

(2002) 08 GAU CK 0018

In the Gauhati High Court

Case No : Writ Petition (C) No. 147 (SH) of 2000

N.C. Choudhury

APPELLANT

Vs

State of Meghalaya and Others

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Meghalaya Services (Revision of Pay) Rules, 1988 — Rule 7(1), 7(4)

Citation : (2003) 2 GLR 129 : (2003) 1 GLT 206

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : B.N. Dutta and D.D. Purkayastha, for the Appellant; V.K. Jindal and L. Lyngdoh, for the Respondent

Judgement

I.A. Ansari, J.—By this application made under Article 226 of the Constitution of India, the petitioner, an Assistant Conservator of Forests, Meghalaya, having failed to convince his Administrative Department and also the Finance (Pay Revision) Department, that the scale of pay of the petitioner fixed under the revised pay scale needs to be corrected in accordance with the provisions of the relevant Rules, has approached this Court for necessary reliefs.

2. The case of the petitioner, if it is stated briefly, runs as follows :

The petitioner was appointed as a Forest Ranger in the scale of pay of Rs. 225-15-285-EB-15-360-EB-20-600 to be revised at Rs. 400-20-500-Eb-25-750-EB-30-900 with effect from 27.2.1975 and henceforth, as decided by the State Government, his annual increment was to be drawn from 1.2.1976 and on first February every year thereafter. The scale of pay of the post was revised to Rs. 575-25-700-EB-30-850-EB-35-1200 w.e.f. 1.1.1979 and on option being exercised by the petitioner, his pay was fixed at Rs. 650 on 1.1.1979 to be raised to Rs. 675 on and from 1.2.1979, i.e., his usual date of increment. The scale of pay for the post of Forest Ranger alongwith other posts in the State of Maghalaya was further revised to Rs. 1750-55-2025-EB-65-2480-75-3230 with the issuance of notification of the Meghalaya Services (Revision of Pay) Rules, 1988, vide No.

F(PR) - 35/88/28, dated 30th November, 1988 (Annexure 1 to the writ petition). According to Rule 1(2) of the said Rules, the provisions of Maghalaya Services (Revision of Pay) Rules, 1988, came into force on 1st day of January, 1987. Rule 5 of the said Rules provides that a Government servant shall draw pay in the revised scale applicable to the post, which he has been holding on the 1st day of January, 1987, provided that a Government Servant may elect to continue to draw his pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale. Under Rule 7(1) of the said Rules, the option under the proviso to Rule 5 shall be exercised, in writing, in the form appended to the Second Schedule thereof and submitted, within sixty days from the date of publication of the said Rules to the authority mentioned in Sub-rule (2) of Rule 7 and that the option, once exercised, shall be, according to Rule 7, final. Where a senior Government servant promoted to a higher post before the 1st day of January, 1987, draws less pay in the revised scale than his junior, who is promoted to higher post on or after the 1st day of January, 1987, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post in accordance with Rule 7 of the said Rules. The petitioner exercised, within the period of sixty days of the issue of the said notification, his option for the revised scale of pay and, in terms of the proviso to Rule 5, elected to continue to receive the existing scale until the date of his next increment, i.e., on 1.2.1987 (Annexure 2 to the writ petition). However, the Administration Department of the petitioner drew up petitioner's initial pay statement and fixed his pay at Rs. 2025 in the scale of Rs. 1750-55-2025-EB-65-2480-75-3230 w.e.f. 1.1.1987 fixing his next increment w.e.f. 1.1.1988 totally overlooking the fact that the petitioner had opted to receive the revised pay on and from 1.2.1987. The statement, so fixing the revised pay scale, was sent to the Finance Department and the Finance (Pay Revision) Department mechanically certified the fixation so made by the Administrative Department (Annexure 3 to the writ petition) without, however, noticing the mistake committed by the Department concerned. The petitioner inadvertently drew his arrears on the revised scale of pay erroneously fixed by the Department concerned and it was much later that the petitioner came to learnt from his junior colleagues that they had been drawing pay at a stage higher than what the petitioner was drawing. On inquiry and scrutiny, the petitioner found that the mistake had occurred due to fixation of his pay revision with effect from 1.1.1987, which was contrary to what had been elected by him, and, in consequence thereof, this mistake was perpetuated in fixing petitioner's further increments. On representations made by the petitioner, the Conservator of Forest (HQ), vide his letter No. MPS. 25/2/11, dated 19.3.1994 (Annexure 4 to the writ petition), addressed to the Under Secretary, Government of Meghalaya, Finance (PR) Department, pointed out that though the petitioner had exercised his option for the revised scale w.e.f. 1.2.1987, his pay was erroneously fixed w.e.f. 1.1.1987, whereas three of petitioner's juniors, who also joined on the same date as that of the petitioner on 27.2.1975, were receiving their initial pay at Rs. 2135 on 1.2.1987 as against petitioner's initial pay of Rs. 2025 w.e.f.

