

50/100
**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI. 5

ORIGINAL APPLICATION NO. 371/2000

Rakeshwar Chandra Paul APPLICANTS
versus.

Union of India &ors Respondents.

FOR THE APPLICANT(S) Mr. N. Chanda.

ADVOCATE

Mrs. N. D. Goswami

Mr. G. N. Chakrabarty.

FOR THE RESPONDENT(S)

C.G.S.C.

Notes of the Registry DATE COURT'S ORDER

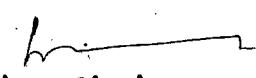
3/11/2000 Present : Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman

This application is in form but not in time. Condonation Petition is filed / not filed C.P. for Rs. 50/- deposited vide I.P.C.R. No. 503796
Dated..... 31/11/2000

Heard Mrs. N.D. Goswami, learned counsel for the applicant and also Mr. B.S. Basumatary, learned Addl. C.G.S.C. for the respondents.

Application is admitted. Call for the records. Issue usual notice. Returnable by six weeks.

List on 14.12.00 for written statement and further orders.


Vice-Chairman

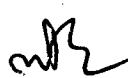
Notice prepared and sent to D/S for issuing the respondent No. 1 to 4 by Registered Post & by hand, vide D/No. 2776 & 2778 dtd 23/11/00
20/11/00

Service report are still awaited.

14.12.00 Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman
The Hon'ble Mr M.P. Singh, Administrative Member.

Three weeks time is granted to the respondents to file written statement on the prayer of Mr. A. Deb Roy, learned Sr. C.G.S.C.

List on 5.1.2001 for order.

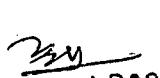

Member (A)


Vice-Chairman

① Service report are still awaited.

pg

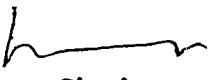
② No. 10's has been filed.


14.1.2001

5.1.2001 Four weeks time is allowed to the respondents to enable the respondents to file written statement, on the prayer of Mr. B.S. Basumatary, learned Addl. C.G.S.C. for the respondents.

List on 6.2.01 for written statement and further orders.

220
5.2.2001

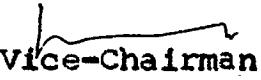

Vice-Chairman

mk

No W/S has been 6.2.01
d/7/01. WS 7/3/01

List on 8.3.01 to enable the respondents to file the written statement.

I.C.Ushan
Member

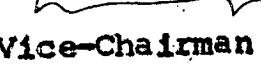

Vice-Chairman

lm

8.3.01

List on 9.4.01 to enable the respondents to file written statement.

I.C.Ushan
Member


Vice-Chairman

lm

9.4.2001

Four weeks time allowed to the respondents to file their written statement. List it for orders on 10.5.01.

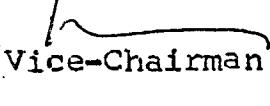

Vice-Chairman

nkm

11.5.01

List on 8.6.01 to enable the respondents to file written statement.

I.C.Ushan
Member


Vice-Chairman

No written statement
has been filed.

lm

8-6-01

Mr. A. Deb Roy, Sr. C.G.S.C. for the respondent has prayed for time to file written statement.

List on 2-7-2001 for order.

I.C.Ushan
Member

mb

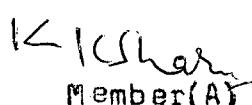
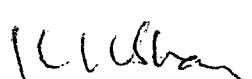
220
29.6.01

Notes of the Registry

Date

Order of the Tribunal

| | | |
|---|----------|---|
| | 2.7.2001 | On the request made by Mr.A.Dab Roy, learned Sr.C.G.S.C. for the respondents, three weeks time is allowed to the respondents to file written statement. List on 30-7-2001 for further order. |
| | | <i>IC Usha</i> Member |
| | 30.7.01 | List again on 3.9.2001 to enable the respondents to file written statement |
| | | <i>IC Usha</i> Member |
| | 3.9.01 | On the request of Mr.A.Dab Roy, learned Sr. C.G.S.C., 3 weeks time is allowed to file written statement. List on 26/9/01 for order. |
| | | <i>IC Usha</i> Member |
| 13.9.2001 WTS submitted by the respondents. | mb | Written statement has been filed. The applicant may file rejoinder, if any, within 2 weeks from today. |
| | | <i>IC Usha</i> Member |
| | 26.9.01 | List on 11/10/01 for order. |
| | | <i>IC Usha</i> Member |
| | 11.10.01 | Written statement filed. The case may now be listed for hearing. List on 4.12.01 for hearing. |
| | | <i>IC Usha</i> Member |
| | pg | <i>IC Usha</i> Member |

| Notes of the Registry | Date | Order of the Tribunal |
|---|---------------|---|
| Copy of plaint and O.M. filed for leave to file plaint in Civil suit and application for interim injunction against the defendant. | 4.12.2001 | At the requests of Mr. M. Chanda, learned counsel for the applicant, the case is adjourned to 25.12.01 for hearing. |
| | |  Member (J) |
| 26.12.2001 Copy of the plaint has been sent to the defence for record. The same to the applicant as well as to the law counsel for the defendant. | mb 5.12.01 | Heard learned counsel for the parties. Hearing concluded, judgment delivered in open Court, kept in separate sheets. The application is allowed in terms of the order. No order as to costs. |
| | |  Member (A) |
| | |  Member (A) |

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 371 of 2000.

Date of Decision.. 5.12.2001..

Shri Rabindra Chandra Paul

Petitioner(s)

Mr. M. Chanda

Advocate for the
Petitioner(s)

Versus-

Union of India & Others.

Respondent(s)

Mr. A. Deb Roy, Sr.C.G.S.C

Advocate for the
Respondent(s)

THE HON'BLE MR. K.K.SHARMA, ADMINISTRATIVE MEMBER.

THE HON'BLE MRS. BHARATI RAY, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : Administrative Member

KK Sharma

X

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 371 of 2000.

Date of Order : This the 5th Day of December, 2001.

THE HON'BLE MR K.K.SHARMA, ADMINISTRATIVE MEMBER.

THE HON'BLE MRS BHARATI RAY, JUDICIAL MEMBER.

Shri Rabindra Chandra Paul,
Carpenter H.S-II,
C/o B.S.O. G.E. 869 EMS,
C/o 87 IFPO
C/o 99 A.P.O.
Nagaland.

Applicant.

By Advocate Sri M.Chanda.

- Versus -

1. Union of India,
through the Secretary to the Govt.of India,
Ministry of Defence,
Neew Delhi.
2. Garrison Engineer,
869 EMS,
C/o 99 APO.
3. Controller of Defence Accounts,
Pay Section,
Udayan Vihar, Guwahati.
4. Garrison Engineer,
869 EWS,
C/o 99 APO. Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R

K.K.SHARMA, ADMN MEMBER,

The applicant was appointed as Carpenter (S.K) in the year 1972 under the Garrison Engineer 869 EWS. By order dated 21.8.94 (Annexure-1) the applicant was

(Signature)

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promoted from Carpenter (SK) to Carpenter (HS-II) with effect from 21.8.94. In the promotion order the scale of pay for Carpenter (HS-II) has been mentioned as Rs.950-1500/-. Mr. M.Chanda, learned counsel for the applicant clarified that the applicant was promoted from the scale of Rs.950-1500/- of Carpenter (SK) to the scale of 1200-1800/- for Carpenter (HS-II). The applicant wanted the fixation of pay as per FR 22(a) (i) after accrual of increment in the previous scale.

