

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 1<sup>st</sup> day of Nov. 2000.

CORAM :- Hon'ble Mr. Rafiq Uddin, Member- J.  
Hon'ble Mr. S. Biswas, Member- A.

Original Application No. 162 of 2000.

Maiya Deen Kuthar S/o Sri Bhondur Kuthar  
R/o A-825, M.I.G World Bank Colony, Barra, Kanpur  
At present posted Sub- Divisional Engineer, Telephone  
(Vigilance) Jhakanbag Chhabara Building, Jhansi.

.....Applicant.

Counsel for the applicant:- Sri I.M. Kushwaha

V E R S U S

1. Union of India through the Secretary, Tele-  
communication Department, Govt. of India,  
New Delhi.
2. The Chief General Manager, Maintenance (N.T.R)  
Kidwai Bhawan, New Delhi.
3. The Chief Account Officer (T.A) O/O G.M.N.T.R  
Prasad Nagar C.T.O Compound, New Delhi, 110228.
4. The Chief General Manager, Telecommunication,  
U.P. Circle (East), Lucknow.
5. The General Manager, Maintenance, Vidhan Sabha  
Marg, Akrit Building, Lucknow.
6. T.D.M. Chhabara Building,  
Jhokan Bagh, Jhansi.

..... Respondents.

Counsel for the respondents:- Sri R.C. Joshi.

O R D E R

(By Hon'ble Mr. S. Biswas, A.M.)

This application has been filed under section 19 of the Administrative Tribunal's Act, 1985 and the applicant has sought the following reliefs :-

(i) a direction to the respondents to fix the date of increment of the applicant on 1st of January instead of August and October in the category of J.T.O and S.D.E from 01.01.84 and 01.01.94 <sup>64</sup> being the respective up to dt. 31.12.98 and arrear of salary and allowances be paid with 18% interest.

(ii) the pay of the applicant be directed to be fixed at par with his junior one, Riaz Ahmad, S.D.E, Kanpur since 01.01.94.

2. The applicant's claim for refixation of his salary and stepping up is based on the following submissions.

3. The applicant was appointed and joined as a Repetitor Station Assistant (R.S.A) 04.03.67, whereas one Riyaz Ahmad was also appointed to the same post in the same scale on 02.01.71. After third Pay Commission Report, the said date of increment payment was changed to 01.01.74 and consequently both the applicant and Riyaz Ahmad began to draw the same pay in the R.S.A cadre.

4. The applicant was promoted as J.E (statedly re-designated as J.T.O) and joined on 21.08.82, while Riyaz Ahmad was promoted as J.E (J.T.O) and joined in the promoted post on 30.09.83 both statedly in the scale of Rs. 425-700/- while the applicant's pay was fixed at Rs. 530/- with due date of next increment on 1st August, Riyaz Ahmad's pay as J.E (J.T.O) was fixed at Rs. 560 with dt. date of next increment on 1st January (01.01.84).

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5. The applicant's pay was fixed on promotion without any option w.e.f. 1st August of each year, Riyaz Ahmad's was fixed on promotion in 1983 with date of increment fixed on 1st January, 1984. The case of the applicant was accepted much later by the respondent No.4 and equal salary of Rs. 9250/- w.e.f 01.01.99 was granted to the applicant.
6. The applicant moved a representation dt. 08.06.89 to respondent No.3. In reply he was asked by C.A.O on 26.10.90 to file option. The applicant made representation on 21.02.91. A recommendation was sent by A/C Officer on 08.03.91 to respondent No.3. But no action seemingly has been taken to change the date of increment to 1st January.
7. The applicant's pay was fixed at Rs. 2300/- on consequent to his promotion as Asstt. Engineer in T.E.S Gr, B (now S.D.E) on 07.10.93, whereas Riyaz Ahmad was promoted to T.E.S Group B and joined in October 1998 and his salary was fixed at Rs. 9250 on 01.01.99. The applicant though senior, was fixed at Rs. 8750/-. Thereafter, the case of the applicant warranted a stepping up.
8. The applicant made several representations and sent reminders to sortout the fact that like that of Riyaz Ahmad who is his junior ~~if~~ no option was taken from him at the time of his promotion in 1983 and later on for fixing his date of increment on 1st January and grant consequential salary differential which are due to him.
9. We have heard the rival counsels on facts and law.
10. The learned counsel for the respondents has contended that the O.A is not legally maintainable as the cause of



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action arising from the fixation of the pay of the applicant on the date of his promotion has been agitated about 16 years after the incident.

