HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.908/2016

Sri Brij Kishore Dwivedi, S/O. Lt. Ram Narayan Dwivedi, now residing at Panisagar, North Tripura, Tripura.

----Petitioner(s)

Versus

1. Union of India, represented by and through the Secretary to the Government of India, New Delhi in the Ministry of Home Affairs, South Block, New Delhi.

2. Commandant (PERS) in the office of the Head Quarters BSF at New Delhi.

3. Assistant Accounts Officer in the Directorate of Border Security Force.

4. Commandant, 55 Bn BSF Raisinghnagar Raj.

-----Respondent(s)

For Petitioner(s) : Mr. S.K. Deb, Sr. Advocate.

For Respondent(s) : Mr. H. Deb, Asstt. S.G.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment : **19th May, 2020**.

Whether fit for reporting : **No**

JUDGMENT & ORDER (ORAL)

Petitioner has made a grievance about the non-acceptance of his option form dated 15.12.2010 seeking the postponement of the date of grant

of revised pay scale. According to the petitioner, such option was exercised before the last date prescribed for such purpose i.e. 31.12.2010. The respondents contend that no valid option was received from the petitioner before the last date and, therefore, the same could not be considered.

2. Brief facts are as under:

The petitioner joined the services of Border Security Force (BSF) in the year 2003. At the relevant time in the year 2010 the petitioner was posted in Tripura and was holding the post of Deputy Commandant.

3. The Government of India had implemented fresh pay scales for all its employees w.e.f. 01.01.2006. On 05.07.2010 the Government of India issued an office memorandum pointing out that as per Rule 11 of the Central Civil Services (Revised Pay) Rules, 2008 option lies with the Government servant to postpone to draw his pay in the existing scale from 01.01.2006 and to switch over to the revised scale from a later date. In the said memorandum, it was provided that in exercise of the powers under the CCS (Revised Pay) Rules, 2008 the President had granted relaxation in stipulation under Rule 6(4) of the said Rules and the employees may be permitted to revise their initial option latest by 31.12.2010 if such option is more beneficial to them. In the nutshell thus by virtue of the said office memorandum dated 05.07.2010 all Central Government employees were

granted one time fresh option to postpone fixation of their pay scale in the revised scales beyond 01.01.2006 if the same was more beneficial to them. Such revised option, however, had to be exercised latest by 31.12.2010.

4. The petitioner claims that such option was exercised by him by filling up the prescribed form and submitting to his office on 15.12.2010. A copy of such option form claimed to be filed by him is produced by the petitioner at Annexure-P/1.

5. The respondents, however, did not act on such option, the reasons behind which will be discussed later. On 20.09.2011 the Assistant Accounts Officer of BSF wrote to the Commandant of the Battalion where the petitioner was posted stating that the petitioner had not exercised the option for postponement of pay fixation before the last date of 31.12.2010 and, therefore, his option cannot be accepted.

6. Significantly, on 09.02.2011 the petitioner had written to the Inspector General and Director of Pay and Accounts. Relevant portions of this letter read as under:

> "2. I intend to exercise option as per rule 06(4) of Central Service revised pay scale 2008 in continue to draw pay in due existing scale (Pre revised from 1st Jan 2006) before the grant of senior time scale i.e. 30 Sept 2007 and

> further whichever to the revised pay structure i.e. pay band of Rs.18,750/- with grade pay Rs.6600/- total Rs.25,350/-.
>
> 8. In view of above, it is therefore, requested to your good self to look into the matter and to pass necessary orders enabling me to get my legitimate dues to provide one more chance to give new option as per rule No.11 to the beneficial employees. Hence my pay may please be re-fixed as per pre-revised pay scale of sixth pay commission and onward as applicable. Option for pay fixation has already been forwarded to your HQ. However, a copy of fresh option is enclosed for further re-fixation of my pay on my senior time scale w.e.f. 2007."

7. This letter dated 09.02.2011 written by the petitioner to the respondents, does not anywhere refer to his exercise of option on 15.12.2010.