2. The factual position is accepted by the respondents and it is admitted that the scale of pay of Carpenter HS-II is Rs.1200-1800/-. The applicant had earlier approached this Tribunal by filing O.A.294/98 claiming the promotional scale of Rs.1200-1800/-. By order dated 8.10.99 this Tribunal directed the applicant to make a representation to the respondents and the respondents were also directed to dispose of the representation within a period of one month from the date of receipt of the representation. Accordingly the respondents have disposed of the representation of the applicant by order dated 3.3.2000 (Annexure-9 to the O.A). The claim of the applicant has been rejected on the ground that he was promoted to HS-II with effect from 21.8.94 and under FR 22 he was required to exercise his option for fixation of pay in the old scale after earning increment and such option was to be exercised within a period of one month from the date of order i.e. by 20.9.94. The applicant had not exercised that option within the period of one month.

ICWShah

3. Mr M.Chanda, learned counsel appearing for the applicant submitted that the promotion order itself was defective and till the date of filing of this O.A. the applicant was not in the knowledge that he has been given the scale of Rs.1200-1800/-. Mr Chanda also relied on the clarification No.19 under FR 22 which states that the promotion order should mention that the Government servant has to exercise the option of increment in the lower scale within a period of one month. The promotion order did not give any such option.

4. After hearing the learned counsel for the applicant - and Mr A.Deb Roy, learned Sr.C.G.S.C and on perusal of the documents available before us it is clear that the applicant was not given option as required under FR 22. No such mention is found in the order of promotion. The

applicant is a low paid employee working in a remote area. He had also approached this Tribunal for getting relief but he was not given the pay scale of the promotional post. He has been agitating for the exercise of option of increment in the lower scale from his first representation dated 19.10.95. Mr M.Chanda also referred to the order of this Tribunal in O.A.No.96/98 disposed of on 14.12.2000 wherein in such situation when the promotion order did not mention the exercise of option within the period of one month and relief was granted to the applicant.

AC Usha

5. Keeping an overall view we are of the opinion that the applicant's case requires re-consideration. The applicant is directed to submit a formal option before the respondents within a period of 2 weeks from the date of receipt of this order. The respondents are also directed to dispose of the representation of the applicant within a period of one month from the date of receipt of the representation. The respondents shall dispose of the representation in the light of the clarification under FR 22.

The application is treated as allowed. There shall however, be no order as to costs.

Bharati Ray,
(BHARATI RAY)
JUDICIAL MEMBER

K. K. Sharma
(K. K. SHARMA)
ADMINISTRATIVE MEMBER

केन्द्रीय प्रशासनिक अदायक
 Central Administrative Tribunal
 24th NOV 2000
 IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 गुवाहाटी अधायकारी
 GUWAHATI BENCH

(An Application under Section 19 of the Administrative
 Tribunals Act, 1985).

Title of the Case : O.A. No. 37 /2000

Sri Rabindra Chandra Pal l: Applicant

-versus-

Union of India & Ors. : Respondents

I N D E X

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| 3 | 1 | Order of promotion dt. 21.8.94 | 21 |
| 4 | 2 | Letter of Option dt. 19.10.95 | 22 |
| 5 | 3 | Option dated 19.7.97 | 23 |
| 6 | 4 | Representation dt. 11.12.97 | 24 |
| 7 | 5 | Representation dated 12.1.98 | 25 |
| 8 | 6 | Representation dated 24.7.98 | 26 |
| 9 | 7 | Judgement & Order dt. 8.10.99 | 27-29 |
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Date 25/10/2000

Filed by
N.D. Goswami

Advocate

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative
Tribunals Act, 1985).

O.A. No. 321 /2000/

BETWEEN

Sri Rabindra Chandra Paul
Son of Late Ramesh Chandra Paul
Carpenter-H.S.II,
C/o B.S.O. G.E.869 EMS,
C/o 87 IFPO
C/o 99 A.P.O.

Nagaland Applicant

-AND-

1. Union of India
Through the Secretary to the Govt.
of India, Ministry of Defence,
New Delhi.
2. Garrison Engineer,
869 EMS,
C/o 99 APO.
3. Controller of Defence Accounts,
Pay Section,
Udayan Vihar, Guwahati.
4. Garrison Engineer,
869 EWS
C/o 99 APO

.... Respondents

Shri Rabindra Ch Paul

DETAILS OF APPLICATION

1. Particulars of order against which this application is made.

This application is made against the letter bearing No. Pay/34/Confdl/294/93 dated 3.3.2000 whereby claim of the applicant for pay fixation has been rejected and the applicant praying for a direction to the respondents for re-fixation of pay in the promotional post of H.S. Grade II in terms of the option exercised by the applicant vide his letter dated 19.10.1995 in pursuance of the promotion order issued under letter No. 1228/DPC/83/EIC (2) dated 21.8.94 and also praying for a direction to the respondents to pay arrear pay and allowances of the promotional post with effect from 21.8.1994 after re-fixation in the scale of Rs. 1200-1800 and further praying for a direction to the respondents for modification of the order of promotion dated 21.8.1994 as the scale of pay wrongly shown in the promotion order as Rs. 950-1500 instead of Rs.1200-1800.

2. Jurisdiction

The applicant declares that the cause of action of the application is within the jurisdiction of the Hon'ble Tribunal.

3. Limitation

The applicant further declares that this application is made within the time limit as has been prescribed under 21 of the Administrative Tribunals Act, 1985.

Contd.....

Shri Rabin德拉 Ch. Paul

4. Facts of the Case.

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights and privileges guaranteed under the Constitution of India, the applicant is presently serving as Carpenter H.S. II in the office of the Garrison Engineer 869 EWS C/o 87 IFPO, C/o 99 APO in the state of Nagaland.

4.2 That your applicant was initially appointed as Carpenter (S.K) in the year 1972 under the Garrison Engineer 869 EWS, MES C/o 99 APO. The applicant after serving nearly for a period of more than 23 years, the departmental authorities was pleased to promote the applicant from the post of Carpenter (S.K.) to the post of Carpenter H.S.II vide Office Order issued under letter No. 1228/DPC/83/EIC(2) dated 21.8.94. The applicant after receipt of the promotion order exercised his option for fixation of his pay in the promotional post of Carpenter H.S. II in the scale of Rs.1200-1800/- vide his letter dated 19.10.95 whereby the applicant has prayed his fixation of pay after accrual of his next increment in the cadre of Carpenter (S.K.). The next increment in the lower cadre of Carpenter (S.K.) was due in the month of October 1994 in the scale of Rs.950/- - 1500/-. It is pertinent to mention here that the scale of pay in the promotional post has been wrongly shown as Rs.950-1500/- instead of Rs.1200-1800/- in the promotion order dated 21.8.94. Be it stated that the applicant in fact drawing the scale of Rs.950-1500/- in the Lower Cadre of Carpenter (S.K.) although the applicant brought it to the notice of the depart-

Shri Ranendra Ch Paul

mental authorities for rectification of the same but the same has not yet been done, therefore Hon'ble Tribunal be pleased to direct the respondents to modify the scale of pay in the promotional order dated 21.8.94 as because the prescribed scale of pay of Rs.1200-1800/- in the post of Carpenter H.S. II in the MES Department, although it appears to be a bona fide mistake.

A copy of the promotion order dated 21.8.94 and letter or option dated 19.10.95 are annexed as Annexures-1 & 2 respectively.

