

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. 45/2012

Date of Decision: 29.06.2017

Coram: Hon'ble Shri Justice Dinesh Gupta, Member(J)
Hon'ble Shri R. Ramanujam, Member(A) .

N S S Ramakrishna,
Aged about 40 years,
Residing at Quarter No. 1/15,
Chitragupta Colony, Hidaitulla Road,
Near Poona College, Pune- 411 042. **... Applicant.**

(By Advocate Shri P.J. Prasadrao)

Versus

1. The Union of India, through
its Secretary,
Ministry of Defence(Finance),
Room No. 139, South Block,
New Delhi - 110 001.
2. The Controller General of Defence Accounts,
Ulan Batar Road, Palam,
Delhi Cantonment- 110010.
3. The Principal Controller of Defence
Accounts(Officers),
Golibar Maidan,
Pune- 411 001. **....Respondents.**

(By Advocate Shri V S Masurkar)

O R D E R (oral)

Per: Hon'ble Shri R. Ramanujam, Member (A)

The case of the applicant is that he joined the Defence Accounts Department on 19.02.2001 and served in the office of Joint Controller of Defence Accounts and Integrated Financial Advisor(JCDA & IFA) Port Blair and served in that office till 28.08.2008. Following his success in the SAS Part II examination, the applicant was issued with a promotion order w.e.f., 25.08.2008 and posted to the office of the

CDA(Officers), Pune along with a direction to report in the new office for assuming charge as SO(A) w.e.f., the same date.

2. As the applicant was posted at a distant place, he could report for duty at Pune only on 04.09.2008. It is stated that the option for pay fixation in the Fifth Pay Commission pay scale of the higher post was denied to him on the ground that the Sixth Pay Commission recommendations had been accepted in the mean time on 29.08.2008 albeit with retrospective effect. It is alleged that the persons who were promoted along with the applicant and granted posting to the same or nearby locations were at an advantage in as much as they were able to join immediately before the notification of the Central Civil Services(Revised Pay) Rules 2008 on 29.08.2008. As the applicant had joined the new post on promotion after the date of notification, he was not allowed to exercise his option for the pre-revised pay scales although the others who were promoted from the same list of successful candidates had the advantage of exercising such option.

3. The pay of the applicant was fixed at Rs. 9790/- while his colleagues who joined duty a few days earlier were fixed at Rs. 12,090. The applicant made a representation for parity with his colleagues which was rejected by a communication dated 21.01.2010 on the ground that he had assumed his promotional post of

Section Officer well after the Revised Pay Rules came into effect. He could not, therefore, claim pay fixation in a manner as if he was promoted between 01.01.2006 and the date of notification of the Revised Pay Rules, i.e., 29.08.2008. Aggrieved by the rejection of his representation, the applicant is before us seeking a direction to the respondents to fix his pay at par with other promotees mentioned in Part-II Order No. 49 dated 19.02.2009 along with consequential benefits.

4. The respondents contest the claim of the applicant on the ground that the pay of the applicant was only fixed as per the option exercised by him i.e., from the date of promotion in the revised pay scales as per the Sixth Pay Commission related orders. The promotion of the applicant came into effect w.e.f., 04.09.2008, i.e., after the date of notification of the revised pay rules on 29.08.2008. He could not, therefore, compare himself with persons whose promotion had taken effect before such date. Under the revised pay rules, the applicant was not entitled to retain the existing pay scales on the date of promotion. His other colleagues had been promoted from their respective dates of assumption of charge before the date of issue of Government notification dated 29.08.2008 and they had exercised the option of retaining the existing pay scale till the date of promotion and then to switch over to the new pay

structure after their date of promotion. In their case, they were not entitled and, therefore, not paid any arrears of pay from 01.01.2006 to the date of promotion. However, the applicant was paid arrears from 01.01.2006 till the date of promotion on the basis of pay fixation in the new pay scale.

5. The respondents further contend that the applicant never sought an option to remain in the pre-Sixth Pay Commission pay scale at the time of his promotion. On the other hand, the applicant had exercised an option on 10.09.2008 for his initial pay fixation in the higher grade/post on the basis of the proviso to **FR 22(1) (a) I (FR 22 C)** straightaway without any further review on account of increment in the pay scale of lower grade/post. Under the rules, option once exercised could not be withdrawn and, therefore, the applicant could not be permitted to revise his option.

