

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

**O.A. No. 195 of 1993**

~~T.A. No.~~

**DATE OF DECISION** 23/9/1993

Babubhai Premjibhai Patel Petitioner

Shri Babubhai Premjibhai Patel ~~Advocate for the Petitioner(s)~~  
(Party-in-Person)

Versus

Union of India & Ors. Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. N.B. Patel Vice-Chairman

The Hon'ble Mr. V. Radhakrishnan Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No.

Shri Babubhai Premjibhai Patel,  
Assistant Superintendent  
(Telegraph Traffic),  
Incharge: Telegraph Office,  
Maninagar, Ahmedabad - 380 008.

..... Applicant

Shri Babubhai Premjibhai Patel

Party-in-Person

Versus

1. Union of India through  
Director General (Telecommunications),  
Sanchar Bhawan,  
New Delhi - 110 001.

2. Chief General Manager,  
(Telecommunications) P & T,  
Administrative Building,  
Khanpur, Ahmedabad-380 001.

3. Chief Superintendent,  
Central Telegraph Office,  
C.T.O. Bhadra, Lal Darwaja,  
Ahmedabad - 380 001.

..... Respondents

Shri Akil Kureshi

..... Advocate

J\_U\_D\_G\_M\_E\_N\_T

IN

O.A. 195 of 1993

Date:-23/9/1993

Per Hon'ble

Mr. N.B. Patel

Vice-Chairman.

The applicant challenges the decision (Annexure-A) dated 13-5-92, by which his representation to accept his option dated 25-3-82 for pay fixation under F.R. 22(a)(i) and F.R. 22(C) is rejected, on the ground that the said option was not given within the stipulated period of one month from the date of promotion. The applicant says that his option dated 25-3-82 should have been accepted and his pay should have been fixed on his promotion on the basis of the said option.

2. The material facts which have led to the filing of this application by the applicant are not in dispute and may first be stated. On 27-1-82, the applicant was promoted to A.S(T.T.) in the scale of 425-15-500-EB-15-560-20-640-EB-20-700-25-750, from the post of L.S.G(T.M) in the scale of 425-15-500-EB-15-560-EB-20-640. Till the O.M. dated 26-9-81 (Annexure A-3) was issued, the only manner in which the fixation of pay of an employee promoted from a lower scale post to a higher scale post was the one prescribed by Fundamental Rule 22(C). However, by the O.M. dated 26-9-81, another alternative manner, namely, the one of combination of FR 22(a)(i) and FR 22(C) was also prescribed and the promotees were asked to exercise option in favour of one or the other manner of pay fixation on their promotion within one month of the date of their promotion. The applicant was thus required to exercise option latest by 26-2-82. However, till then he had not exercised option one way or the other and, therefore, his pay was fixed at Rs.580/- as on 27-1-82. Subsequently, the applicant exercised option in favour of fixation of his pay under FR 22(a)(i) and FR 22(C) and his said option, even though it was given beyond stipulated period of one month after the date of promotion, was accepted and his pay was re-fixed as per his said option. That was done on 15-4-82. Subsequently, however, his option was rejected and his pay fixation was revised by the order dated 22-12-84 (Annexure R-6) and recovery of the excess payment made to him on the basis of acceptance of his option was ordered. It appears that if the pay of the applicant is fixed on the basis of Fundamental Rule 22(C) only, his pay would be fixed at Rs.580/- as on 27-1-82 and the

next date of increment for him will be 1-1-83 from which date his pay will go up to Rs.600/-. If the pay of the applicant were to be fixed on the basis of his option, it would be fixed at Rs.560/- on his date of promotion and he will get the benefit of refixation of his pay on his next increment date and his pay would be fixed at Rs.600/- on 3-9-82 on his increment date. The next date of his increment would then be 1-9-83 and, on that day, his pay would go upto Rs.620/-. It appears that if the pay of the applicant is fixed in this latter manner, it would be more beneficial to him and he would have some benefit even as regards pension etc. payable to him on his retirement. As already stated, the option exercised by the applicant on 25-3-82 was once accepted and his pay was fixed as demanded by him, but it was subsequently rejected on the ground that he had exercised the option beyond the stipulated period of one month, as per O.M. dated 27-1-82. It is this rejection of the option by the Department that is challenged by the applicant.