4.3 That most surprisingly the pay of the applicant was arbitrarily fixed by the respondents on 22.10.96 without taking into consideration, the option exercised by the applicant and in total violation of the provision laid down in F.R. 22(A) (i) and also in violation of F.R. 22(c) by adding only one increment and in basic pay arbitrarily shown to Rs. 1260/- in the promotional post of Carpenter H.S. II as on 21.8.94 by the authority, this fact came to the notice of the applicant and immediately thereafter the applicant submitted number of representation to the authorities, protesting arbitrary fixation of pay of the applicant in the promotional post of Carpenter H.S.II.

4.4 That your applicant submitted his representation dated 19.6.97. In the said representation the applicant stated that his pay ought to have been fixed after granting of Annual increment on 16.10.94 in the Lower scale of Rs.950-1500/- and also stated that for this purpose he had submitted his option certificate for the same. The appli-

Shri Rabindra Ch. Patel

Cant again submitted another option letter alongwith his representation dated 19.6.97 similar to that of 19.10.95 but finding no response from the authorities the applicant again approached the Garrison Engineer through proper channel vide his letter dated 11.12.97, whereby the applicant stated that he had already furnished option certificate under F.R. 22(a) (i) and also stated that his pay has been fixed to Rs. 1260/- with effect from 21.8.94 in total violation of his option exercised in terms of the aforesaid rules and also requested to look into the matter for that his pay shaould be fixed as early as possible but finding no response the applicant again submitted a detailed representation to the Controller of Defence Accounts, Narengi, Guwahati but even thereafter no reply was receipt from the authority concerned.

representation and
Copy of the ~~representation~~ and option dated
19.6.97 and representation dated 11.12.97 are enclosed
as Annexures-3 & 4 respectively (Series).

4.5 That your applicant further begs to state that even after his promotion to the post of Carpenter H.S. II he is being paid salary in the salary in the scale of Rs. 950/- - 1500/- since 21.8.94 to till date. The applicant have personally approached to Shri R.P. Sharma, Local Audit Officer, Ulubari, Guwahati, but he did not give any attention to the problem facing by the applicant due to non-fixation of salary in accordance with the Rules but due to negligence of Shri R.P. Sharma, Local Audit Officer the applicant did not receive his due pay and allowances with effect from 21.8.94 to till

Shri Raninderach Paul

date and as a result the applicant is being denied the salary in the higher scale of promotional post of Carpenter H.S. II. It is a continuous wrong and the applicant is meted out with differential treatment which is violative of Article 14 of the Constitution.

4.6 That in the compelling circumstances, your applicant again approached to the Controller of Defence Accounts, Narengi, Guwahati and also to the Hon'ble Defence Ministry, New Delhi vide his representation dated 12.1.98 and 24.7.98, inter alia praying for review of his case of fixation and it is further stated that the basic pay of the applicant ought to have been fixed to Rs.1290/- in the higher scale of Rs.1200-1800/- w.e.f. 1.10.94 in terms of his option exercised under FR 22(a) (i) but no action was initiated even after submission of number of representations.

Copy of representation dated 12.1.98 and 24.7.98 are annexed as Annexures 5 & 6 respectively.

4.7 That your applicant in the compelling circumstances approached the Hon'ble Tribunal through O.A. No. 294/98 praying for a direction to the respondents to modify the order of promotion of the applicant issued under letter dated 21.8.94 showing the scale of pay of Rs.950-1500/- instead of Rs. 1200-1800 in the promotional post and also praying with the prayer to fix the pay of the applicant in the scale of Rs. 1200-1800/- in the promotional post of Carpenter H.S. II in terms of the option exercised by the applicant vide letter dated 19.10.95 i.e. in terms

Shri Rabindra Ch. Paul

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exception of provision F.R. 22(a) (i) after accrual of increment on 16.10.94 in the earlier scale of Rs. 950-1500/- with all arrear salary with effect from 21.8.94. The applicant also prayed in the said application to grant benefit of the scale of Rs. 1200-1800/- with effect from 21.8.94 i.e. from the date of promotion of the applicant to the post of Carpenter H.S. II. However the Hon'ble Tribunal was pleased to admit the said OA and finally disposed of the same vide its judgement and order dated 8.10.99 with a direction to dispose of the representation of the applicant keeping in mind that the applicant after promotion is entitled to the scale of pay of the promotional post from date of his promotion and if the facts stated in the application are correct the applicant shall be given the scale of pay of H.S. Grade II from the date of his promotion. It is also directed that this should be done within a period of one month from the date of receipt of the order. The relevant portion of the judgement and order dated 8.10.99 referred to above is quoted below :

"5. In view of the above we dispose of this application with direction to the respondents, particularly respondent No.3 to dispose of the representation keeping in mind that the applicant after promotion is entitled to get his scale of pay of the promotional post as stated hereinbefore from the date of his promotion and if the facts stated in the application are correct the applicant shall be given the scale of pay of High Skilled Grade II from the date of his promotion. This must be done as early as possible at

any rate within a period of one month from the date of receipt of this order.

6. The application is accordingly disposed of. No order as to costs."

From the direction of the Hon'ble Tribunal it is clear that if the facts stated in the application are correct the applicant shall be given the scale of pay of H.S. II from the date of his promotion. But unfortunately the respondents did not comply with the order of the Hon'ble Tribunal. In the O.A. the applicant claimed firstly for modification of the order of promotion showing the correct pay scale, secondly the applicant prayed for grant of scale of pay Rs.1200-1800/- for the promotional post of Carpenter H.S. II interms of his option dated 19.10.95 in terms of the provisions of F.R. 22(a)(i) after accrual of increment on 16.10.94 on the earlier scale of pay and thirdly, the applicant prayed for a direction to grant the benefit of the pay scale of Rs.1200-1800/- with effect from 21.8.94. The relevant portion of the relief column in paragraph 8 of the O.A. No. 294/98 is quoted below :

" 811 That the respondent be directed to modify the order of promotion of the applicant issued under letter No.1223/DPC/83/EIC(2) dated 21.8.94 showing the scale of pay of Rs.1200-30-1400-EB-30-1800/- instead of Rs.950-20-1150-EB-25-1500/-.

8.2 That the respondents be directed to fix the pay of the applicant in the scale of

Shri Rabindra Ch Paul

Rs.1200-1800/- in the promotional post of Carpenter H.S. II in terms of option exercised by the applicant vide letter dated 19.10.95 i.e. in terms of the provision of F.R. 22(a) (i) after accrual of increment on 16.10.94 in the earlier scale of Rs.950-1500/- with all arrear salary w.e.f. 21.8.94."

Although the Hon'ble Tribunal categorically directed that if the facts stated in the application are correct the applicant shall be given the scale of pay of H.S.II from the date of his promotion. But the respondents deliberately did not comply with the judgement and order passed by the Hon'ble Tribunal in O.A. No. 294/98. In this connection it may be stated that the judgement and order was duly served upon the respondents by the applicant which is evident from his representation dated 1.2.2000 addressed to the Controller of Defence Accounts, Pay Section, Guwanati through Garrison Engineer, 869 Engineer Works Section, C/o 99 APO where the applicant categorically stated that he had been denied the pay scale in the promotional post since October, 1994 till date due to non fixation of his pay as such he requested to take immediate steps for fixation of pay as per his ~~option~~ ^{option} as well as to pay his arrear salary for the current month in the higher scale. The Hon'ble Tribunal categorically directed the respondents which is evident from paragraph 5 that the representation of the applicant should be disposed keeping in mind that the applicant after promotion is entitled to get his scale of pay of the promotional post and also categorically directed to

Shri Rabindra Ch Paul

grant the scale of pay High Skilled Grade II from the date of promotion of the applicant if the facts stated in the application are correct. In this connection it is pertinent to mention here that there is *not* dispute that the applicant is promoted to the post of H.S. II with effect from 21.8.1994. Therefore as per the direction of the Hon'ble Tribunal the respondents ought to have given him the scale of pay of Rs. 1200-1800 as because there is *not* dispute regarding promotion of the applicant but the same has been denied even after the pronouncement of the judgement and order dated 8.10.1999. As such action of the respondents is amount to contempt of court. However the applicant in the facts and circumstances filing this Original Application praying for a direction against the impugned order dated 3.3.2000 passed by the Senior Accounts Officer, office of the CDA, Narengi, Guwahati.