1.8.1987 and hence, petitioner's pay needs to be refixed correctly. However, on extraneous considerations, the Finance Department refused to correctly fix the revised pay scale in respect of the petitioner. Realising the mistake, so committed, the Administrative Department of the petitioner had also suggested rectification of the fixation of pay of the petitioner by taking resort to F.R. 29, but the Finance Department turned down this suggestion too. Though the petitioner made further representations in this regard to the Government Department concerned, nothing fruitful has been done. The petitioner has, therefore, approached this Court.

3. The respondents 1 to 4 have contested this case by filing jointly their affidavit in opposition, their case being, briefly stated, thus : Under Rule 7 of the said Rules, mere exercise of option within the specified period of 60 days is not adequate compliance with the provisions of the said Rule inasmuch as this Rule provides that it is the responsibility of Government servant concerned to ensure that the option exercised by him reaches the prescribed authority within the fixed time limit and he shall obtain an acknowledgement to that effect. In the case at hand, Finance (PR) Department, on examining the fixation of revised pay prepared by head of office of the petitioner, found that the service book and the initial pay statement of 1987 had been submitted by the head of the office of the petitioner without any option paper. In such a situation, the Finance (PR) Department had no other alternative but to act in accordance with Rule 7(4) and fix the revised pay scale of the petitioner with effect from 1.1.1987 inasmuch as Rule 7(4) of the said Rules provides that if intimation regarding option is not received within the prescribed time limit, the Government servant shall be deemed to have elected to be governed by the revised scale of pay w.e.f. 1.1.1987. The Finance (PR) Department, thus, acted in accordance with the relevant Rules in fixing the revision scale of pay of the petitioner. This apart, the relevant acquittance role of the petitioner also indicates that the arrear pay was paid to the petitioner for the period from 1.1.1987 and was duly received by the petitioner on 3.3.1989. This further indicates that the petitioner had actually not exercised any option as asserted by him. On receiving the letter, dated 16.3.1994 (Annexure - 4 to the writ petition) aforementioned from the Head of office of the petitioner, the Finance (PR) Department examined the matter once again and found that the option had not been exercised by the petitioner in the prescribed form inasmuch as it did not contain acknowledgement portion of the form. The petitioner, thus, neither exercised his option within the stipulated period nor did he submit his option in accordance with the prescribed form. The Finance (PR) Department, therefore, correctly rejected the representation of the petitioner. The fact that the petitioner's junior, at one stage, started receiving more pay than the petitioner is the outcome of the petitioner's own omission to act in accordance with the provisions of the said Rules. The Finance (PR) Department has received a large number of claims of the same nature as has been made by the petitioner and if the Rules are relaxed in the case of the petitioner, the same would open a flood gate of such claims by the Government

servants. The Finance (PR) Department, therefore, justifiably turned down the request of the petitioner. Since the difference in the pay scale of the petitioner and his colleagues occurred due to operation of Meghalaya Revision of Pay (ROP) Rules, 1988, question of taking resort to the provisions of FR 29 does not arise at all.

4. I have carefully perused the relevant materials on record. I have heard Mr. B.N. Dutta, learned senior counsel for the petitioner, and Mr. V.K. Jindal, learned counsel for the respondents.

5. Before entering into the merit of the writ petition, it needs to be clarified that the pay scales are revised from time to time in the interest of Government servants and for their welfare. Hence, while construing the intent and meaning of the Rules governing fixation of revised pay scales of Government servants and/or while adjudging compliance with the provisions thereof, the authority shall act liberally. In the case at hand, the entire controversy has arisen out of fixation of the revised pay scale of the petitioner under the said Rule of 1988.

