

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD

O.A. No. 17401 1997.

G. Lazarus

(Applicant(s)).

VERSUS

The Chief Post Master General, AP, Hyderabad

(Respondent(s)).

Date	Office Note.	Order
<u>30-12-97</u>		Heard Sri Subrahmanyam for Mr. S. R. Anjaneyulu ms. Shyam for Respondent, Adviser.
		<i>R</i> HBSJP MRS DSR
<u>Admit/Notice on 1/1/98</u> <u>Issued 9/1/98</u>	<u>Before DR Court</u> 18-8-98 None for the Applicant. M/s. Shyam for Mr. K. Ramulu A.C.W. present, Seeks time for filing reply. Notice Sd. on R1 and R3. Notice sent to R2 not yet returned Sd. but deemed to have been Sd. Cm. on 29-9-98 for memo and reply	<u>2/3/99</u> List on 16/3/99. Reply should be filed before that. <i>R</i> HBSJP MRS DSR <u>16/3/99</u> The OA is dismissed as infractions vide order on separate sheet. NO Costs. <i>R</i> HBSJP MRS DSR

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH : HYDERABAD.  
ORIGINAL APPLICATION NO. 1740 /97.

G. Lazarus

(Applicants(s))

Union of India, Regd. By.

Chqg Post Master General, AP Postal Circle

Hyderabad 8 2005

(Respondents(s))

The application has been submitted to the Tribunal by  
Sri ICSR Anyanguly Advocate/Party in  
person Under section 19 of the Administrative Tribunal Act.

1985 and the same has been scrutinised with reference to the  
points mentioned in the check list in light of the provisions  
in the Administrative Tribunal (Procedure) Rules 1987.

The Application is in order and may be listed for admission  
on \_\_\_\_\_

S 17/11/97  
Scrutiny Asst.

Anil  
Deputy Registrar (Judl).

13. Has the Index of documents been filed and pagination done properly. *u*
14. Has the declaration as required by item No. 7 of form been made. *u*
15. Have required number of envelops (file size) bearing full address of the respondents been filed. *u*
16. (a) Whether the relief sought for, arise out of single cause of action. *u*  
(b) Whether any interim relief is prayed for, *u*
17. In case an MA for condonation of delay in filed, it supported by an affidavit of the applicant. *u*
18. Whether this cause be heard by single Bench. *N*
19. Any other points.
20. Result of the Scrutiny with initial of the Scrutiny clerk.

*23/1/97*  
Scrutiny Assistant.

May be numbered pl.

Section Officer.

Deputy Registrar.

Registrar.

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

Diary No. 4025/97

Report in the Scrutiny of Application

Presented by in ICSR Anymeyulu Adv

Date of Presentation

Applicant(s) G. Lazarus

9/12/97

Respondent(s) City Post Master General, AP Postal Circle

Nature of Grievance Non delivery of letters, Non payment of fees

No. of Applicants

No. of Respondents

CLASSIFICATION

Subject Non payment of fees No.

Department Postal (11) (No.)

1. Is the application in the proper form, (three complete sets in papers books form in two compilations). Y
2. Whether name description and addressed of all the parties been furnished in the cause title. Y
3. (a) Has the application been fully signed and verified. Y  
 (b) Has the copies been duly signed. Y  
 (c) Have sufficient number of copies of the application been filed. Y
4. Whether all the necessary parties are impleaded. Y
5. Whether English translation of documents in a language other than English or Hindi been filed. Y
6. Is the application on time, (See Section 21). Y
7. Has the Vakalatnama/Memo of Appearance/Authorisation been filed. Y
8. Is the application maintainability. Y  
 (W/s 2, 14, 18, or U/R 8 Etc.,)
9. Is the application accompanied IPO/DD, for Rs.50/- Y
10. Has the impugned orders original, duty attested legible copy been filed. Y
11. Have legible copies of the annexure duty attested been filed. Y
12. Has the applicant exhausted all available remedies. Y

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD.

I N D E X

O.A.NO.

1740

of 1997.

CAUSE TITLE

G. Lazarus

V E R S I S S.

The CPMU, AP, And 4 20th.

SL.NO.	Description of Documents	Page No.
1.	Original Application	1 to 11
2.	Material papers.	11 A to 29
3.	Vakalat	
4.	Objection sheet	
5.	Spare copies.	3. (Three)
6.	Covers.	3. A

to set aside the order dt. 13/8/96 1.9.97 as arbitrary, illegal and to direct the concerned to fix the pay of the applicant as on 1-1-86 in the revised scale and to lay the same before the

*Bullet* APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNALS

ACT, 1985.