Copy of the judgement and order dated 8.10.1999 and representation dated 1.2.2000 are annexed and marked as Annexures-7 & 8 respectively.

4.8 That most surprisingly Shri S. Prasad, Senior Accounts Officer (Pay) issued the impugned letter bearing No. Pay/34/Confidential/294/98 dated 3.3.2000 whereby the applicant's claim for fixation of pay on accrual of next increment has been rejected on the alleged ground that the same is not valid and cannot be acted upon under the existing rules. The impugned order dated 3.3.2000 passed by the Senior Accounts Officer Sri S. Prasad is contrary to the order passed by the Hon'ble Tribunal. The said impugned order has been passed in order to avoid implementation of the

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Shri Ranbir Ch. Paul

judgement and order dated 8.10.1999 passed in O.A. No. 294/98, although there was a categorical direction that the representation should be disposed of keeping in mind that the applicant after promotion is entitled to get his pay on the promotional post if the facts stated in the application are correct, the applicant shall be given the scale of pay of H.S. Grade II from the date of his promotion. But there is no order contained in the impugned order dated 3.3.2000 regarding payment of arrear pay and allowances in the promotional post from the date of promotion of the applicant. On that score alone the impugned order dated 3.3.2000 is liable to be set aside and quashed.

Copy of the impugned order dated 3.3.2000 is annexed as Annexure-9.

4.9 That your applicant begs to state that the Govt. of India categorically laid down the policy of option for choosing the date for fixation of pay in FR 22 C on promotion vide Govt. of India MHA, department for Personnel and A.R. OM No. F.7/1/80-Estt P.1 dated 26.9.81 and 24.12.81 wherein it is stated as follows :

"(19) Option for choosing date for fixation of pay under F.R.22-C on promotion.

A reference is invited to the existing provisions regarding the manner of fixation of pay of a Central Government employee on his promotion to the next higher grade/post under F.R. 22-C. A point was raised that under the above provisions promotion of a junior person to the higher post, after accrual of his

Contd...

Shri Kalinendra Ch Paul

increment in the lower post, gives rise to an anomaly in pay of a person senior to him who though promoted earlier had not drawn at any time pay less than that of his junior in lower post.

2. The matter has been considered by this Department in consultation with the Ministry of Finance and it has been decided 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 F.R. 22-C straightway 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 F.R. 22 (a) (i) which may be refixed on the basis of the provisions of F.R. 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.

3. In the event of an officer refusing promotion even after the above concessions become available, he should be debarred from promotion for a period of one year instead of six months, as at present.

Contd...

Shri Ramendra Ch Patel

4. These orders take effect from the 1st May, 1981

Clarifications - 1. Mention of option available in the order of promotion - In the order promoting the Government servant, it may be mentioned that he has to exercise the option within one month. On his promotion, the pay should first be fixed under F.R. 22-C and in case he exercised an option in terms of para 2 (b) of O.M. dated 26th September, 1981, within the prescribed period of one month, his pay should be refixed originally under F.R. 22(a) (i) with effect from the date of ~~xxxxxxxxxx~~ his promotion and then under F.R. 22-C only with effect from the date of accrual of next increment in the feeder post."

From above it appears that in terms of F.R. 22(a) (i) the pay of the applicant may be ~~fixed~~ on promotion initially in the manner as provided under F.R. 22(a) (i) which may be refixed on the basis of the provision of FR 22-C with effect from the date of accrual of next increment in the feeder post, i.e. in the scale of pay of the lower post. In the clarificatory note it is further categorically instructed that in the order promoting Government servant, it may be mentioned that employee concerned has to exercise option within one month on his promotion and the pay should first be fixed under FR 22-C and in case he exercised option in terms of para 2 (b) of OM. dated ~~26.9.81~~ 26.9.1981 within the prescribed period of one month, his pay should be refixed originally under FR 22 (a) (i) with effect from the date of his promotion and then under FR 22-C only with effect from the date of accrual of next increment in the feeder post.

Contd...

Shri Radhakrishna Paul

It is further stated in para 3 of the clarificatory note that the option should be uniformly allowed in respect of all promotion effected or after 1.5.1981 where the fixation of pay is to be made under F.R. 22-C irrespective of the fact whether there is an impending anomaly or not. It is further clarified subsequently in sub para 6 of the clarificatory note that in the case of promotion took place on or after 1.1.1986 option in terms of sub para b of FR 22 C will however continue to be applicable vide Govt. of India, Department of Personnel & Training O.M. No. 1/2/87-Estt. (Pay-I) dated 9.11.1987. Therefore it appears that there was no mention in the order of promotion regarding exercise of option within a period of one month which one of the basic requirement of ~~such~~ rule. As such even assuming but not ~~assuming~~ admitting the grounds raised by the respondents that the applicant did not exercise his option within a period of month as required under the rule quoting the reference of O.M. dated 22.5.89 cannot be sustained in the eye of law as because the mention regarding exercise of option is mandatory requirement of the rule and the said rule is still in force. As such the impugned order dated 3.3.2000 rejecting the prayer of the applicant regarding fixation of pay is liable to be set aside and quashed.

4.10 That your applicant begs to state that the promotion order dated 21.8.94 is itself defective and there was a prayer made in the earlier O.A. No. 294/98 for a direction to the respondents to modify the order of promotion incorporating the correct scale of pay i.e. Rs. 1200-1800 in setead of Rs. 950-1500. Although the same was pointed out before

Shri Rakeshwar Ch. Paul

before the Hon'ble Tribunal and the Hon'ble Tribunal in its judgement and order dated 8.10.99 in this respect was silent. However the same was brought to the notice of the respondents as the copies of the notice were served upon them but till date no action has been initiated regarding the correction of the order of promotion. In this connection it may be stated that the promotion order passed by the respondent itself is defective, moreover they also did not make any mention regarding exercise of option in the promotion order ~~within~~ to be exercised within a period of ^{1 month} ~~one month~~. On this ground the impugned order dated 3.3.2000 is liable to be set aside and quashed. Moreover the respondents are duty bound to rectify the order of promotion dated 21.8.94, thereafter only they are entitled to raise objection for exercise of option within the stipulated time limit.

In the facts and circumstances stated above, the Hon'ble Tribunal be pleased to direct the respondents to rectify the order of promotion and also be pleased to direct to fix the pay of the applicant in the scale of Rs. 1200-1800/- in the promotional post of H.S. II (Carpenter) in terms of option exercised by the applicant on 19.10.95 under the provision of FR 22(a) (i) after accrual of increment on 16.10.94 in the scale of Rs. 950-1500 with all arrear salary with effect from 21.8.1994 and also with a direction to the respondents to grant the benefit of the scale of Rs. 1200-1800/- with effect from 21.8.1994 i.e. the date of promotion to the post of Carpenter H.S. II.