8. After detailed correspondence, the Director of Accounts of BSF finally conveyed to the petitioner through proper channel under letter dated 09.04.2014 as under:

> "2. In this context, it is submitted that Shri Brij Kishore Dwivedi, DC (IRLA NO.40387277) of 55 Bn BSF was promoted to the rank of Asstt. Comdt. From 30 Sep 2003 and granted senior time scale in the pay scale of Rs.10,000-325-15,200/- (pre-revised) from 30 Sep 2007 vide FHQ order No.17/56/2007-pers/1954-2253 dated 12 Jan 2009. The pay

> was fixed at Rs.17210 + 6600 w.e.f. 30.10.2007 with next date of increment on 01/07/2008. The Officer had submitted option which was countersigned by the unit Comdt. on 11/06/2011 for fixation of pay in revised scale (6th CPC) w.e.f. 30/09/2007. The option was forwarded by 55 Bn BSF vide letter No.Estt/55 Bn/Option-form/2011/8303 dtd. 14 June 2011 which was received in PAD on 30 June 2011. "As per GOI order No.07/14/2010-E.III (A) dated 05th July 2010, the employees may be permitted to revise their initial option upto 31/12/2010, if the option is more beneficial to them." The officer had submitted option for revised pay fixation after the last date mentioned in the order dated 31/12/2010. This case is also verified from Audit Section of PAD. SO option is not admissible at this stage."

9. After such detailed correspondence, the petitioner issued a legal notice to the department. In the year 2015/2016 the department gave a detailed reply to all the points raised in such legal notice under a communication dated 14.01.2016. In this reply once the stand taken by the department was that the petitioner had not exercised the option before the last date of 31.12.2010. It was pointed out that such option was received and countersigned by the department on 11.06.2011 seeking fixation of pay in the revised scale w.e.f. 30.09.2007. Since this was clearly beyond the time permitted, it was not accepted. At that stage, this petition came to be filed.

10. In the affidavit-in-reply the respondents have reiterated the same stand principally contending that the petitioner had failed to exercise proper option before 31.12.2010. His pay fixation in the revised scale w.e.f. 01.01.2006, therefore, continued.

11. Learned counsel for the petitioner submitted that the petitioner had filled up the necessary form on 15.12.2010 itself. It was for his immediate superior to process the form and forward it to the Accounts Section. If this was not done in time, the petitioner cannot be deprived of the benefit. Much stress has been placed on a letter dated 24.06.2014 written by the Commandant of 55 Bn BSF to the Accounts Officer, New Delhi in which it has been stated as under:

> "On searching of old records, option form duly signed by Sh B.K. Dwivedi, Dy Comdt. of date 15.12.2010 duly counter signed by Sh Rakesh Negi, Commandant has been found and same is forwarded for your kind consideration and for further fixation of pay of Sh B.K. Dwivedi, Dy Comdt. please."

Along with this letter, a copy of the said option form said to have been exercised by the petitioner on 15.12.2010 is annexed which purportedly carries the signature of one Shri Rakesh Negi, Commandant, 55 Bn of BSF. On the basis of this document, learned counsel for the petitioner

vehemently contended that the petitioner having exercised the option in time which was also processed by his Commandant at the relevant time, the petitioner must be given benefit thereof. The petitioner cannot be deprived of the benefit simply because his local office due to oversight failed to forward such option form.

12. On the other hand, learned counsel for the department opposed the petition contending that the petitioner did not file a valid option form before 31.12.2010. The option form stated to have been submitted on 15.12.2010 stated that the petitioner wishes to switch over to the revised pay rules w.e.f. 01.01.2006. This was not in terms of the petitioner's subsequent request for fixation of his pay in the revised scales w.e.f. 30.09.2007. Such options were received much later in 2011 and 2014. Last date for switching the options was 31.12.2010.

