

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH,CUTTACK**

**ORIGINAL APPLICATION NO.124 OF 1999**

Cuttack, this the 28<sup>th</sup> day of November, 2003

Tikasla Patra ..... **Applicant**

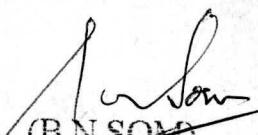
Vrs.

Union of India and others ..... **Respondents**

**FOR INSTRUCTIONS**

1. Whether it be referred to the Reporters or not? **NO**
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? **NO**

  
(BHARATI RAY)  
MEMBER(JUDICIAL)

  
(B.N.SOM)  
VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL,  
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Cuttack, this the 28th day of November, 2003

CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

AND

HON'BLE SMT.BIHARATI RAY, MEMBER(J)

Tikasal Patra, aged about 48 years, son of late Jagdish Patra, permanent resident of village Salepali, Post Salepali, Via Melchamunda, District Bargarh, presently working as Senior TOA(T) at SFT-162 Central Room, Telephone Bhavan, Farm Road, Sambalpur

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Applicant

Advocate for applicant

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Mr.Ashok Kr.Mishra

Vrs.

1. Union of India, represented through D.G., Telecom, Sanchar Bhavan, New Delhi.
2. CGM, Telecom, Orissa Circle, Bhubaneswar 751001, Dist.Khurda,Orissa
3. Telecom District Manager, Sambalpur, At/PO Sambalpur, PIN 768001 (Orissa)

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Respondents

Advocate for respondents

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Mr.S.Behera, ACGSC

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## ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

In this Original Application, the applicant Shri Tikasal Patra has prayed for quashing the impugned order at Annexure 3 denying him arrears of pay prior to the date of exercise of option for fixation of initial pay on his re-employment in the P&T Department and also for a direction to the Respondents to pay him arrears of pay as due and admissible on re-fixation of pay.

2. The case of the applicant, in short, is that on release from military service, he was re-employed as Telegraphist, Telegraph Office, Sambalpur with effect from 12.1.1983. Although there is provision for fixation of initial pay of the ex-serviceman from the date of his appointment in civil post and although the Respondents fixed his pay from 12.1.1983 on his exercising option from 5.2.1994, they did not disburse to him the arrears of pay for the period from 12.1.1983 to 4.2.1994 in spite of his repeated representations. The applicant's plea is that denial of arrears of pay by the Respondents is arbitrary and illegal inasmuch as no option was invited by Respondent No.2 from the applicant and there is no provision of exercise of option according to the letter

No.16/3/85-Estt.(Pay-I) dated 22.1.1987 of the Department of Personnel & Training.

3. The Respondents have contested the Original Application by filing a counter and have submitted that the applicant is not entitled to any of the reliefs as sought for by him on the ground that he had never exercised the option to fix his pay in accordance with the provisions contained in the order of the Director General, P&T, dated 8.3.1982 (Annexure 4). He had never exercised option within 3 months/6 months of his joining civil employment. In fact he exercised his option only on 5.2.1994. As soon as the Respondents received his option, they re-fixed his pay with effect from 12.1.1983 under FR 27 raising it from Rs.284/- to Rs.324/-. However, he was paid arrears of pay on such re-fixation only from 5.2.1994, i.e., the date of his exercising option according to the Director General, P&T's letter dated 8.3.1982. They have also rebutted the averments made in the Original Application that there is no provision for exercising option according to the letter dated 22.1.1987 issued by the Department of Personnel & Training. They have clarified that the letter dated 22.1.1987 deals only with the mode of pay fixation on re-employment of ex-servicemen as Telegraphist/Telephone Operator in the

Department of Posts & Telegraphs. They have also reiterated that the representation dated 5.2.1996 submitted by the applicant was disposed of by Respondent No.2 by order dated 21.5.1999, which was communicated to the applicant on 1.6.1999.

4. We have heard the learned counsel for the rival parties and have perused the records placed before us.

5. We have given our anxious thoughts to the grievance of the applicant. He is aggrieved that although his pay has been re-fixed with effect from 12.1.1983 giving him the benefit of the Government order contained in the Department of Telecommunication, New Delhi's letter dated 4.9.1989 (Annexure 3) under FR 27, the actual benefit of pay fixation has been granted from 5.2.1994, i.e., the date on which he exercised his option in terms of the Department of Telecommunication's letter dated 8.3.1982. As this order re-fixing his pay was issued on 11.7.1996 (Annexure 3), he was given arrears of pay from 5.2.1994 to July 1996 and no arrears of pay were disbursed for the earlier period. The applicant's further submission is that he could not be denied of the actual benefit of pay on the ground that he had delayed submission of option because he was never given any notice by the

*[Signature]*

Department that he should submit option to fix his pay taking into account the length of service in the armed forces. It was only in 1994 that he became aware of this benefit of fixation of pay in civil service taking into account the length of military service. The Respondents in their counter have submitted that payment of arrears of pay prior to the date of exercise of the option is not permissible under the Government order. In the Respondent-Department's instruction dated 8.3.1982, all that has been mentioned is that the Department did not have the power to condone any delay in exercise of option and such cases are to be referred to the Department of Personnel & Administrative Reforms for condonation of delay and that the Department discourages entertaining delayed cases. The said instruction issued to all the Heads of Circles and other Administrative Heads of the Indian Posts & Telegraphs Department, is as follows:

“..... In all such cases, arrears are allowed only from the date of exercise of option, which is a loss to the official. In this connection, it may be noted that it is the duty of the appointing authority to fix the pay of the re-employed pensioners after obtaining their option within the stipulated period.”

6. From the instruction issued by the Director General, P&T, dated 8.3.1982, it is clear that the power to condone any delay in exercise of option

lies with the Department of Personnel & Administrative Reforms and that benefit of arrears of pay is allowed only from the date of exercise of option. The Department has, therefore, called upon the appointing authority to ensure that pay of the re-employed ex-servicemen is fixed after obtaining their option within the stipulated period. As there is provision for condonation of delay in exercise of option, but there is no provision for payment of arrears of pay prior to the date of exercise of option, the Respondents have not been able to accede to the request of the applicant to make payment of arrears of pay prior to the date of exercise of option. We see no illegality in the impugned order denying him such arrears of pay. As the pay of the applicant has been re-fixed, taking into account the length of his military service, with effect from 12.1.1983, when he joined the civil post, on a notional basis upto 4.2.1994 and he has been allowed the actual financial benefits from 5.2.1994, i.e., the date of his option, we see no reason to interfere in the matter.

7. In the circumstances, this Original Application fails and is accordingly dismissed. No costs.

*Bharati Ray*  
(BHARATI RAY)  
MEMBER(JUDICIAL)

*B.N. Som*  
(B.N. SOM)  
VICE-CHAIRMAN

AN/PS