4.11 That this application is made bona fide and for the ends of justice.

Shri Rakesh Ch Patel

5. Grounds for relief(s) with legal provisions.

5.1 For that the impugned order dated 3.3.2000 (Annexure-9) is contrary to the direction passed by the Hon'ble Tribunal in its judgement and order dated 8.10.1999 passed in O.A. No. 294/98 and the contention raised by the Senior Accounts Officer cannot be sustained in the eye of law.

5.2 For that there is no mention in the promotion order dated 21.8.94 regarding exercise of option within the period of one month as required under the rule.

5.3 For that the promotion order is itself is defective where the existing scale of pay of Rs. 950-1500 has been shown in the promotional post of Carpenter H.S. II. As such without removing the defects the respondents cannot raise objection regarding exercise of option in the matter of fixation of pay of the applicant.

5.4 For that the defective order of promotion has not yet been rectified by the respondents.

5.5 For that the mandatory provision regarding exercise of option as stated in the application is still in force.

5.6 For that there was no mention in the promotion order dated 21.8.94 for exercise of option within a period of one month which is required under the rules thus the respondents cannot raise any objection at this stage.

5.7 For that the decision of the respondents for not considering of the case of the applicant in spite of the Hon'ble Tribunal's specific decision passed

Shri Rabindra Ch. Paul

in O.A. No. 294/98.

6. Details of remedies exhausted.

The applicant states that he has no other alternative and other efficacious remedy before him than to file this application. Representations through proper channel were submitted by the applicant to the competent authority but the prayer of the applicant has been rejected by the respondents.

7. Matters not previously filed or pending with any other court.

The applicant further declares that he had previously filed any application ~~xxx~~ before this Hon'ble Tribunal through O.A. No. 294/98 and the said O.A. was disposed of on 8.10.99 with a direction to the respondents to consider the case of the applicant but the claim of the applicant has been rejected. The applicant further declares that regarding the matter in respect of which this application has been made, no suit or writ petition is pending before any other court.

8. Relief(s) sought for :

Under the facts and circumstances of the case the applicant prays that Your Lordships would be pleased to issue notice to the respondents to show cause as to why the relief sought for by the applicant shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause that may be shown, be pleased to grant the following relief(s) :

Shri Rabindra Ch. Paul

8.1 That the Hon'ble Tribunal be pleased to set aside the impugned order ~~of expunction~~ dated 3.3.2000 issued by the Senior Account Officer (Pay) (Annexure-3).

8.2 That the respondents be directed to fix the pay of the applicant in the scale of Rs.1200-1800/- in the promotional post of Carpenter H.S. II in terms of the ~~post of experience~~ option exercised by the applicant vide letter dated 19.10.1995 i.e. in terms of the provision of F.R. 22(a) (i) after accrual of increment on 16.10.1994 in the earlier scale of Rs. 950-1500/- with all arrear salary with effect from 21.8.1994.

8.3 That the respondents be directed to grant the benefit of the scale of Rs.1200-1800/- with effect from 21.8.94 i.e. from the date of promotion of the applicant to the post of Carpenter H.S. II. ~~by modifying the promotion order of 21.8.94~~

8.4 To pass any other order or orders as deemed fit and proper by the Hon'ble Tribunal.

9. Interim relief prayed for :

~~The respondents~~

9.1 That the Hon'ble Tribunal be pleased to direct the respondents to pay the pay and allowances in the cadre of Carpenter H.S. II with immediate effect.

10.

This application is filed through advocate.

11. Particulars of the I.P.O.

i. I.P.O. No. : 26-503796
ii. Date of Issue : 30-10-2001

Shri Rabinder Chawla

iii. Issued from : G.P.O., Guwahati.
iv. Payable at : G.P.O., Guwahati.

12. List of enclosures

As stated in the Index.

...Verification

(31) Imbued order
8.2. (18) -
950 - 1500 - existing scale
12.00 - 1800 not disturbed
not modified.
-
Defective order
f R - 22 - Page 6 is classification - Part 65
- No such option given

Shri Radhakrishna Ch. Paul

V E R I F I C A T I O N

I, Shri Rabindra Chandra Paul, son of late Ramesh Chandra Paul, aged about 54 years, presently working as Carpenter H.S. ~~Exxas~~ II, C/o B.S.O, G.E. 86 E.W.S. C/o 87 I F P.O, 99 APO Nagaland do byreby verify and declare that the statements made in paragraphs 1 to 4 and 6 to 12 are true to my knowledge and those made in paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 25th ^{Oct} day of August, 2000.

Shri Rabindra Ch. Paul

Signature

GE 868 EWS PTO Srl No. 34 dated 22.8.94 Page 4

1

2

3

4

5

6

Part 17 (b)

Promotion/Industrial

13. 243749 SHRI BIR BAHADUR MATE 21 Aug Promoted from Mate-Elect 94 (FN) Elect (SE) to Elect (SK (S.S.) wef 21.8.94 in situ in the scale of pay Rs. 950-20-1150-EB-26-1500. TOS/Placed in position for promotion wef 21 Aug 94.

Date of promotion for promotion wef 01 10r 94.

Auth : HQ 137 Wks Engrs letter No.1228/DPC/83/E1c(2) dated 12 Aug 94 and GE 868 EWS Part I order No. 136.

14. XXXXXXXXXXXX

15. XXXXXXXXXXXX x

16. x x x x x x x x :

17. 238508 SHRI ROBINDRA CHANDRA PAUL Carpt 21 Aug Promoted from Carpenter 94 (FN) (SK) to Carpenter H.S. II wef 21 Aug 94 in situ in the scale of pay Rs. 950-20-1150-EB-25-1500.

@ Date of seniority for promotion wef 01 Apr 94

TOS/placed in position for promotion wef 21 Aug 94.*@*.

Auth- HQ 137 Wks Engrs letter No.1228/DPC/83/E1C(2) dated 12 Aug 94 and GE 868 EWS Part I Order No. 136 dated 21 Aug 94.

S/- BSO

*Revised
S. A.*

OPTION

Consequent upon my promotion the post of Carpenter (HS Gde-II) in the scale of Rs. 1200-30-1440-30-1880 wef 21.8.94 vide HQ 137 Wks Engrs letter No. 1228/DPC/83/EIC(2) dt. 21.8.94. I hereby exercise my option for fixation of pay in the new post initially under FR 22(a) (i) and then refixed under FR 22(C) on the date of ~~extuax~~ accrual of next increment in the pay scale of lower post.

Sign . Sd/-

MES/ 238508

Name : R.C.Paul

Design : Carpenter H.S. II

Date

Station : c/o 99 APO

Dated : 19 Oct 95

COUNTERSIGNED

Sd/- x x x

(A.K.Saha)
BSO
for Garrison Engineer

Allestar
A. K. Saha
for Garrison Engineer

OPTION CERTIFICATE

1. Consequent upon my placement in the grade of Carpenter (HS-II) in the scale of 1200-30-1440-1800/- wef/ 21.8.94 vide HQ 137 Wks letter No. 1228/DPC/83/EIC(2) dt. 21.8.94, I hereby exercise my option for fixation of pay in the new post.

(a) with effect from 16 Oct 94 the date of my next increment in the old post in the scale of Rs.950 to 1500/-. In terms of G of I, Ministry of personnel & Public Grievance & Pension (Dept of personnel Training) O.M. No. 1/2/86-Estt (Pay I) dt. 22 May 89.

