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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.2612 of 2003

New Delhi, this the 12th day of July, 2004

HON'BLE MR.KULDIP SINGH, MEMBER (JUDL)
HON'BLE MR.S.K. NAIK, MEMBER (A)

H.R. Dhiman
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working in the office of
Deputy Secretary (Project-II),
Ministry of Defence, Room No.18,
A-Wing, Sena Bhavan,
New Delhi-110011.

...Applicant

(By Advocate: In person)

Versus

Union of India represented by

(1) The Secretary,
Ministry of Defence,
South Block New Delhi; and

(2) The Secretary,
Department of Personnel & Training,
North Block,
New Delhi.

...Respondents

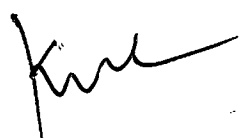
(By Advocate: Shri Mohar Singh)

O R D E R (ORAL)

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant has filed this OA challenging the order dated 8th/10th September, 2003 whereby his request for payment of arrears as a result of refixation of pay has been turned down as he had been asked to give an undertaking that he will not claim any arrears as a result of condonation of delay in exercising the option before his pay is fixed.

2. Facts, as alleged by the applicant in brief are, that the applicant was appointed as Grade 'D' Stenographer on 15.1.1976 and was promoted to Grade 'C' Stenographer in December, 1986. On 8.11.1999, under the



Assured Career Progression Scheme (ACPS) of the Government of India, the applicant's name was approved for second financial upgradation on completion of 24 years of his regular service to be effective from 15.1.2000 in the pay scale of Rs.6500-200-10500. On 9.12.1999, the applicant's pay was fixed at Rs.7700/- and arrears were made admissible with the next date of increment as 1.1.2001.

3. It is further stated that clarifications were sought by various Ministries/Departments in connection with the implementation of the ACP Scheme so clarification was issued on 18.2.2000 wherein it was clarified that the option of pay fixation in the next higher grade based on the date of increment may be allowed.

4. The applicant further alleges that though this clarification was issued by respondent No.2 but the applicant was not asked to exercise the option for fixation of his pay w.e.f. August, 2000, i.e., the date of increment in lower grade by respondent No.1 and the applicant did not come to know of the clarification issued by the DOP&T.

5. However, he came to know that Smt. Mariama George, Steno Grade 'C' in the Ministry of Defence who is otherwise junior to the applicant is getting her basic pay of Rs.7900/- on the basis of this clarification while the applicant was allowed this pay from January, 2001. Thus there was an anomaly.

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6. On 11.11.2002, the applicant applied for stepping up of pay between employees of the same batch and himself but he was informed that he and Smt. Mariama George had been granted ACP w.e.f. 9.8.99 and their pay was fixed accordingly.

7. However, it is not feasible to accede to the request of the applicant for stepping up of pay because DOP&T OM dated 9.8.99 provides that no additional financial upgradation would be available to the senior employee on the ground that the junior employee in the grade has got higher pay scale under ACPs.

8. The applicant made a representation which was replied by the Department on 7/10.7.2003 vide Annexure A-8 and applicant was informed that his request for condonation of delay in exercising of option has been exercised in consultation with the DOP&T who have agreed to the same. However, no arrears shall be allowed so the applicant may give an undertaking that he will not claim arrears as a result of condonation of delay in exercising the option before his pay is refixed.

9. The applicant claims that the order passed by the respondents is arbitrary and against the principles of natural justice as the respondents have not given a reasoned reply to the applicant's representation so the respondent's action to give only fixation of pay and to exclude the arrears is unfair, arbitrary and against the principles of natural justice and is also violative of

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Article 14 of the Constitution of India. As such, it is prayed that this order be quashed and the applicant be allowed the arrears also.

10. The respondents are contesting the OA. The respondents submitted that the OA is barred by limitation as the cause of action had arisen when the pay of the applicant was fixed with effect from 15.1.2000 in granting 2nd financial upgradation vide respondent's order dated 9.12.99 and the applicant has filed this OA after 3 years 10 months and 7 days so the same is barred by time.

11. Respondent further stated that the option for fixation of pay under FR 22(a)(a)(1) for grant of ACP is available to those granted financial upgradation under the Scheme. The clarification received from the DOP&T vide order dated 9.8.99 was circulated to all the Ministries/Departments of Government of India and other concerned officers of the Government of India so the applicant claims that he had no knowledge.

12. It is further stated that initially he had made an application for stepping up of pay with respect to his junior Smt. Mariamma George. Under the ACP Scheme, this benefit is not to be granted on the ground that no additional financial upgradation would be available to the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP scheme and the financial upgradation under the said Scheme shall be purely personal to the employee

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and shall have no concern to his/her seniority position. The applicant was not eligible for stepping up of his pay with reference to his junior.

13. It is further stated that the applicant had opted only on 7.1.2003 that his pay may be fixed in the pay scale of Rs.6500-10500 from the date of next increment in the pay scale of Rs.5500-9000 on being granted the financial upgradation w.e.f 15.1.2000.

14. Since the applicant had requested for condonation of delay in exercising his option, the request of the applicant was sent to the DOP&T for their approval. The DOP&T agreed to condonation of delay in exercising the option subject to the condition that the applicant would first have to give an undertaking that he would not claim arrears as a result of the condonation of delay. Since the applicant has not given any such undertaking and has approached this Tribunal for arrears, so the OA is not maintainable.

15. It is further submitted that the option was to be exercised within a month under the provisions of FR 22 (I)(a)(1) and since the applicant has not exercised the same even after receipt of clarification on 18.2.2000, so applicant cannot be paid arrears.

16. We have heard the learned counsel for the parties and have gone through the records of the case.

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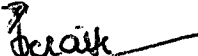
17. The applicant who argued in person also submitted that the arrears have been denied only in his case whereas in the case of other employees the arrears have not been denied and in support of his contention he referred to Annexure RA-2 dated 4.12.2003 and also another order Annexure RA-1 dated 27.6.2000 and submitted that the applicant is being discriminated for this purpose since he is being denied the arrears.


18. Opposing the pleas of the applicant, the counsel for the respondents submitted that since FR 22 (I)(a)(i) required that the option is to be made within one month and the applicant has not exercised option so the same has become time barred as such the Government has rightly denied the arrears to the applicant. In our view this contention of the learned counsel for the applicant has no merits because the Department in particular agreed to condone the delay in exercise of option then there does not appear to be any reason why the arrears should not be paid. Adding the rider of non-payment of arrears and asking for an undertaking from the applicant that he shall not claim arrears amounts to denial of legitimate dues and also amounts to discrimination between the applicant and similarly situated employees because once the delay in exercise of option is condoned, the applicant relegates back to the same position with his counter-parts or similarly situated employees who had exercised option have got the benefit, so the applicant's demand for arrears cannot be said to be time barred particularly so when the delay in exercise of the option had been denied by the department itself.

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19. Thus we are of the considered opinion that the rider attached with the condonation of delay and calling for an undertaking from the applicant that he will not claim arrears is purely arbitrary in nature and the same cannot sustain and is liable to be quashed.

20. The OA is allowed. The applicant is allowed pay fixation of arrears in accordance with the ACP Scheme and the relevant rules on the subject. This may be done within a period of 3 months from the date of receipt of a copy of this order. No costs.


(S.K. NAIK)
MEMBER (A)


(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh