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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 1573/2004

New Delhi, this the 13th day of December 2004

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S. A. SINGH, MEMBER (A)**

Shri Kirat Singh s/o Late Sh Gokal Singh
Retired Sorting Asstt. (BCR) of Speed Post Centre,
New Delhi Sorting Division, R/o 19E, A-2 Mayur Vihar,
Phase III Delhi -110096
Address for service of notices
C/o Shri Sant Lal Advocate , CAT Bar Room,
New Delhi -110001

.....Applicant

(By Advocate: Shri Sant Lal)

VERSUS

1. The Union of India through the Secretary,
Min. of Communication & IT Dept of Posts,
Dak Bhawan, New Delhi - 110001.
2. The Chief Postmaster General, Delhi Circle,
Meghdoot Bhawan, New Delhi -110001
3. The Sr. Supdt. New Delhi Sorting Division,
Meghdoot Bhawan, New - 110001
4. The Sr. Supdt. RMS,
JP Division, Jaipur - 302001.

.....Respondents.

(By Advocate: B K Barera)

ORDER

BY HON'BLE SHRI S.A SINGH, MEMBER (A)

The applicant who joined service in Group 'D' cadre in 1962 and was promoted as Sorting Asstt. In 1974 he was placed w.e.f. 17.12.1990 in the LSG Grade under TBOP Scheme. On the date of promotion i.e.

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17.12.90 he was drawing pay of Rs. 1360/- with the next date of increment being 1st December 1991 which would raise his pay to Rs. 1390/- . as he was promoted from the existing scale of Rs.975-1660/- to the scale of Rs.1400 – 2300. He was fixed on the minimum of new scale i.e. Rs.1400/- w.e.f. 17.12.1990 under Rule 22(1)(a) (i) FR/SR Part-I with the next date of increment 01.12.91.

2. Vide order dated 5.11.98 the pay of the applicant was stepped up to match with his junior i.e. from Rs.1210/- to 1240/- on 01.3.86 with the date of increment First of March . The applicant submitted an option form on 1.2.99 to the Head of Record , RMS, JP Division Jaipur for refixation of his pay under FR 22(a) (1).

3. His re-fixation was rejected by the respondents vide their order dated 31.7.73 on the ground that he had not exercised his option within the stipulated period . Aggrieved by this order the applicant filed this OA seeking directions to the respondents to refix his pay on the basis of the option dated 1.2.99 by ante dating date of increment from Ist December to Ist March and grant of all consequential benefits of arrears of pay and allowances and revision of retrial benefits.

4. The main ground of the applicant for seeking these relief is that there was an anomaly in pay fixation wherein his juniors were given more pay than the applicant in the feeder cadre and also in the promotion grade. This anomaly of pay in the feeder cadre was removed by stepping up of the pay of the applicant to Rs.1240/- w.e.f. 1.8.86 vide respondents order dated 5.11.98. The applicant became aware of this order only in January 1999 and immediately submitted an application dated 1.2.99 i.e. within one month for refixation of his date of increment w.e.f. 1.2.1999 in the grade of LSG.

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5. The competent authority of his parent division for the relevant period i.e. Senior Supdt. RMS Jaipur Division, Jaipur accepted the revised option . However, respondent 2 and 3 rejected his claim without applying their mind to the said anomaly. They have also not taken cognizance of the fact that the provision of giving option under rule within the prescribed period had not been incorporated in the order of promotion dated 12.12.1990, promoting the applicant to LSG (TBOP) and rejected his claim.

6. Moreover the benefit of the order dated 5.11.98 stepping up the pay to Rs. 1240/- w.e.f. 1.3.1986 to the level of his junior cannot be restricted only upto 17.12.90 then denied thereafter for fixing his pay on promotion to the next higher pay scale of LSG.

7. The applicant pleaded that he could not have applied earlier because the need for revision of his pay in feeder cadre arose only when the anomaly was removed by re - fixing his pay. . Once this was done he exercised his option within the prescribed limitation period of one month. He also relied upon the case of C K Thomas Vs Scientific advisor, Ministry of Defence & Anr (1990 (3) CSJ-315) of the Ernakulam Bench of the Tribunal.

8. The respondents contested the claim of the applicant pleading that the applicant was placed in the next higher pay scale of LSG w.e.f. 17.12.1990 and he should have exercise his option within one month of this period and the stepping up of his pay viz a viz his junior was of no relevance for this purpose. The applicant was given another opportunity for exercising his option vide respondents communication dated 19.8.1994 wherein the provision for exercising option for pay fixation was made available to those whose promotion orders did not

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incorporates the rule. The applicant failed to take advantage of this and as such when no claim for the same was made his request has been rightly rejected.

9. We have heard the counsel for the parties and gone through the records placed before us. Counsel for the parties re-iterated their pleas during oral submissions. The basic facts are not contested. The applicant was promoted to LSG (TBOP) scale of Rs.1400 – 2300/- w.e.f. 17.12.90 and his pay was fixed at the stage of Rs.1400/- with DNI as 1.12.1991 . It is also not contested that subsequently his pay was stepped up to that of his junior vide order dated 5.11.1998. The applicant submitted options for re-fixation of his pay on 1.2.99 and second on 17.2.99 to the head of Record Officer of RMS Division Jaipur and Sr. Supdt. RMS Jaipur Division Jaipur respectively. The only ground on which the respondents have rejected the claim of the applicant is that he has not exercised his option on his promotion to LSG within one month, as required under FR 22(1)(a)(i).

10. We find that this argument of the respondents is not sustainable on the ground that the applicant could have exercised the option only when the need arose i.e. after his pay had been stepped up to that of his juniors to remove the anomaly. Once his pay has been stepped up it necessarily, follows that he would have a right for exercising the option under the relevant rules for fixing the date of increment provide the request was made within the period of limitation, which he has done. In view of this the OA succeeds and the respondents are directed to accept the option of





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the applicant dated 1.2.99 and re-fix his pay on the basis of his option by modifying the date of increment from 1st December to 1st March and pay all consequential benefits including arrears and retrial benefits as per law and rules within the period of six months from the date of receipt of this

order . No cost.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

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