13. As noted, the Government of India issued an office memorandum dated 05.07.2010 allowing a fresh option to all Government employees to postpone fixation of their pay in the revised scales as per CCS (Revised Pay) Rules, 2008 if the same was more beneficial to them. The extension granting fresh option was valid only up to 31.12.2010. In other words, such revised option had to be made before 31.12.2010. It is in this

context, the question of the petitioner having exercised such option within time assumes significance. In this regard, we may recall the petitioner contends that he had exercised such option by filling up the form on 15.12.2010. The department also does not seriously dispute that petitioner's option form was received at the relevant time. However, they point out that such option form only requested that the fixation in the revised pay scales be made w.e.f. 01.01.2006. This is in consonance with the petitioner's own document which the petitioner has annexed as Annexure-P/1. This is a document which the petitioner claims in the copy of an option form which he had inwarded with the department on 15.12.2010. This does not contain counter signature of a superior officer which is understandable but significantly contains a declaration that he wishes that his pay fixation in the revised scales be done w.e.f. 01.01.2006. It is true that the same option form also talks of the date of grant of senior time scale on 30.09.2007. However, the option that the petitioner was given and a declaration in clear terms that the petitioner, therefore, had to make was does he wish to postpone fixation of pay in the revised pay rules of 2008 beyond 01.01.2006. The date of granting of senior time scale was not of any direct consequence. What was important was did the petitioner want that as per normal rule and by default his pay in the revised scales be fixed from 01.01.2006 or finding it more

beneficial, he wished that the date of fixation of pay in the revised rules be postponed to a later date. The petitioner did not indicate such option for deferment of pay fixation under the revised pay rules beyond 01.01.2006.

14. This document Annexure-P/1 can be juxtaposition with the petitioner's own later communication Annexure-P/4 dated 09.02.2011 in which, as noted earlier, the petitioner clearly indicated his desire for deferment of his pay fixation under revised pay rules till 30.09.2007. In this letter petitioner did not refer to his earlier option form which he claimed to have filled up on 15.12.2010. This option if it is treated as a first option form filled up by the petitioner, it was exercised for the first time on 09.02.2011, long after the last date of 31.12.2010 had gone.

15. The petitioner apparently filed one other option form in the year 2014 which would be again of no consequence. Thus the documents on record would suggest that the first attempt of the petitioner to exercise the option by filling up a form on 15.12.2010 was a non-starter. That option was exercised faultily. Having perhaps realized this, the petitioner made a fresh communication on 09.02.2011, this time clearly indicating that he wished that his pay fixation under the revised pay rules be deferred till 31.12.2007.

16. It is true that the Commandant of 55 Bn BSF has written on 24.06.2014 saying that the petitioner's option of 15.12.2010 was duly received and countersigned by the then Commandant Shri Rakesh Negi on the same date. However, the same was not forwarded. Though the respondents have not flatly denied this position, I find several difficulties in accepting this position. As stated earlier in the letter dated 09.02.2011 the petitioner has not made any reference to his previous option exercised on 15.12.2010. More importantly, the petitioner has produced at Annexure-P/1 the option form that he had filled up on 15.12.2010 which is in all other terms same as a copy annexed along with the letter dated 24.06.2014 written by the Commandant of 55 Bn BSF except that the petitioner's copy carries the date of 01.01.2006 from which his pay under the revised pay rules should be fixed whereas the copy produced along with the letter Annexure-P/10 carries a handwritten correction over the said date of 01.01.2006 and the date of 30.09.2007 is written. Thus to accept that the petitioner had exercised a valid option on 15.12.2010 is not possible. By the petitioner's own account he had filled up a form on 15.12.2010 in which he had indicated his desire that his pay under the revised pay rules be fixed w.e.f. 01.01.2006. This theory that he had actually filled up a form indicating his

clear intention of postponing the fixation of pay under the revised rules to 30.09.2007 is incongruent to his own document Annexure-P/1.

17. Under the circumstances, I find that the petitioner did fill up a form on 15.12.2010, nevertheless if not exercised the correct option which he now wants to exercise. His correct declaration was made only on 09.02.2011 which was well beyond the last date of 31.12.2010 granted by the office memorandum dated 05.07.2010. I find no error in the stand of the respondents not accepting such form.

18. In the result, petition is dismissed.

Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

Pulak

HIGH COURT OF TRIPURA
सत्यमेव जयते