6. For the sake of brevity, let me quote the relevant provisions of Rule 5, which provide for exercise of option, is reproduced below :

"5. Drawal of pay in the revised scale. - Save as otherwise provided in these rules, a Government servant shall draw pay in the revised scale applicable to the post, which he has been holding on the 1st day of January, 1987 or to which he is appointed on or after the 1st day of January, 1987:

Provided that a Government servant may elect to continue to draw pay in the existing scale or until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale." (emphasis is supplied)

7. Let me also quote Rule 7, which lays down the terms and conditions for the exercise of option under Rule 5, as follows :

"7. Exercise of option. - (1) The option under proviso to Rule 5 shall be exercise in writing in the form appended to the Second Schedule and submitted to the authority mentioned in Sub-rule (2) of these rules within sixty days from the date of publication of these rules or where existing scale has been revised by an order made subsequent to that date, within sixty days of the date of that order :-....

(2) The option shall be intimated by the Government servant :-

(a) If he is a gazetted Government servant, to the Accountant General (A&E), Meghalaya, Shillong, and

(b) If he is a non-gazetted Government or a gazetted Government servant, whose pay and allowances are drawn by the head of the office in Establishment pay bill forms, to the head of his office.

Note 1 : It should be noted that mere exercise of an option within the specified time limit mentioned in Sub-rule (1) is not sufficient. It will be his responsibility to ensure that the option paper reaches the prescribed authority within the time limit and obtain an acknowledgement to that effect.

(3) The option once exercise shall be final.

(4) If the intimation regarding option is not received within the time limit mentioned in Sub-rule (1), the Government servant shall be deemed to have elected to be governed by the revised scales of pay with effect from 1st day of January, 1987 under these rules." (emphasis is added)

8. From a close examination of Rule 5 read with Rule 7, it clearly transpires that the option has to be exercised by the Government servant within a period of sixty days from the date of publication of the said rules. These Rules were, admittedly, published on 30.11.1988; hence, the option could have been exercised, under these Rules, by a Government servant till 29.01.1989. Let me, now determine whether the petitioner, according to the materials on record, exercised his option on or before 29.1.1989 and if he so exercised the option, whether the same was in accordance with the mandates of the said Rules.

9. Turning to the question as to whether the petitioner had exercised the option within 29.1.1989, it is essential to note that according to the petitioner, he elected to continue to receive vide his option form (Annexure 2 to the writ petition), existing pay scale till 1.2.1987 and this option was exercised on 25.1.1989. In terms of the above Rules, this option was to be submitted before the authority mentioned in Sub-rule (2) of Rule 7. According to Rule 7(2)(b), if the Government servant concerned is a non-gazetted person, he has to submit his option to the head of his office. In the case at hand, the petitioner was, admittedly, a non-gazetted servant at the relevant time and, hence, the head of his office was, undoubtedly, Divisional Forest Officer, Garo Hills Division. It is the office of this Divisional Forest Officer, who are in the best position to say if the petitioner had submitted his option form as asserted by him. In this regard, the letter bearing No. MPS. 25/2/11, dated 18.3.1994, sent by the Conservator of Forest (HQ), Meghalaya, addressed to the Under Secretary, Government of Meghalaya Finance (PR) Department, is of utmost importance inasmuch as this letter clearly shows that the petitioner did submit his option to the head of his office electing to continue to receive his existing pay scale till 1.2.1987 and not till 1.1.1987 as has been done in this case. Alongwith this letter, the Conservator of Forest (HQ) also sent to the said Department for its consideration the revised initial pay statement of the petitioner and his Service Book. This letter, with which stands enclosed a copy of the option form submitted by the petitioner, shows that the petitioner did submit his option on 25.1.1989, i.e., within the prescribed period of sixty days.

10. Coupled with the above, scrutiny of the petitioner's service record made by this Court, in the presence of the learned counsel for the parties, revealed that

the materials kept in the service book include petitioner's option form dated 25.1.1989.

11. In the face of the above materials on record, there can be no escape from the conclusion that the petitioner did exercise his option as contended by him on 25.1.1989. Curiously enough, however, the Finance (Pay Revision) Department; prepared the statement of the petitioner under the revised pay Rules as early as on 27.1.1989. It is rightly contended by Mr. B.N. Dutta that even if, for a moment, it is assumed that the Finance (PR) Department had not received the above form within 29.1.1989, they ought not to have prepared statement of petitioner's revised pay scale till 29.01.1989 inasmuch as the petitioner could have submitted his option on any day on or before 29.1.1989, but ignoring this aspect of the matter, the Finance (PR) Department, undoubtedly, prepared and sent to the Head of office of the petitioner the relevant statement as early as on 27.1.1989, i.e., even before the last date for submission of option was over.