O.A.No: 17 WO of 1998

fixation of pay

Between:

G. Lazarus

and

Union of India represented by

Chief Post Master General and  
2 others.

पोस्टल POSTAL

... Applicant.

postal (1)

. Respondents.

I N D E X



Sl. Details of the No. Documentz	Annexure No.	Page Nos. From To
01. Application	--	01 to 10
02. Superintendent of Post Offices, Nandyal Letter AC/CAT/13/86 dated at Nandyal 1.9.1997	01	11A to 12
03. OM Dated 4.5.1987 Item No: 273 Swamy's Annuald 1987	02	12 to 13A
04. OM Dated 23.03.1995 Item No: 111 Swamys News May, 1995.	03	14 to 14
05. Option of the applicant dated 18.12.1995	04	15 to 15
06. Post Master, Markapur Reply letter dated 8.4.1996	05	16 to 16
07. Representatin of the applicant dated 23.04.1996	06	17 to 18
08. Reminder dated 31.07.1996	07	19 to 19
09. SPOs Nandyal Letter dated 13.8.96	08	20 to 21
10. Judgement of CAT dated 4.12.96	09	22 to 24
11. Judgement of Honourable Supreme Court	10	25 to 29

*Reuf*  
B. N. R. D. D. D.  
COUNSEL FOR THE APPLICANT.

*B. N. R. D. D. D.*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH AT  
HYDERABAD.

O.A.No: 1740 of 1996.

Between:

G. Lazarus

.. Applicant.

and

Union of India represented by:

Chief Post Master General and  
2 others.

.. Respondents.

CHRONOLOGY OF EVENTS

Sl. No.	Date	Event
01.	01.01.1986	Date of increment of the applicant.
02.	04.05.1987	Issue of orders for fixing the pay in such cases.
03.	23.03.1995	Issue of revised orders.
04.	December, 1995	Applicant came to know of the orders through Audit Party.
05.	18.12.1995.	Applicant gave option.
06.	18.04.1996	Post Master rejected the option
07.	23.04.1996	Applicant represented to the Superintendent of Post Offices.
08.	13.08.1996	Superintendent of Post Offices, Nandyal rejected the application.
09.	04.12.1996	O.A.No: 1402/96 ordered by CAT.
10.	01.09.1997	CPMG rejected the claim.

*Subrahmanyam*  
COUNSEL FOR THE APPLICANT.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH AT  
HYDERABAD.

O.A.No:1740 of 1997

Between:

G. Lazarus son of G. Daniel, aged  
44 years, working as Sub Post Master  
at Cumbum East Sub Post Office,  
Prakasham District.

.. Applicant.

and

Union of India represented by:

1. Chief Post Master General,  
Andhra Pradesh Postal Circle,  
Hyderabad.

2. Superintendent of Post Offices  
Nandyal Postal Division, Nandyal,  
Kurnool District.

3. The Post Master, Markapur Head  
Post Office, Markapur, Prakasam  
District.

.. Respondents.

Address for service

: K.S.R. ANJANEYULU &  
D. SUBRAHMANYAM  
Advocates, Jawaharnagar,  
HYDERABAD 500 020.

Details of the Application:

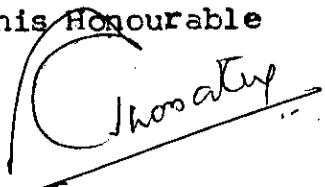
1. Particulars of the order against which this application is filed:

This application is filed against the orders of the Chief Post Master General, Andhra Pradesh Circle (Respondent No: 1) conveyed by the Superintendent of Post Offices, Nandyal (Respondent No: 3) in his letter AC/CAT/13/96 dated at Nandyal 1.9.1997 (Annexure 1 Page 12) rejected the request of the applicant for revised pay fixation in terms of Director General Posts Letter OM 1(2) E III/95 dated 23.3.1995 (Annexure 3 Page 14).

2. Jurisdiction:

The applicant declares that the subject matter of the application is within the jurisdiction of this Honourable





Tribunal as per Section 14(1) of the Administrative Tribunals Act, 1985, as the applicant is working Sub Post Master at Cumbum East Post Office in Nandyal Postal Division.

3. Limitation:

The applicant further declares that the application is within the period of limitation as prescribed in Section 21 of the Administrative Tribunals Act, 1985. The impugned order is dated 13.08.1996.

4. Facts of the case:

4.1. The applicant humbly submits that he entered the Department as P.A. on 12.01.1978. As on 31.12.1995 he was drawing a pay of Rs. 316 in the scale of 260-480 with D.N.I. as on 1.1.1986. Consequent on revision of pay scales w.e.f. 1.1.1986 his pay was fixed at Rs.1,150/-.

