. Alleging that the Regional Director, National Savings, Jaipur being the controlling officer and Head of Office of the applicant was competent to fix the pay under Central Civil Services (Revised Pay) Rules, 1986, yet his matter was referred to respondent No.2 and ultimately fixed the applicant at a lower stage than the entitled one pursuant to letter

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dated 18.12.1995 (Annx.A/20) and thereafter issued order dated 29.12.1995 (Annx.A/21) granting only four annual increments fixing him at a lower stage. It is further the grievance of the applicant that though he has submitted his option on 5.12.1986 electing for the revised scale of pay w.e.f. 1.1.1986, yet by virtue of Circular dated 1.1.1987 (Annx.A/19) issued by the National Savings Commissioner whereby the employees who had already exercised option were further allowed to submit the revised option on the basis of their date of increment after 1.1.1986; he submitted the revised option on 16.12.1994 (Annx.A/14) immediately on his reinstatement in service. It has, therefore, been urged that in pursuance of his revised option given on 16.12.1994 (Annx.A/14) his pay should have been fixed at an appropriate stage and he should be allowed to cross the Efficiency Bar and receive the arrears of pay and allowances.

4. The respondents have opposed this application by filing a written reply to which the applicant has also filed a rejoinder. The stand of the respondents has been that since the applicant has once exercised his option on 5.12.1986 electing to draw the revised pay scale w.e.f. 1.1.1986 and the facility of giving an option having been exhausted, he cannot be permitted to come up with a revised option to fix his pay w.e.f. 1.11.1986 after a lapse of 8 years. It is also urged that while exercising his option on 5.12.1986 he was free to have his pay fixed w.e.f. 1.11.1986 instead of 1.1.1986. But, having chosen to get his pay fixed w.e.f. 1.1.1986, he now cannot be permitted to claim re-fixation on the basis of a revised option submitted by him on 16.12.1994. It has, therefore, been urged that this application has no merit and should be rejected.

5. I heard the applicant in person and Shri M. Rafiq for the respondents and have examined the record in great detail.

6. The only point for determination in this OA is "whether consequent upon the recommendation by the IV Central Pay Commission,

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an employee having once exercised option to draw the revised scale of pay w.e.f. 1.1.1986 before his suspension can further be permitted to exercise fresh option to have his pay fixed w.e.f. 1.11.1986 in accordance with circular dated 1.1.87 (Ann.A19) on his reinstatement in service; on the ground that when subsequent options were sought for, he was under suspension ?

7. The argument of the applicant is that he being under suspension since 12.6.1986 till reinstatement on 14.12.1994; he could not exercise the revised option sought for by the respondents vide their circular dated 1.1.1987 (Annx.A/19). He having submitted his option to be fixed in the revised scale of pay w.e.f. 1.11.1986 immediately after reinstatement i.e. vide letter dated 16.12.1994 (Annx.A/14), he cannot be denied the fixation w.e.f. 1.11.1986: the date of his next increment. As against this, it has been urged by the learned counsel for the respondents that by virtue of Circular dated 1.1.1987 (Annx.A/19) the applicant could have furnished a revised option within three months of its issuance i.e. by 31.3.1987. He having failed to do so cannot now on the basis of revised option submitted by him after 8 years; claim re-fixation in the Revised Scale of Pay w.e.f. 1.11.1986.

8. I have given anxious thought to the arguments advanced on behalf of both the sides.

9. In the original Office Memorandum dated 9.10.1986 (Annx.A/18) in para 5 it has been specifically laid down that:

" A Government servant under suspension on 1.1.86 may exercise the option within three months of the date of his return to his duty if that date is later than the above date. The option once exercised shall be final. A Govt. servant from whom the option is not received within this time-limit shall be deemed to have elected the revised scale w.e.f. 1.1.86"

The applicant in pursuance of this OM had submitted the option in the revised pay scale on 5.12.1986 and was not under suspension on 1.1.1986. Thus his option could have become final but the things did not remain the same since vide Circular dated 1.1.1987 (Annx.A/19) it

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was further ordered that :

" In exercise of the power available under Rule 13 of the CCS (RP) Rules, 1986, the President is please to decide that the pay of Govt. servants drawing their increments annually who opt to switch over to the revised scale of pay from the date of their next increment falling after 1.1.1986 but not later than 31.12.1986 in respect of the post held by them on 1.1.86 shall be fixed in accordance with the provisions of Rule 7 of the C.C.S.(RP) Rules, 1986."

This circular letter further provided that :

"The option in the format appended as the Second Schedule to C.C.S.(R.P.) Rules, 1986 may be exercised by 31.3.1987. The option once exercised shall be final. The option available under these orders can be exercised afresh even by those Govt. Servants who have already exercised option prior to the issue of these orders to switch over to the revised scales. However, the pay of Govt. Servants who still opt to switch over to the revised scales from any date subsequent to 31.12.1986 (in the case of those drawing increments annually), or 31.12.1987 (in the case of those drawing increments biannually) as the case may be shall be fixed in those scales under Rule 9 of the C.C.S.(R.P.) Rules, 1986."

