

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 1042/2015

New Delhi, this the 13th day of July, 2016.

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)**

Prit Singh,
Aged 60 years,
S/o Shri Bharat Singh,
Assistant Commissioner (Retd.),
Navodaya Vidyalaya Samiti,
R/o H.No.732, Sector 23A,
Gurgaon (Har.) .. Applicant

(By Advocate : Shri Yogesh Sharma)

Versus

1. Navodaya Vidyalaya Samiti,
Through its' Commissioner,
(Ministry of Human Resources),
B-15, Institutional Area,
Sector 52, Noida (UP). .. Respondents
2. The Joint Commissioner (Admn.),
Navodaya Vidyalaya Samiti,
B-15, Institutional Area,
Sector 52, Noida (UP). .. Respondents

(By Advocate : Shri S. Rajappa)

ORDER (Oral)

By Hon'ble Mr. P.K. Basu

Heard the learned counsel for both sides.

2. The applicant, who was Principal in a Govt. School, was promoted as Assistant Commissioner on 22.04.2010. As per Govt.

instructions, on promotion an incumbent has to exercise an option for fixation of pay and as per rules this option has to be sent to the Department within a period of one month.

3. In the present case, the applicant states that after promotion on 22.04.2010, he fell seriously ill and was hospitalised from 10.05.2010 to 24.06.2010. During this course, he had also to be operated upon. His case is that he had verbally informed the office the option and his pay was also fixed accordingly. However, when he joined back, he was informed that his option was not available on record and, therefore, he again gave an option on 14.07.2010. The Audit, later on, raised an objection that the option given by the applicant was since beyond the period of one month, the benefit of which given to the applicant is incorrect and his pay should be refixed. As a result, his pay was revised and order of recovery of Rs.95000/- was made. The applicant has retired on 31.03.2014.

4. The learned counsel for the applicant refers to DoPT O.M. dated 12.12.1997 which specifically mentions that the promotion/appointment order should invariably incorporate the exercise of option for fixation of pay. The applicant states that in the promotion order dated 22.04.2010, this clause was not incorporated.

5. Per contra, the learned counsel for the respondents states that while order dated 22.04.2010 does not specifically mention about option, this is not a sufficient ground that option was not called for and there could be subsequent direction to that effect. Moreover, since the DoPT instructions are that option has to be given within one month and there is no scope of communicating option verbally, the option given after a month has rightly been objected to by the Audit, as having been sent with a delay, and the respondents have acted according to the rules and advice of the Audit.

6. It is a fact, as stated by the learned counsel for the respondents, that verbal communication of option is not permissible. However, it seems that the Department had accepted the option and fixed the pay accordingly, which was later objected to by the Audit. It is also a fact that within a few days of joining on 10.05.2010, i.e. before the one month period expired, the applicant fell seriously ill and had to be operated and remained in hospital till 24.06.2010. However, when he was told that his option is not on record, he again gave an option on 14.07.2010.

7. In the facts and circumstances mentioned above, it becomes clear that the Department had indeed accepted the option given by the applicant and fixed his pay accordingly. It is only when the Audit objected, then refixation of pay and recovery was ordered. The option given by the applicant, though verbal, therefore, was clearly

taken note of by the Department and his pay was fixed accordingly. Therefore, the objection of the Audit is purely a technical objection.

8. In view of the above circumstances and also of the fact that the applicant has already retired on 31.03.2014, we allow the O.A. with a direction to the respondents to fix the pay according to the option given by the applicant, as earlier done by the Department, within a period of two months from the date of receipt of a copy of this order. The order dated 07.03.2014 is quashed and set aside. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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