

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

.....
Original Application No. 542/JODHPUR/2013

Reserved on : 11.02.2020
Pronounced on : 19.02.2020

CORAM

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Purkha Ram s/o Shri Shekha Ram, aged 56 years, Electrician SK in the office of Assistant Garrison Engineer, MES, Army, Pokran, District Jaisalmer, R/o Baloo Singh Ki Dhani, District Jaisalmer.

.....Applicant

By Advocate: Mr. Vijay Mehta

Versus

1. Union of India through the Secretary, Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander Works Engineer (P) MES, Banar, District Jodhpur.
3. Garrison Engineer, MES, Army, Jaisalmer.

.....Respondents

By Advocate : Mr Rameshwar Dave

ORDER

Per Mrs. Hina P.Shah

In the present Original Application filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

The applicant prays that the impugned action of the respondents may kindly be quashed and the respondents be directed to make fixation of the applicant from 4/10/2004 at par with said Shri Kan Das and Manak Chand. The respondents may kindly be directed to advance his date of increment and to make payment of arrears thereof.

2. Brief facts, as stated by the applicant, are that he was appointed in MES (Army) on Group-D post of Mazdoor on 22.8.1980. He was later on promoted as Mate on 12.1.1998 and thereafter on skilled post of Electrician on 26.10.2006. The applicant has stated that he is getting less pay in comparison to his juniors and in support of his claim he has mentioned the following details:-

<u>Description</u>	<u>Applicant</u>	<u>Kan Das</u>	<u>Manak Chand</u>
Date of appointment	22.8.80	22.1.1981	31.5.1981
As Mazdoor Pay scale of Rs. 196-232			
Promotion as Mate	12.1.98	10.11.99	5.10.99
Fixation under IV CPC in scale Rs. 750-940	Rs. 822/-	Rs. 822/-	Rs. 822/-
Fixation under V CPC in pay scale Of Rs. 2550-3200	Rs. 2960	Rs. 2960	Rs. 2960
Fixation under II ACP	4.10.2004	1.1.2005	31.5.2005
Pay Fixed	Rs. 3800 26.10.2006	Rs. 3875 26.10.2006.	Rs. 3950 26.10.2006
Promotion to Electrician	Rs. 7210	Rs. 7350	Rs. 7350
Fixation under VI CPC	G.P. 1900	GP 1900	GP 1900

Therefore, according to the applicant, though he is senior to Kan Das and Manak Chand, but is being paid less salary from 4.10.2004 when fixation under 2nd ACP was made. The applicant submitted a number of representations requesting the respondents to provide the equal salary which has been paid to his juniors, but of no avail. In support of his averment, the applicant has referred to order dated 21.11.2011 passed in OA No.231/2000 and order dated 20.5.2004 in OA No.54/2003 claiming that he is entitled for advancement of his date of increment.

4. By way of filing reply, the respondents have submitted that the applicant was paid less salary in comparison of his juniors as the pay fixation has been done by the department on the basis of option given by the applicant under Rule FR 1(a)(i) straightaway without any further revision on accrual of increment in the pay scale of lower post. In this regard, they have referred documents at Ann.R/1 and R/2. Since, the pay fixation was done on the basis of option opted by the applicant and once the option was exercised by the applicant, it is final and no revision is permissible.

5. The applicant has filed rejoinder reiterating the averments made in the OA stating that there is no provision

like FR 1(a)(i) or FR 11(a)(1) for giving option for pay fixation and if option is considered under above provisions of FRs, the fixation is not in accordance with the provisions of law.

6. We have heard Shri Vijay Mehta, counsel for the applicant and Shri Rameshwar Dave, counsel for respondents.

7. In this matter, the applicant is claiming fixation of his pay at par with juniors. These persons were juniors to the applicant from the date of his appointment. The sole stand of the respondents is that pay fixation was done on the basis of the option exercised by the applicant and once the option was exercised by the applicant it is final and no revision is permissible. From perusal of the legible copy of the option certificate, which has been produced by the respondents, it is gathered that the applicant has opted for his pay fixation in the higher post on the basis of FR 11(I)(a)(I) straight without any further review on account of increment in the pay scale of lower post. In the reply, the respondents have taken the stand that pay fixation has been done by the department on the basis of option given by the applicant i.e. under FR 1(a) (i). On going through the provisions of FR-11 and FR-1, we do not find any such

provision for exercising option while fixing pay of an employee. It is not clear from the pleadings of the parties whether the said option given by the applicant was corrected subsequently and a corrected option has been given by the applicant. It is true that option once exercised cannot be changed and it is final, but if the respondents have mistakenly obtained option which is not as per rules while fixing the pay of the applicant, the same should have been corrected subsequently. The respondents emphasised again and again that the fixation has been done as per the option given by the applicant, but when no such option under FR 11(i)(a)(i) is provided under the rules, the fixation on the basis of that option cannot be said as valid in the eyes of law. The respondents should have obtained a correct option as per the provisions or fixed the pay of the applicant which is more beneficial to him. Therefore, in our view, in the absence of provision of pay fixation under FR 11(i)(a)(i) or FR 1(a)(i), the option taken from the applicant under the above provisions cannot be used as disadvantageous to the applicant.

8. In view of above discussions, we direct the respondents to reconsider the claim of the applicant for pay fixation at par with his juniors notionally from the due date and pass

appropriate orders. Since the applicant has approached this Tribunal in the year 2013, the arrears should be liable to be paid three years prior to the date of filing this OA. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

9. The OA stands disposed of in above terms with no order as to costs.

**(ARCHANA NIGAM)
ADMV. MEMBER**

**(HINA P.SHAH)
JUDL. MEMBER**

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