Accordingly, by virtue of this circular, the applicant also became entitled to furnish a fresh option to switch over to the Revised scale of pay from the date of his next increment falling on 1.11.1986. It is true that in the aforesaid circular dated 1.1.1987 the time within which the fresh option could have been exercised was limited upto 31.3.1987; but admittedly the applicant was under suspension on 1.1.1987 as also on 31.3.1987. In fact, he remained under suspension from 13.6.1986 till 14.12.1994 the date of his reinstatement in service. The applicant, therefore, was under a disability to furnish any fresh revised option in pursuance of the circular letter dated 1.1.1987 (Annx.A/19). It is settled position that an employee under suspension is forbidden from discharging his duties during the suspension period. He is also virtually debarred to enter the office premises unless he is asked to or allowed entry in connection of his defence in the disciplinary proceedings. It would, therefore, be presumed that the applicant had no notice of the circular dated 1.1.1987 (Annx.A/19) as also the last date of exercising a fresh option by 31.3.1987. The respondents have failed to substantiate that the applicant was at all informed or asked to furnish any fresh option in consequence of the circular dated

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1.1.1987 (Annx.A/19). Accordingly, the applicant's inability to submit his revised option in compliance with circular dated 1.1.1987 cannot be taken as a failure on his part to seek fixation in the revised pay scale w.e.f. 1.11.1986 the date of his next increment falling after 1.1.1986. The ground taken by the respondents in their reply that when he submitted his earlier option on 5.12.1986 he could have opted and elected for fixation of his revised pay scale w.e.f. 1.11.1986; is fallacious because it was after the issuance of the circular letter dated 1.1.1987 that the employees were given an added opportunity to submit their fresh options to seek their fixation of revised pay scale from the date of increment which fell after 1.1.1986. Admittedly, the next date of increment of the applicant after 1.1.1986 fell on 1.11.1986. On 1.1.1987 as also on 31.3.1987 and till 14.12.1994 the applicant was under suspension and hence could not be expected to give his fresh option before 16.12.1994. In any view of the matter, he could have submitted his fresh option only after his reinstatement. He having been admittedly reinstated vide order dated 14.12.1994 he was within his right to furnish the revised fresh option on 16.12.1994 and to seek fixation in the revised pay scale on the basis of his next date of increment falling on 1.11.1986. It may be mentioned here that although respondent No.3, the Regional Director, National Savings, Jaipur vide his letter dated 18.9.1995 to respondent No.2, has been of the view that as per guidelines in the letter dated 9.10.1986 a Government Servant who has been under suspension may exercise the option within three months of the date of his return to duties, yet while referring to the circular dated 1.1.1987 and observing that though the applicant was under suspension on the date of his next increment i.e. 1.11.1986 and also on the date of issue of order dated 1.1.1987 and was not in a position to exercise his option and could not opt for new scale from 1.11.1986, and that he could have only opted for new scale from the date of his next increment i.e. 1.11.1986 or within three months from the date of his reinstatement which he has done by furnishing a



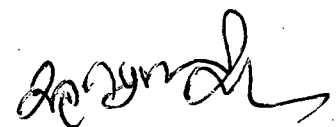
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revised option on 16.12.1994; yet he chose to seek approval of respondent No.2. It appears that respondent No.2 has not appreciated the approach and discretion exercised by respondent No.3 who infact is the Controlling officer and Head of Office in respect of the applicant and competent to fix the pay. He has in fact committed an error in disagreeing with the decision of respondent No.3 sent to him for formal approval vide Annexure A/16 dated 18.9.1995 and rejecting the request of the applicant for fixation of his pay in the revised scale of pay from the date of his annual increment falling on 1.11.1986 vide his communication dated 16.12.1995 (Annx.A/20). It is accordingly held that order dated 16.12.1995 (Annx.A/20) as also order dated 29.12.95 (Ann.A/21) are untenable in the eye of law and are hereby quashed.

10. Consequently, the issue raised in this OA is answered in the 'affirmative'. The applicant is within his right to exercise a fresh option in electing for fixation of his pay in the revised pay scale w.e.f. 1.11.1986 the date of his next increment and submitted by him after his reinstatement vide letter dated 16.12.1994.

11. Therefore, while allowing this OA and quashing the impugned order dated 16.12.1995 (Annx.A/20) as also order dated 29.12.1995 (Annx.A/21), the respondents Nos. 2 & 3 are directed to issue necessary orders fixing the pay of the applicant at appropriate stage in the revised new pay scale as per C.C.S. (EP) Rules, 1986 from 1.11.1986, the date of the applicant's next increment and to allow the applicant to cross the Efficiency Bar and make payment of all the arrears of pay and allowances, within a period of four months from the date of receipt of a copy of this order. The relief claimed by the applicant on account of Damages is not tenable and is rejected. The applicant will also not be entitled for payment of any interest on the arrears of pay and allowances; to be paid by the respondents as ordered above. The OA stands disposed of accordingly with no order as to costs.



(Ratan Prakash)

Judl. Member