6. Heard the Learned Counsel for the applicant as well as the respondents. Learned Counsel for the applicant would submit that the applicant was never given an option to choose pay fixation in the pre-Sixth Pay Commission pay scale of the higher post w.e.f., 25.08.2008, the date on which all the selected candidates had been promoted. The mere fact that the applicant, for reasons of logistics, could not join on the higher post immediately and in the mean time, the Sixth Pay Commission pay scales had been notified

w.e.f., 29.08.2008 could not deprive him of his right to stay in the pre-Sixth Pay Commission pay scale till the effective date of promotion which was 25.08.2008. The applicant could not also be put to a disadvantage vis-a-vis other promotees in the same list for no fault of his. He would accordingly pray for the OA to be allowed.

7. The Standing Counsel for the respondents vehemently opposes the prayer pointing out that the applicant ought to have sought the option at the time of promotion which he failed to do. On the other hand, by an option exercised on 10.09.2008, he had categorically stated that his initial pay may be fixed in the higher post on the basis of the proviso to **FR 22(1)(a) I (FR 22 C)** straightaway without any further relief on account of increment in the pay scale of lower grade or post. Having exercised the option in this manner, he cannot be permitted to revise the same as the same is barred in the revised pay rules.

8. We have carefully considered the facts of the case as well as the relevant provision of the rules. It is not in dispute that the applicant had been selected for promotion to the grade of SO(A) w.e.f., 25.08.2008 or from the date of assumption of charge. It is also not in dispute that the applicant had joined the higher post at Pune only on 04.09.2008 and that in the mean time, the revised pay rules came to be notified. The contention of the applicant is that at

the time of exercising option for pay fixation on promotion, he was told that the option of continuing in the pre-Sixth Pay Commission pay scale till the date of promotion was not available to him as under the revised pay rules, he could only opt for pay fixation directly in the revised pay scale. It was in such circumstances, he exercised the option in order to get the benefit of the higher pay scale. Nevertheless, he represented for being granted the option to choose the date for coming under the new pay scales so that he would not be put to any financial loss vis-a-vis his Colleagues, especially those who were below him in the merit order of the select list.

9. While rejecting the applicant's representation by communication dated 21.01.2010, the respondents had clearly stated that the applicant had assumed his promotional post of Section Officer only after the revised pay rules came into effect and, therefore, his request for pay fixation in a manner as if he was promoted between 01.01.2006 and the date of notification of rules i.e., 29.08.2008 could not be agreed to. It was, however, pointed out that if at all such an option was available to the applicant, he would not have been entitled to any arrears from 01.01.2006 till the date of the option. The applicant by exercising the option dated 10.09.2008, was, however, entitled to and was paid arrears. The respondents thereby implied that there were gains as well as losses

in exercising a particular option and that the applicant having exercised the option could not be allowed to change the same.

10. It is clear from the manner of disposal of the applicant's representation by the respondents that the respondents were always of the view that the applicant could not exercise the option to choose the date from which he would come under the new pay scales as he had joined the higher post on promotion only after the date of notification of the revised pay rules. As the option was not given to him at the time of his promotion, the option exercised by the applicant on 10.09.2008, could not be said to be a well considered option of the applicant. The provision in the rules regarding the option once exercised being final could only apply to cases where an available option failed to be exercised and the employee concerned discovers later on that a better option could have been exercised. However, in this case, there is reason to believe that the applicant was never allowed the option to stay on in the previous scale, even if it was more beneficial to him for the reason that he had joined after 29.08.2008, the date of notification of the revised pay rules. As the late joining of the applicant on the higher post was due to no fault of his, it would not be fair to subject him to adverse discrimination in the matter of pay fixation vis-a-vis his other colleagues.

11. In the aforesaid facts and circumstances, we

are of the view that the ends of justice would be met in this case if the respondents are directed to allow the applicant to exercise the option regarding date from which he would wish to come under the new pay scales treating his notional date of promotion as 25.08.2008. The arrears already paid to the applicant consequent on pay fixation as per the option exercised by him on 10.09.2008 shall be adjusted against any arrears that would be payable on account of revised pay fixation following the exercise of option as above. If the arrears already drawn by the applicant exceeds such amount, the applicant shall refund the excess to the respondents forthwith.

12. O.A is disposed of with the aforesaid directions. No order as to costs.

(R. Ramanujam)
Member (A)

(Justice Dinesh Gupta)
Member (J)

Ram.