Sign St/- R.C.Paul

MES No. 238508

Name Sh RC Paul

Desn Carptr HS-II

Unit : GE 869 EWS

Station: C/o 99 APO

Dated : 19 Jul 97

*Allesford
Shri
Adm*

From : MES/238508 Sh RC Paul
Carpenter HS-II
C/O GE 869 EWS (BSO)
C/o 99 APO

Dated 11 Dec 97

To

Garrison Engineer
868 EWS
C/o 99 APO

(Through proper Channel)

FIXATION OF PAY

Respected Sir,

I beg to state that following few lines for your necessary action please, Refer my application dated 19.6.97 in which I have requested to my pay should be fixed after acc~~mm~~ed of next increment in the lower post in the scale of 950-20-1150-EB-25-1500/- wef 1.10.94.

As such I have already furnished option certificate under FR-22 (a) (i) and the re-fixed under FR 22(c). A pay fixation proforma has also been forwarded alongwith service book duly verified from AAO, GE 869 EWS vide their letter No. AAO/869/ZAK dt. 09.11.95. But it was returned to GE 868 EWS, C/o 99 APO after some times. GE 868 EWS has changed the previous pay fixation proforma without examining the above rule. As such my pay has been fixed @ Rs. 1260/- wef 21.8.94 and I have not accept the pay as fixed by LAO(A) Guwahati.

I, therefore request you kindly take necessary action, so my pay should be fixed after getting one increment in old pay scale wef 16.10.94. I have already furnished option certificate in due time and same is enclosed in my service book. However, again an option certificate is enclosed.

Further I again pray to you kindly look into the matter so my pay should be fixed as early as possible.

Thanking you.

Yours faithfully,

Sd/- x x x x

(R.C Paul)

Carpenter HS-II

Copy to

1. CGDA RK PURAM - For information with request to look
West Block -V into the above matter.
New Delhi-66
2. CDA Guwahati
3. HQ 137 Wks Engrs
4. LAO (A) Guwahati

Yours faithfully,

Sd/- x x x x x x

MES/238508 Sh RC Paul, Carpenter HS-II/

RC Paul

From

MES/238508 Sh RC Paul
Carpenter HS-II
C/O GE 869 EWS
C/o 99 APO

Date : 12 Jan 98

To

The CDA (Pay Section)
Udyan Vihar, Narangi
Guwahati-171

Subject : Fixation of pay in respect of MES/238508
SH RC Paul, Carpenter HS-II

Respected Sir,

I have the honour to state the following few lines for your kind consideration and sympathetic action please.

Please refer to my application dated 19.6.97 and 11.12.97, in which I have requested to consider my pay fixation case as per my option certificate furnished on 19.10.95. In terms of G and I Ministry of personnel and public grievance and pension (Department of personnel training) OM No. 1/2186-ESTT(Pay-I) dt. 22.5.89 in which I have stated that first my pay shall be fixed as per FR 22(a) (i) for Rs. 1260/- as on 21.8.94. Thereafter add one increment in existing scale as per FR 22(c) i.e. 1260 + 25/- Pay shaould be fixed next higher stage i.e. Rs. 1290/- wef 01.10.1994 with next date of increment as 01.10.95 as against my pay has been less fixed as Rs.1260/- ~~Rs. 1290/-~~ as on 21.08.94 DNI is 01.08.95 as fixed by LAO (A) Guwahati. But my case is not yet settled by LAO (A) Guwahati stating the reason that it is unable to refix the pay as per option certificate.

I therefore request your honour to kindly look into this matter and issue an instruction to LAO (A) Guwahati, so that my pay should be fixed as per my option certificate dated 19.10.95 as enclosed in my Service Book. A fixation proforma is enclosed herewith.

In any case is not considered within 60 (sixty) days I shall be compelled once again to go to the Court of law.

Thanking you,

Yours faithfully
Sd/-

Copy to :

(MES/238508 R.C.Paul, Carp HS-II)

GE 869, C/o 99 APO

- For info and my case may be resubmitted to LAO(A) Guwahati through CDA Pay Section, Narangi for their consideration and necessary action alongwith service book. for info please

GE 868 EWS/C/o 99
APO.

for info please

LAO (A) Guwahati
CGDA, RK Puram
West Block-V
New Delhi-11

Yours faithfully,
Sd/-

MES/238058 R.C.Paul, Carp HS II

*RC Paul
Carpenter*

From : MES/238508
Shri RC Paul
Carp (HS-II)
C/o GE 869 EWS
C/o 99 APO

To

The Hon'ble Defence Ministry Dated 22 Jul '98
New Delhi-II.

PRAYING FOR FIXATION OF PAY ON PROMOTION FROM
CARPENTER (SK) TO CARPENTER (HS-II).

Respected Sir,

1. With due respect most humbly I Pray to your kind honour the following few lines for your kind perusal please.
 - (a) Sir, I have promoted from Carpenter (SK) to Carpenter (HS-II) wef 21.8.94 and my basic pay was 1225/- in the trade of carpenter (SK) in the pay scale of Rs. 950/- to 1500/-
 - (b) Sir my pay fixed Rs. 1260/- in the trade of carpenter (HS-II) in the scale of pay Rs. 1200/- to 1800/-.
 - (c) Sir, as per FR 22(c) my pay should be fixed Rs. 1290/- wef 01.10.94, instead of Rs.1260/- but not fixed.
2. In view of above circumstances, I appealed to CDA Guwahati to review my case vide my application dated 12.1.98 (copy enclosed) but no fruitful result achieved from CDA Guwahati and from LAO(A), Guwahati.
3. Sir, I am a low pay employee and since lapse of three years not fixed my pay @ Rs.1290/- wef 01.10.94 by the audit authority. Now I am praying to your kind honour to look into the matter with your kind self.

Thanking you,

Yours faithfully,

Sd/-
MES/238508 Sh R C Paul
Carp HS-II

Copy to :

1. CGDA RK Puram - For information please with request West Block V to look into the above matter.
New Delhi-66
2. HQ CEEC Calcutta - For information with request to look into the above matter with your kind self.
3. HQ CESZ
4. HQ 137 Wks Engrs

RC Paul
Sh R C Paul

Annexure-7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 294 of 1998,

Date of decision : This the 8th day of October 1999

The Hon'ble Mr. Justice D.N.Baruah, Vice-Chairman

The Hon'ble Mr. G.L.Sanglyine, Administrative Member.

Shri Rabindra Chandra Paul
Carpenter H.S. II,
C/o B.S.O, C.E. 869 EWS
C/o 99 A.P.O., Nagaland

.... Applicant

By Advocate Mr. M. Chanda and
Ms N.D. Goswami.

-versus-

1. Union of India, through the Secretary, Government of India, Ministry of Defence, New Delhi.
2. The Garrison Engineer, 869 EWS, C/o 99 A.P.O.
3. The Controller of Defence Accounts, Pay Section, Guwahati.
4. The Garrison Engineer, 868, EWS, C/o 99 A.P.O.
5. R.B.Sarma,
Local Audit Officer,
Guwahati.

.... Respondents

By Advocate Mr. B.S.Basumatary, Addl. C.G.S.C.

O R D E R

BARUAH J. (V.C.).

This O.A. has been filed by the applicant seeking certain directions.

2. Facts are :

The applicant was initially appointed Carpenter in the MES Department, C/o 99 A.P.O. in the scale of pay of Rs. 950-1500 (Pre-revised). By Annexure I order dated 21.8.94

Contd.....