3. The respondents have resisted the application on the ground that the option having not been exercised by the applicant within the stipulated period, his pay was rightly fixed under FR 22(C) and the earlier fixation of pay on the basis of his option was done under a mistake and, therefore, the mistake was rightly rectified. The claim of the applicant is resisted also on the ground that it is barred by delay, latches and inaction on the part of the applicant inasmuch as even though his pay was revised in 1984, he has approached the Tribunal only in 1993. The other ground on which

the application is resisted is that, even assuming that there was a general or special power to make relaxation in the matter of time-limit within which the option was to be exercised, the facts and circumstances of the applicant's case do not justify any such relaxation. In his application, the applicant has averred that the O.M. dated 26-9-81 by which the option was to be exercised by the promotees within one month from the date of the promotion, was not notified on the Notice Board and this averment is also contested by the respondents and they have stated that the O.M. was properly displayed on the Notice Board.

4. There is no doubt about the fact that the applicant having been promoted on 27-1-82, he had the right to exercise option either for his pay fixation under FR 22(C) or under FR 22(a)(i) read with FR 22(C). There is also no dispute about the fact that the applicant had, in fact, exercised option for fixation of his pay under FR 22(a)(i) read with FR 22(C) on 25-3-82. The only fault found by the Department in the matter is that the exercise of option by the applicant was beyond the period stipulated in the O.M. dated 26-9-81. As already stated, under that O.M. the promotees were required to exercise their option within one month of the date of their promotion. In the case of the applicant, the last date for exercising the option would, therefore, be 26-2-82 but there was a delay of about 25 or 27 days in the exercise of option by the applicant. The applicant's case is that the O.M. dated 26-9-81 was not notified on the Notice Board and, therefore,

there was delay on his part in exercising the option. We are not prepared to accept this ground on which the applicant has tried to justify the delay in the exercise of option by him, because we find an endorsement below the O.M. dated 26-9-81 (Annexure R-3) showing that a copy was sent for being displayed on the Notice Board. We also accept the version in the reply affidavit that the O.M. was duly notified on the Notice Board. It appears, however, that it might not have been displayed on the Notice Board till a few days before the promotion of the applicant on 27-1-82. Even according to the respondents, as stated in paragraph 4 of their reply, the O.M. was notified on the Notice Board on 28-1-82, the applicant was promoted on 27-1-82 and the possibility of the O.M. having skipped his notice, cannot be ruled out. We are hinting at this possibility bearing in mind the fact that, if the applicant had known that he was required to exercise the option latest by 26-2-82, he would not have missed to do so, since the exercise of option by him was beneficial to him. In all probability, therefore, the case appears to be a case of omission to exercise the option within the stipulated period only due to ignorance of the requirement that it was to be exercised by the applicant latest by 26-2-82. It is also material to note in this connection that, subsequently, by Annexure A-8, dated 24-12-81 circulated on 5-2-82, it was clarified that those who were promoted between 1-5-81 and 25-9-81 may exercise the option as required by the O.M. dated 26-9-81 latest by 31-3-82. This might also have misled the applicant into believing that the last date for him to