10. It was incumbent upon the applicant to submit his option, at the time of promotion as J.T.O if he wanted to have his increment deferred to 1st January next as against August. Then only he would have been eligible for stepping up in terms of F.R 22(C) (now read as F.R 22(1) (a) (i)) since the entire case of the applicant is based on alleged preference in fixation and option given to one Riyaz Ahmad, the latter should have been made a party for clarification of circulars leading to the anomaly, if any. This has also been defaulted to seal the exposure of facts relevant to the case.

11. The learned counsel for the respondents has however, admitted that the pay of the applicant prior to revision of pay w.e.f 01.01.86, was 560/- on 01.01.85, and the next date of increment was admittedly 1st August, whereas, the pay of Riyaz Ahmad was Rs. 580/- on 01.01.86. Therefore, the pay of the applicant was fixed at Rs. 1700/- as J.T.O whereas the pay of Riyaz Ahmad (J.T.O) was fixed at Rs. 1760 w.e.f 01.01.86.

12. The applicant's case is that vide C.A.O (SBP)'s order dt. 07.01.2000 the pay of the applicant as S.D.E was brought at par to the stage of Rs. 9250/- which his junior Riyaz Ahmad <sup>was drawing</sup> w.e.f 01.01.99 but similar anomaly is persisting since 1983 when his pay was fixed on the date of promotion i.e. 02.08.82 but the date of increment was not changed to January, 1983.

13. The respondents have contended that in (para 6) in 1983 at the time of his promotion, the applicant was

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required to exercise an option, which he did not. At the time of fixation of his pay in the revised scale w.e.f 01.01.86, the applicant was found drawing a salary of Rs. 560/- on 01.01.85, whereas his junior Riyaz Ahmad was drawing Rs. 580/- on that date consequently on 01.01.86, their respective pay were fixed differently. The pay of Riyaz Ahmad was fixed at Rs. 1760/- whereas the applicant's pay was fixed at Rs. 1700/- (J.T.O) W.e.f 01.01.86.

14. One of the basic preconditions for fixation of the pay of the senior by stepping up at par with junior drawing higher pay as envisaged under F.R 22<sup>C</sup> (now 22(1) (a) (i)) is that the senior <sup>has</sup> ~~got~~ <sup>been</sup> servant at the time of promotion have been drawing equal or more pay than the junior.

15. In this case the applicant was drawing lesser pay w.e.f 01.01.85 itself due to his default in option ~~at~~ at that stage. If the applicant was promoted on 02.08.82 the pay fixation without option would have been taken place as per the following flow- chart :-

Date of promotion/ fixation	Amount (Rs.)
02.08.82	530/-
01.08.83	560/-
01.08.84	580/-
01.01.85	580/-

16. We are not able to understand how then the applicant could be drawing lesser pay than Riyaz Ahmad who has not been made a party <sup>to</sup> clarify this <sup>amount</sup> ~~amount~~. The applicant is also unable to produce his promotion order by virtue of which he took charge as J.T.O on 02.08.82

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17. It is not clear to us how the date of promotion on 02.08.82 could be changed to 01.01.83 for the purpose of fixing the next date of increment for which the onus was on the applicant to produce evidence that he was required to opt for it but the respondents unlike the case of Riyaz Ahmad did not ask for his option. Here also we feel that Riyaz Ahmad should have been made a party, particularly when the applicant moved this application after about 16 years of the incident requiring correction.

18. We feel that the applicant has cited the case B.P. Chaudhry Vs. U.O.I & Ors quite out of context.

19. In view of the above, we dismiss the O.A as devoid of merits.

20. There will be no order as to costs.

S. Bawa  
Member- A.

S. J. Nandan  
Member- J.

/Anand/