*Helester
D.G.A.*

he was promoted to the post of High Skilled Grade II. On being promoted he has been discharging his duties a such till today. The scale of pay in his promotional post, i.e. High Skilled Grade II was Rs. 1200-1800 (pre-revised). Most unfortunately the applicant was not given the said pay scale in terms of his promotion which he was entitled to on his promotion. According to the applicant, as per FR 22(a) (i), when an employee is promoted to the next higher grade he is entitled to get the pay fixed after accrual of the increments in the previous scale. He had already obtained that before promotion. However, his scale of pay has not been fixed and he has not been given the scale of pay which he is entitled to. Being aggrieved, the applicant submitted several representations, which had not been replied to. Hence the present application.

3. We have heard Mr. M. Chanda, learned counsel for the applicant and Mr. B. S. Basumatary, learned Addl. C.G.S.C. Mr. Chanda submits that without any reason the applicant has been deprived of the scale of pay which he is entitled to. Mr. Basumatary submits that after promotion, the applicant was entitled to get his pay fixed only when he became eligible for increments in the previous post. He, however, admits that the applicant had already got the increments in the previous post. Therefore, he was entitled for fixation of his pay.

4. We are really surprised that the representations filed by the applicant have not been replied to. When a representation is filed, it is the duty of the authority to reply to the representation. Unfortunately this has not been done.

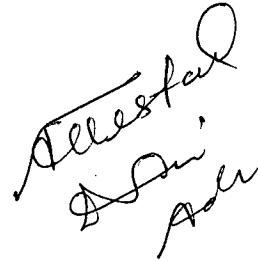
Contd...

5. In view of the above we dispose of this application with direction to the respondents, particularly respondent No. 3 to dispose of the representation keeping in mind that the applicant after promotion is entitled to get his scale of pay of the promotional post as stated herein before from the date of his promotion and if the facts stated in the application are correct the applicant shall be given the scale of pay of High Skilled Grade II from the date of his promotion. This must be done as early as possible at any rate within a period of one month from the date of receipt of this order.

6. This application is accordingly disposed of. No order as to costs.

Sd/- VICE-CHAIRMAN

Sd/- MEMBER (A)



A handwritten signature in black ink, appearing to read 'D. Srinivasan'.

From

MES/238508
Shri RC Paul
Desig : Carptr HS-II

To

The Controller of Defence Accounts
pay section, Guwahati.

Through Garrison Engineer
869 Engr Wks Section
C/o 99 APO

SUB : PRAYER FOR IMMEDIATE IMPLEMENTATION OF THE INCREMENT
& ORDER DATED '*****' 8.10.1999 PASSED IN O.A. NO.
204/98 (R.C. PAUL-Vs- UNION OF INDIA & ORS.).

Sir,

I like to draw your kind attention on the subject cited above and beg to state that the Hon'ble Tribunal was pleased to dispose of my case on 8.10.1999 with a direction to the respondents to dispose of my representations.

It is also observed that the undersigned should also be paid salary in the promotional post of Carpenter HS-II from the date of my joining in the promotional post.

My salary should be fixed in terms of my option submitted before you. I have been denied my pay and allowances in the promotional post since October 1994 till date due to non-fixation of my pay as such I request you to take immediate steps for fixation of my pay as per option as well as to pay my arrears salary and for the current month in the higher scale.

I am enclosing a photo copy of my original application as well as Hon'ble Tribunal's Order dated 8.10.99 passed in O.A. No. 294/98 for your ready reference.

An early action is highly desired.

Dated 01 Feb 2000

yours faithfully,

Sd/-

(Rabindra Chandra Paul)

Copy to

Garrison Engineer - For necessary information and action.
868 Wks Section
C/o 99 APO

*Releasued
R.C. Paul*

Registered/Insured for Rs.100

No. Pay /34/Conf1./294/93
Office of the CDA, Narangi,
Guwahati 781171

Dt. 3/3/2000

To

Shri R.C.Paul
MES/238508
O/o the GE 869EWS
C/o 99 APO

THROUGH ~~KKK~~ GE 869 EWS, C/o 99 APO.

Sub : Judgement dated 8.10.99 of CAT Guwahati Bench in O.A. No. 294/98.

Ref : Your application dated 19.6.97, 11.12.1997 and 12.1.98.

Representations contained in your applications cited under reference regarding fixation of pay on promotion to H.S.II wef 21.8.94 on accrual of next increment due in lower grade on 16.10.94 has been examined. As per provisions contained in G of I, Ministry of Personnel and Public grievances and pention (Dept. of personnel & Training) O.M. No. 1/2186-Estt (Pay-I) dated 22.5.89 option for fixation of pay on accrued of next day of increment in the lower post is required to be exercised within a period of one month from the date of promotion. You were promoted to H.S. Grade-II w.e.f. 21.8.94 and therefore, you were required to exercise option by 20.9.94.

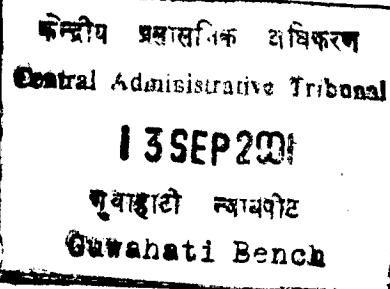
2. You have stated in your application dated 19.6.97 that option was exercised in application (ii) dated 11.12.97 that option was exercised in due time and finally in application (iii) dated 12.1.98 that option was exercised on 19.10.95. The option was actually exercised by you on 19.6.97 a copy of which is enclosed for your reference.

3. Since the option was exercised by you on 19.6.97 and even if your contention of exercising option as on 19.10.95 as stated in your application dated 12.1.98 is taken to be correct, it has not been exercised with permissible limit of one month from the date of promotion.

4. In view of the above option exercised by you on 19.6.97 for fixation of pay on accrual of next increment is not valid and cannot be acted upon under the existing rules. The fixation as carried out and approved in audit is therefore valid.

Sd/- S Prasad,
Sr. Accounts Officer (Pay)

*File's Ref
Date
Parasalit*
*Certified to be true copy
S. Prasad
Advocate*



File No. 149/01
(A. D. S. 2001)
Sr. C. 10
C. A. T., Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :::: GUWAHATI.

O.A. NO. 371 OF 2000

Shri R C Paul

- Vs -

Union of India & Others.

- And -

In the matter of :

Written Statements ~~are~~ submitted
by the respondents.

The respondents beg to submit the written statement
as follows :

1. That with regard to para 1, the respondents beg to offer no comments as the case stands examined by CDA Guwahati vide their letter No. PAY/34/Confld/0A No. 294/98 dated 3.3.2000.
2. That with regard to para 2, ^{1 & 3} the respondents beg to state that the statements are agreed to.
3. That with regard to para 4.1, the respondents beg to state that the applicant is a bonafide Indian citizen and presently serving in GE 869 EWS, C/o 99 APO as Carpenter (HS-II).
4. That with regard to para 4.2, the respondents beg to state that as per documentary evidence the facts narrated by the individual are correct.
5. That with regard to para 4.3, the respondents beg to state that it is not agreed to by the department as fixation of pay comes under the jurisdiction of audit authorities i.e. IAO/CDA Guwahati.