exercise the option was 31-3-82. In this connection, it is very significant to note that the option exercised by the applicant on 25-3-82 was undisputedly accepted by the Chief Superintendent, Central Telegraph Office, Ahmedabad without raising any objection that the option was exercised beyond the stipulated period. Not only that the option, though belated, was accepted by the Chief Superintendent without any demur, the pay of the applicant was fixed as per his option by Annexure R-4 dated 15-4-82. It is also significant to note that, while fixing the pay of the applicant on the basis of his option dated 25-3-82, a reference is made in Annexure R-4 to the O.M. Annexure A-8 dated 24-12-81 (circulated on 5-2-82) which extended the time-limit for promotees between 1-5-81 and 25-9-81 to 31-3-82. Thus, it appears that even the Accounts Section of the Department was under the impression that, in view of Annexure A-8, the applicant could have exercised his option till 31-3-82. If the Accounts Section of the Department was under such a mistaken impression, the mistake or the mistaken impression on the part of the applicant must be held to be excusable. It is also only by Annexure A-2, dated 22-12-82 i.e. more than two years after the fixation of the pay of the applicant on the basis of his option, that his pay was again re-fixed as per the provision of FR 22(C). On facts, therefore, we find that the Department should not have fastidiously stuck to the time-limit but ought to have granted relaxation in that respect, provided that there was such power of making relaxation in the matter of time-limit within which the option was to be exercised.

5. That brings us face to face with the question whether the concerned authority will have no power to make relaxation in the matter of time-limit, simply because in the O.M. it is stated that the option was to be exercised within one month of the date of the promotion and the option once exercised will be final. We are clearly of the opinion that, though it is stated that the option once exercised will be final, there is no embargo on the competent authority against making a relaxation in respect of time-limit in a genuine and fit case. If this was not so, it will not be possible to do justice even in gross cases where a promotee might have failed to exercise his option within the time-limit for reasons beyond his control such as physical or mental disability. In the present case, the factors which the Department should have borne in mind were that there was a distinct possibility of the applicant being un-aware of the O.M. which was issued and notified only a few days prior to his promotion; that, since the exercise of option by the applicant in the manner done by him on 25-3-82 was beneficial to him, he would normally have exercised the option within the prescribed time if he was aware of the time-limit; that even the Accounts Section of the Department also was under the impression that, by virtue of Annexure A-8, the time-limit for exercising the option was extended till 31-3-82. It must also be borne in mind that the provisions made by the O.M. dated 26-9-81 (Annexure R-3) were for the benefit of the employees and were made on the demand of the employees.

This being the case, we are of the opinion that the authorities could have taken a liberal view about the time-limit in the facts and circumstances of the case like the present one. We are of the opinion that the respondents had the implied power to make relaxation in respect of the time-limit and they should not have revised the pay-fixation of the applicant once having accepted the option and having fixed his pay on the basis of that option. We are, therefore, not prepared to accept the alternative submission of Shri Kureshi that, even assuming that there was power of relaxation, there was no adequate ground for making any relaxation in favour of the applicant.

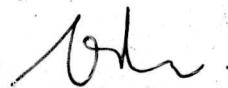
6. Lastly, it was contended by Shri Kureshi that the applicant's claim was barred by delay, latches and inaction on his part for a long time. However, the record shows that, after the option exercised by the applicant was rejected by R-6 dated 26-12-84, the applicant had started making representations to the concerned authorities from 17-1-85 and his last representation was rejected on 13-5-92 by the letter Annexure -A. Apart from all this, since we find that the applicant has a genuine case and it would be unjust to refuse relief to him, we are not inclined to throw away the applicant's claim on the ground of delay or latches, because grant of relief to the applicant is not going to cause any prejudice to anybody including the Department.

7. In the view of the matter taken by us above, we allow this application and direct the respondents to refix the pay of the applicant on his promotion w.e.f. 27-1-82 on the basis of his option dated 25-3-82 and to grant him all benefits of pay and retiral benefits

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consequent upon his pay fixation on the basis of the said option exercised by him. Refixation of the pay and retiral benefits of the applicant will accordingly be made within two months hereof.

There will be no order as to costs.



( V. Radhakrishnan )  
Member (A)



( N.B. Patel )  
Vice-Chairman.

'pkk'

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD.

Application No. CA/195/93 of 199

Transfer Application No. — Old writ Pet. No. —

C E R T I F I C A T E

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated : 11/10/93

Countersigned :

Section Officer/Court Officer

*(Signature) 10-11-93*

Sign. of the Dealing Assistant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD BENCH

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NAMES OF THE PARTIES Shri B. P. Patel

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