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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration No. 1150(T) of 1986.

B.P. Chaudhari

plaintiff
applicant.

Versus

Union of India and others

Defendants
Respondents.

Hon'ble D.S. Misra, A.M.

Hon'ble G.S. Sharma, J.M.

(By Hon'ble D.S. Misra)

This is an original suit no. 1225 of 1985, which was pending in the court of Munsif City Kanpur and has come on transfer under Section 29 of the A.T. Act XIII of 1985.

2. The case of the plaintiff is that while working as Telephone Inspector, under the General Manager (Telephone) Kanpur, he was selected for the post of Junior Engineer on his successfully getting through the departmental qualifying examination for the year 1978 in the U.P. Circle Lucknow; that the plaintiff was promoted as Junior Engineer in the scale of Rs. 425-700 under the control of Asstt Engineer Auto Installation New Telephone Exchange Mathura vide letter dated 5.5.81 of the DET(SWG-PLG) office of the General Telecom Project New Delhi and he joined duty on 23.11.81; that the plaintiff was drawing basic salary of Rs. 488/- per month when he was promoted from the post of Telephone Inspector to the post of junior Engineer; that the plaintiff was entitled for the fixation of his basic pay under F.R. 22-A and F.R. 22-C in the scale of Rs. 425-700 and at the stage of Rs. 500/- per month w.e.f. 23.11.1981 and Rs. 530/- per month w.e.f. 12.1982, the date when his next increment

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was due ; that he is being paid at the rate of Rs.425/- per month w.e.f. 1.12.1981 and he has not received any salary from 23.11.1981 to 30.11.1981. The plaintiff has sought a direction to the defendants to fix the basic pay of the plaintiff at Rs.500/- since 23.11.1981 in the scale of Rs.425-700 and Rs. 530/-w.e.f. 12.1982 with all consequential benefits and arrears accruing to the plaintiff.

3. In the reply filed on behalf of the defendants, it is stated that the pay of the plaintiff was fixed on 16.6.83 at Rs.515/- in the scale of Rs.425-700 under F.R.22 C w.e.f. 23.11.1981 with the date of increment on 23.11.1982 to the stage of Rs.530/-; that to mitigate his difficulty in the matter of fixation of pay in the cadre of J.E. for want of LPC and service book from General Manager(Telephone)Kanpur, the minimum of Junior Engineers' scale i.e., Rs. 425/- per month was drawn and paid to the official; that the arrears of pay and allowances consequent on fixation of pay ~~could not be~~ has been paid to the official on 25.11.1985 and this could not be paid earlier for want of service book; that the official joined in the promotional post as J.E. on 23.11.1981 and he should have exercised his option before 22.12.1981, as per conditions laid down in the letter dated 26.9.1981 of the Government of India, Ministry of Home Affairs Department of Personnel and Administrative Reforms; that the entitled pay of the plaintiff from 23.11.1981 to 30.11.1981 and the difference of pay for the period 1.12.1981 to 30.6.1981 and the difference of pay for the period 1.12.1981 to 30.6.1983 have been drawn and the money has been sent through money order dated 25.11.1985.

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4. In the replication, filed by the plaintiff it is stated that he is entitled to the fixation of pay at the rate of Rs.500/- w.e.f. 23.11.1981 and Rs.530/- w.e.f. 12.12.1982; that the contention made by the defendants regarding exercise of the option by the plaintiff before 22.12.81 is incorrect; that it was the duty of the defendants to call for the option of the plaintiff in accordance with the letter dated 26.9.1981 of D.G. P & T; that the plaintiff was not asked to give any option by the appointing authority and he should not be punished for no fault of his own; that the plaintiff did not receive any appointment order and there was no occasion for him to exercise any option as alleged by the defendants; that the plaintiff has received the arrears in part and under protest; ^{that} In another affidavit filed by the applicant, it is stated that the General Manager Telecommunication Project New Delhi had informed the applicant vide his letter dated 20.2.84 (copy annexure 1); that his pay fixation will be revised in terms of OM dated 26.9.1981 on receipt of the service book; that the plaintiff opted for fixation of his pay vide his letter dated 7.12.1982 addressed to G.M. Telecom Project New Delhi, (copy annexure 2).

5. We have heard the arguments of the learned counsel for the parties and have carefully perused the documents on record. The short point for consideration in this case is whether the pay of the applicant on his promotion as Junior Engineer should be fixed in accordance with the provisions of F.R. 22 (A)(1) as contended by the plaintiff or in accordance with the F.R. 22-C as contended by the defendants. The applicant has contended that he had given his option on 7.12.1982 after his promotion as Junior Engineer w.e.f. 23.11.1981 (copy annexure 2) in which

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he had specifically requested that his pay should be fixed under F.R.22 (A)(1) from the date of his promotion and under F.R.22-C from the date of increment in the previous cadre of Telephone Inspector which happens to be 12.82. The defendants have raised the plea that the applicant should have given his option within one month from the date of his promotion if he wanted the fixation of his pay in the manner indicated above. The contention of the applicant is that in accordance with the instruction contained in the Ministry of Home Affairs, Department of Personnel OM dated 26.9.81, it was the duty of the defendants to obtain the option of the applicant. In any case the applicant had given his option vide his letter dated 7.12.1982 much before the fixation of his pay by the defendants by their order dated 16.6.83. The applicant's contention is that his pay on promotion should be fixed at Rs.500/- w.e.f. 23.11.1981 and Rs.530/- w.e.f. 12.1982.

6. We have examined these contentions of the applicant with reference to the instructions contained in F.R.22. F.R.22 C deals with the option for choosing the date of fixation of pay on promotion. The instruction contained in the Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms memo dt. 26th September, 1981 clearly states that "the President is pleased to decide that in order to remove the aforesaid anomaly, the employees may be given an option for fixation of his pay on promotion as under:-

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(a) Either his initial pay may be fixed in the higher post on the basis of F.R.22-C straightway without any further review on accrual of increment in the pay scale of the lower post; or,

(b) his pay on promotion, may be fixed initially in the manner as provided under F.R. 22(a)(1) which may be refixed on the basis of the provisions of F.R. 22-C on the date of accrual of next increment in the scale of pay of the lower post.

If the pay is fixed under (b) above, the next date of increment will fall due on completion of 12 months' qualifying service from the date pay is refixed on the second occasion. Option may be given within one month of the date of promotion. Option once exercised shall be final."

The above instructions are quite clear and the contention of the defendants that the applicant should have ^{been} ~~been~~ given his option within one month from the date of his promotion, is incorrect. On the other hand, the instructions cast a duty on the authorities to obtain the option of the government servant concerned and to pass suitable orders. The defendants have not contested the claim of the plaintiff that he had given his option on 7.12.82 even though he was not asked to give option. This option was given before the defendants, fixed the salary of the applicant on 16.6.83. In our opinion the plea taken by the defendants is not valid and is liable to be rejected. We are of the opinion that the plaintiff is entitled to fixation of his pay under F.R.22(a)(1) raising his pay to Rs.500/- per month in the old scale of pay and two more increments in the new scale of pay w.e.f. 12.82 under F.R. 22 C. In this way the applicant is entitled to fixation of his pay at Rs.500/- per month w.e.f. 23.11.1981 and Rs. 530/- per month w.e.f. 12.82 and to receive arrears thereof.

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The suit is decreed and parties shall bear their
own costs.

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A.M.

Zshar
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