6 - That with regard to para 4.4, the respondents beg to state that the applicant was not satisfied with the fixation of pay as stated in para 4.3, of his application, filed in O.A. no. 294/98, he represented for reconsideration of his case accordingly his case was forwarded to audit authorities for fixation of pay as desired by the applicant but LAO Guwahati had expressed inability vide their letter No. LA/Pay fixation-IV dated 05-03.98 (Annexure -)

7. That with regard to para 4.5, the respondents beg to offer no comments.

8. That with regard to para 4.6, the respondents beg to state that this office had not received any communication from Min of Defence ~~nor~~ i on the representation addressed to Hon'ble Defence Minister and CDA Guwahati. However on receipt of copies of representation enclosed to our higher authorities, the position of the case was called for. Accordingly the factual position of the case as stated in LAO Guwahati letter No. LA/Pay/fixation-IV dated 05.3.98 has been apprised vide our letter No. 1415/2368/EIR dated 07 Oct 98 (Annexurē-).

9. That with regard to para 4.7, the respondents beg to state that the Hon'ble CAT Guwahati delivered the judgement on 08 Oct 99 with direction to respondents to do needful within a period of one month from the date of receipt of their order. In fact the copy of judgement dated 08 Oct 99 alongwith O.A. No. 294/98 was received by this Office under GE 868 EWS (Previous unit of the Indl) vide their letter No. 1014/21/303/E1 dated 10.01.2000 (received by this office on 17.01.2000). In the meantime, CDA Guwahati in the capacity

of respondent No.3 and competent authority in fixation of pay, asked this office to forward the details of complete case vide their letter No. Pay/34/Confdl/0A-294/98 dated 12/18.1.2000 (Annexure-). Accordingly the service book of the individual alongwith pay fixation proforma and statement of case, were forwarded to CDA Guwahati vide our letter No. 1415/2638/EIR dated 14.2.2000 for their examination (Annexure).

Since the pay fixation done by IAO Guwahati stands good, CDA Guwahati vide their letter No. Pay/34/condl/294/98 dated 03.03.2000 addressed to petitioner, apprised the position with regard to his grievance. This letter was received by this office under CDA Guwahati letter no. Pay/34/confdl/0A No. 294/98 dated 01.3.2000 to 03.11.2000 and delivered to the individual (Annexure-). The CDA letter delivered to the applicant and obtained receipt thereof and kept in our record. Moreover, this office approached our Addl. CGSC Guwahati to file a misc. petition before Hon'ble CAT Guwahati for disposal/close of case as the implementation of verdict already stands goods. In response to our approach, Addl. CGSC Guwahati has given legal opinion that there is no point to file MP at this stage because by the judgement itself the O.A. 295/98 stands disposed of. As such action of the respondent ~~as~~ may not be amount to contempt of Hon'ble Court please. It is also pertinent to mention that competent authority in fixation of pay is rest with respondent No. 3 i.e. CDA Guwahati.

10. That with regard to para 4.8, the respondents beg to offer no comments as it is concerned to respondent No.3.

11. That with regard to para 4.9, the respondents beg to state that the ~~xx~~ fixation of pay as promotion to HS-II wef 21.8.94 an accrual of next increment due to lower grade on 16.10.94 has been examined by CDA Guwahati in the capacity of respondent No.3 and competent authority. As per provisions contained in G of I, Min. of Personnel and Public grievances and pension (Deptt. of personnel Training) O.M. No.1/2186-Estt (Pay-I) dated 22.05.89 option for fixation of pay on accrual of next date of increment in the lower post is required to be exercised within a period of one month from the date of promotion. The applicant promoted to HS Gds-II wef 21.8.94 and therefore, he was required to exercise option by 20.9.94. Whereas the applicant stated in his application dated 19.6.97 that option was exercised in due time and finally in application dated 12.1.98 that option was exercised as 19.10.96. The option was actually exercised by him on 19.6.97.

Since the option was exercised by the applicant on 19.6.97 and even if his contention of exercising option as on 19.10.95 as stated in his application dated 12.1.98 is taken to be correct, it has not been exercised within the permissible limit of one month from the date of promotion. As per the audit report the option exercised by the applicant on 19.6.97 for fixation of pay on accrual of next increment on 19.6.97 for fixation of pay on accrual of next increment is not valid and may not be acted upon under the existing rule and the fixation as carried out and approved in audit is valid. As far the modification of promotion order, part II order No. 34/17/94 was published based on promotion order notifying the pay scale of Rs. 950-20-1150-EB-25-1600 which has been ~~xxx~~ amended vide PTO No. 48/4/98 notifying the pay scale of

Rs.1200-30-1440-EB-30-1800. As such contention made by the applicant are mischevious and mislending the Hon'ble Tribunal.

12. That with regard to para 5, the respondents beg to ~~state~~ state that the para is admitted.

13. That with regard to para 5.1, the respondents beg to offer no comments since it is concerned to Respondent No.3.

14. That with regard to para 5.2, the respondents beg to state that as per the existing rule the applicant has to exercise the option within a month.

15. That with regard to para 5.3, the respondents beg to state that it is not agreed to as per documentary ~~exx~~ evidence available. The individual is being paid pay scale of Rs. 1200-30-1440-EB-1800.

16. That with regard to para 5.4, the respondents beg to state that the scale of pay Rs. 1200-30-1440-EB-30-1800 has already been notified in PTO No. 48/4/96.

17. That with regard to para 5.5, the respondents beg to state that as per the existing policy/rule option to be exercised within a period of one month from the date of promotion otherwise it may not be valid.

18. That with regard to para 5.6, the respondents beg to state that as per existing rules the applicant has to exercise his option within a period of one month.

19. That with regard to para 5.7, the respondents beg to state the Hon'ble Tribunal's decision has been obeyed accordingly the respondent No.3 disposed of the O.A. No.294/98

as per existing rules.

20. That with regard to para 6, the respondents beg to state that the applicant has right to take relief from Hon'ble Tribunal.

21. That with regard to para 7, the respondents beg to offer no comments.

22. That with regard to para 8, the respondents beg to state that it is agreed to as per documentary evidence.

23. That with regard to para 8.1, the respondents beg to state that no comments since it is concerned to respondent no.3.

24. That with regard to para 8.2, the respondents beg to state that the pay fixation proforma showing the pay scale of Rs. 1200-1800 in the promotional post of Carpenter HS-II in terms of option exercised by the applicant on 19.10.96 in terms of the provision of FR 22(a) (I) was projected to audit authority i.e. LAO Guwahati but the accrual of increment in the lowest grade of Rs. 950-1500 has not been admitted on the plea that applicant should have exercised his option on 21.8.94 and once option exercised it is final.

25. That with regard to para 8.3, the respondents beg to state that it is already granted as per documentary evidence.

26. That with regard to para 8.4, the respondents beg to state that it is agreed to as per evidence.

27. That with regard to para 9 and 9.1, the respondents beg to offer no comments.

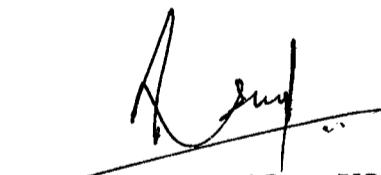
28. That with regard to para 10 ~~and xi~~, the respondents beg to state that it is admitted .

29. That with regard to para 11 & 12, the respondents beg to state that the contention of paras are admitted to the extent borne out of record.

VERIFICATION

I Shri Vijaya Kumar
Major VS being authorised do hereby verify and declare that the statements made in this written statement are true to my knowledge, information and believe and I have not suppressed any material fact.

And I sign this verification on this
th day of 2001.


VIJAYA KUMAR VS
Major
Garrison Engineer
Declarant.