4.2. Initially it was clarified in the Ministry 7(21)-R/87 dated 4.5.1987 (Swamy's Annual 1987 - Page 273 Item 233 Annexure 2) <sup>page 13</sup> that increment in the pre revised scale is to be allowed first on 1.1.1986 and the pay fixed in the revised scale thereafter. His pay was fixed at Rs. 1,150/- on that basis.

4.3. The Staff side in National Counsel demanded that the Government servant whose increment fell on 1.1.1986 should have his pay fixed in revised scale without taking into account the increment and that the increment be allowed in the revised scale. The matter was considered and ultimately revised orders were issued under Government of India, Ministry of Finance OM No: I (2)-E/III/95 dated 23.03.1995 (Item No: 111 of Swamy's News May, 1995) (Annexure 3) <sup>page 14</sup> stating interalia "The Pay in the revised scale as on 1.1.1986 may be fixed

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without taking into account the increment due on 1.1.1986. After the pay in the revised scale is so fixed, the increment may be allowed on 1.1.1986 in the revised scale". Options were required to be exercised within a period of six months and the Ministry advised to bring the provisions of this Memo to all concerned and once option is exercised the same shall be deemed as final. It is also stated in the said letter that in case no option is exercised it shall be presumed that the Government employee has opted to get his pay fixed by drawing increment in the pre revised scale and thereafter the pay being fixed in the revised scale in accordance with provisions of OM 7(20)E/III/87 dated 4.5.1987 (Annexure 2 Page 13 ).

4.4. It is humbly submitted, that the revised orders dated 23.03.1995 (Annexure 3 Page 14) have not been circulated or brought to the notice of the applicant and no opportunity was provided for exercising the option as envisaged in the orders. During the course of Audit Inspection in December, 1995, the applicant came to know that he is entitled to get pay fixed in the revised scale of 1986 since his date of increment was on 1.1.1986.

4.5. The applicant gave his option on 18.12.1995 (Annexure 4 Page 15) after knowing from the Audit Party. The Post Master, Markapur vide his letter No: 11/Revised Pay/96-97 dated 8.4.1996 (Annexure 5 Page 16) replied the applicant stating that he has not exercised the option as required in para 3 of the OM dated 23.03.1995 (Annexure 3 Page 14) and hence he is not eligible for fixation of pay in the revised scale with effect from 1.1.1986.

4.6. The applicant submitted a representation on 23.04.1996 (Annexure 6 Page 17) to the Superintendent of Post Offices,

*D. S. Mehta*

*C. Chonkay*

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Nandyal specifically stating that the circular dated 23.03.1995 was not circulated and the applicant is not aware of the option to be exercised. He came to know of it only in December, 1995 through Audit Party and gave his option on 18.12.1995 and as such his option should be taken into consideration and his pay shoul be fixed as on 1.1.1986 and allow the increment on 1.1.1986 in the revised scale and pay him the arrears. The applicant also sent a reminder on 31.07.1996 (Annexure 7 Page 19) for early action.

4.7. The Superintendent of Post Offices, Nandyal Division in his lette AC/RPR/1981/Dlgs dated 13.08.1996 (Annexure 8 Page 20) replied stating that the applicant has not exercised his option within the period of stipulated time in terms of OM dated 23.03.1995 (Annexure 3) <sup>Page 14</sup> and as such he is not eligible for fixation of pay w.e.f. 1.1.1986.

4.8. It is submitted that it is not denied/disputed that the revised orders dated 23.3.1995 was not brought to the notice of the applicant to exercise his option. It is also not denied that the applicant is eligible for revised pay fixation. In the circumstances, the applicant cannot be denied what is due to him under revised orders and he cannot be put to loss and penalised for no fault on his part. The action of the Superintendent in rejecting the option of the applicant and not fixing his pay in the revised scale as per the revised orders dated 23.03.1995 is wholly arbitrary, unjustified and untenable. The applicant left with no alternative approached this Honourable Tribunal filing O.A. No: 1402 of 1996 which was ordered on 04.12.1996 (Annexure 9 Page 21).