12. Though Mr. Jindal has vociferously argued the case on behalf of the respondents, he has not been able to justify issuance of the said statement by the Finance (PR) Department as early as on 27.01.1989, whereas the option could have been exercised by the petitioner till 29.1.1989. Situated thus, it is clear that the revised statement issued by the Finance (PR) Department was completely in violation of the provisions of the relevant pay Rules inasmuch as they did not wait till the last date for submission of the option from to be over.

13. The next question, which is required to be considered by this Court, is whether the fact that the petitioner did not, as contended by the respondents in para 10 of their affidavit-in-opposition, exercise his option in the prescribed form with acknowledgement portion thereof shall render the option invalid?

14. While considering the above aspect of the matter, it is essential to mention that Note 1 to Rule 7 does state that mere exercise of option within the specified time limit mentioned in Rule 7(1) is not sufficient, but that it will also be the responsibility of the Government Servant concerned to ensure that the option paper reaches the prescribed authority within the time limit and he (i.e., the Government servant) shall obtain an acknowledgement to the effect. The question, now arises whether mere omission to obtain such acknowledgement by the Government servant will make his option ipso facto invalid? The answer to this question has to be an emphatic "no". Even Mr. Jindal could not assign any convincing reason as to why if a Government servant can prove that he did submit his option to the prescribed authority within the time limit specified in the Rules, such option will become invalid merely on the ground that he did not obtain acknowledgement in this regard from the prescribed authority.

15. What logically follows from the above discussion is that notwithstanding with Note 1 to Rule 7 states, the provision for obtaining of acknowledgement has been made to safeguard the interest of the Government servant so as to enable him to prove exercise of his option, but if a Government servant can prove the

exercise of such option without the acknowledgement from his head of the office, there is no reason for, the authorities concerned to ignore the option by insisting on the formality that the acknowledgement portion of the form has not been received. Such reading of Note 1 will be too pedantic and highly hypertechnical, which, if allowed to be persisted, will defeat the ends of justice.

16. I am, therefore, completely convinced that notwithstanding the fact that the petitioner did not obtain the acknowledgement for the option form that he had submitted to his head of office, the petitioner has successfully proved that he did exercise, as contended by him, his option on 25.1.1989 and this fact is acknowledged by the Head of his office.

17. What crystallizes from the above discussion is that the Finance (PR) Department, hurriedly and without waiting for the last date to be over, issued, on 27.1.1989, petitioner's revised pay scale with effect from 1.1.1987, which was contrary to the petitioner's option exercised on 25.1.1989 and having committed this mistake in haste, the Finance (PR) Department appears to have been unreasonably insisting to continue to maintain their own illegally prepared revised statement of the petitioner. Such insistence on the part of the Finance (PR) Department is highly unreasonable and arbitrary and the same cannot be allowed to prevail.

18. The impression that the direction to obtain acknowledgement under Sub-rule (1) of Rule 7 is merely directory and not mandatory also gets strengthened from the fact that Sub-rule (4) of Rule 7 lays down that if the intimation regarding option is not received within the time limit specified, then, the Government servant shall be deemed to have elected to be governed by revised pay scale with effect from 1.1.1987. Had the obtaining of the acknowledgement by the Government servant, in respect of option exercised by him, been mandatory, Rule 7 would have clarified that any option received from a Government servant, without acknowledgement thereof having been obtained by the Government servant from the authority to whom the option is submitted shall be invalid and/or ineffective. No such provision exists in the relevant rules.

19. In the result and for the reasons discussed above, this writ petition succeeds and the State respondents are hereby directed to make necessary corrections within a period of two months from today, in the relevant revised pay scale of the petitioner fixing his revised pay scale w.e.f. 1.2.1987 and giving him thereby all consequential financial benefits in accordance with the provisions of law contained in that behalf.

20. With the above observations and directions, this writ petition shall stand disposed of.

21. Let the service record of the petitioner be returned to the learned counsel for the respondents.