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4.9. This Honourable Tribunal in para 5 of the order directed:

5. The only point for consideration in this O.A. is whether the OM Dated 23.03.1995 was circulated. If it was not circulated in time to enable the officials to exercise their option, then the applicant may have a case. Respondent No: 2 has rejected the option of the applicant as that option was not exercised in time. But whether the contents of the Memorandum dated 23.03.1995 were brought to the notice of the officials concerned is to be seen. Each Department has its own method of bringing to notice of concerned officials any important memorandum. If those methods were adopted in accordance with the rule then the applicant cannot ~~be~~ have any grouse for non display/ non-bringing to the notice of the concerned official in accordance with the rules, practice, procedure. It is a factual verification. No adjudication is required in this connection. If the notification was not brought to the notice of the applicant in time, then the official can not be penalised by not granting him therelief as per the memorandum. If it was brought to the notice of the concerned official and the concerned official did not take any action on the basis of the Memorandum then the Government cannot be held responsible for not implementing the orders of the Memorandum.

6. In view of what is stated above Respondent No: 1 should examine the issue in toto and decide the

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brought to the notice of the applicant in time then the official cannot be penalised by not granting him relief.... The reply is cryptic, non speaking and arbitrary and contrary to the clear directions of this Honourable Tribunal.

4.12. The applicant further submits that in the jurisdiction of Respondent No: 3, there are 3 officials whose increments fell on 1.1.1986 and all of them were denied the benefit of Director General Posts Circular dated 23.03.1995 (Annexure 3 Page 14). All the three officials filed O.A.s in this Honourable Tribunal.

O.A. No: 1306 of 1996 was admitted and is awaiting disposal. No counter has also been filed in this O.A.

O.A.s 1402 and 1403 were disposed of at the admission stage itself directing Respondent No: 1 to verify whether the contents of the circular were brought to the notice of the applicants and dispose of the representations.

It is learnt that among the two applicants of O.A.s 1402 and 1403, the applicant of O.A. No: 1403 was given relief solely on the plea that the official belongs to Group D. The denial of relief to the applicant who is similarly situated is discriminatory.

4.13. The applicant also submits that the Honourable Supreme Court decided identical case Chander Bhangill Vs. Union of India reported at (1994) ATC 27-869. In that case also the applicants increment fell on 1.1.1986. The increment was given in the old scale and then the pay was fixed in the New Scale which worked to the detriment of the applicant. The applicant approached the Principal Bench.

*D.S. Mehta*

*Chander Bhangill*

of the Central Administrative Tribunal. His O.A. was dismissed. Then he approached the Apex Court in Civil Appeal No: 3958 of 1992 which was decided on July 14, 1994.

4.13.2. The Honourable Supreme Court at Para 9 of the order held as follows: "It is not dispute that the applicant did not given any option under Rule 5 of the Rules and as such under Rule 6(3) he became entitled to therevised scale of pay. "With effect on and fro 1.1.1986". Since the minimum of the revised scale was more than the amount worked out under Rul. 7(1)(A)(i)(ii) he became entitled to be fixed at 1640 as basic pay with effect from 1.1.1986 in the revised scale. The pre-revised scale ceased to operate on 31.12.1985. Rule 8 of the rules clearly lays down that "the next increment of a Government Servant whose pay has been fixed in the revised scale in accordance with Sub Rule (1) of Rule 7 shall be granted on the date he would have drawn had he continued in the existing scale. The language of the rule makes it clear that the applicant whose annual increment became due on 1.1.1986 was entitled to grant of the said increment in the revised pay scale. We are therefore of the viewthat the appellant Gill was entitled to the grant of Rs. 60/- as increment with effect from 1.1.1986 and his basic pay in the revised scale should have been fixed at Rs. 1700/- from 1.1.1986. We allow the appeal and set aside the judgement of the Tribunal. We direct the respondents to fix the pay of the appellant as Rs. 1700 with effect from 1.1.1986 and give him all the consequential benefits. This should be done within three months from the date of receipt of this Judgement. The appellant shall be entitled to his costs which we quantify as Rs. 10,000/-

*D. J. Kelly*

*C. Chandra*

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4.14. The applicant submits that he is identically situated ~~the~~ as the appellant in the case decided by the Supreme Court and hence this case is covered on all fours by the Judgement of the Supreme Court.

5. Grounds for relief with legal provisions:

1. The contents of orders dated 23.03.1995 (Annexure 5) were not brought to the notice of the applicant. The contention of Chief Post Master General that they circulated to all offices and the official was on duty and hence it has to be presumed that the contents of the circular was brought to the notice of the applicant is arbitrary, unjustified and untenable.

2. The applicant cannot be denied the benefit of the orders dated 23.03.1995 for fixation of pay in the revised scale for no fault on his part.

3. The action of the Superintendent of Post Offices denying fixation of pay in the revised scale is wholly arbitrary, unjustified and untenable.

4. The contention of the Superintendent of Post Offices that the applicant is not eligible for fixation of pay in terms of order dated 23.03.1995 (Annexure 3) is unfounded and unsustainable on the sole ground that the orders dated 23.03.1995 were never brought to the notice of the applicant to enable him exercise his option in time and is in gross violation of principles of natural justice.

5. The Judgement of the Honourable Supreme Court Case Chander Bhangill Vs. Union of India reported in (1994) 27 ATC 869 square <sup>Page 22</sup> y covers the case of the applicant (Annexure 9).

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Deputy

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**6. Details of the remedies exhausted:**

The applicant gave his option on 18.12.1995 (Annexure 4) and submitted representation on 20.04.1996 (Annexure 6) and also gave a reminder on 31.07.1996 (Annexure 7 Page 19). His application was rejected by the Superintendent of Post Offices in his letter dated 13.08.1996 (Annexure 1 Page 12).

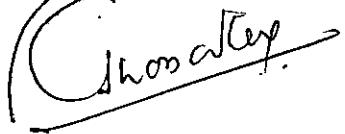
**7. Matters not filed previously nor pending in any court:**

No case relating to this matter is filed or pending in any court except as stated at para 4.

**8. Relief(s) sought:**

In view of the facts mentioned in para 4 above the applicant herein humbly prays that this Honourable Tribunal be pleased to call for the records relating to his fixation of pay and declare the orders of the Superintendent of Post Offices, Nandyal in his letter No: AC/SPR/1981/Digs dated 13.08.1996 be declared as arbitrary and unlawful and set aside the same on the ground that the case is covered by the Judgement of Supreme Court in Chanderbhan gill Vs. Union of India (Annexure 10 Page 25) reported (1994) ATC 27 - 869 and orders dated 23.3.1995 (Annexure 3) was not brought to the notice of the applicant as envisaged in the orders for exercising the option within the stipulated time. The Superintendent of Post Offices may be further directed to take into account the option given by the applicant on 18.12.1995 and the pay of the applicant in the revised scale be fixed in terms of OM No: 1(2) E/III/95 dated 23.03.1995 (Annexure 3 Page 14) i.e. to fix the pay of the applicant as on 1.1.1986 in the revised scale without taking into account, the increment due on 1.1.1986, and after the pay in the revised scale is so fixed, the increment may be allowed on 1.1.1986 in the revised scale and to pay arrears on account

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thereof and to pass such other order or orders as are deemed fit and proper in the circumstances of the case.

9. Interim orders if any sought for:

To fix an early date for hearing.

10. Not applicable.

11. Particulars of the court fee paid:

a. No. & Date of postal order : 8-12-232262 A 3-12-97

b. Post office of the issue : Golconda Chowrasta

c. Payable at : Hyderabad GPO FSSPL - Plurk  
F.D.R.C.I.D.D.Hemant

1. Enclosures:

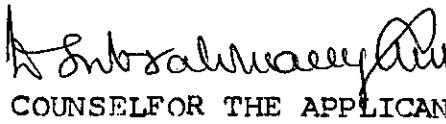
Vakalat, Postal order and material papers as per index.

VERIFICATION

I, G. Lazarus son of G. Daniel, aged 41 years, working as Postal Assistant, Cumbum East Sub Post Office, Prakasam District, do hereby verify that the contents of paras 1 to 11 are true to my personal knowledge and belief and that the contents of paras 5 and 8 are believed to be true as per legal advise and I have not suppressed any material facts in the case.



SIGNATURE OF THE APPLICANT.

  
COUNSELOR FOR THE APPLICANT.



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## Ansoxine - I -

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प्रग संचार | CAT | 13196 | दिनांक | Nov 2023 |  
No. | 1234567890 | Period of | Nov 2023 |

me 1-9-57

**विषय  
SUBJECT**

## Implementation of CII

Judgment in on 1402/91  
by Mr. Georges PPM  
Cumhur Post

Pr. Pm G APR, turned  
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ST 331 (Lc) 7-47

for S.P.M.C. is asked to consider for consideration as  
for not be circulated to all offices and the  
Circular was circulated to all offices and the  
Circular was not circulated. •

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TRUE COPY  
D. S. Murphy  
Counsel for the applicant

1948-1950  
SIPUR. 10 JULY 1951.

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## Annexure - 2

PAY, D.A., ETC.

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M.F.O.M. No. 7 (21)-E, 11/87,  
dated 4-5-1987Central Civil Services (Revised Pay) Rules, 1986  
—Clarifications regarding

The undersigned is directed to state that references are being received from Ministries/Departments seeking clarifications regarding application of certain provisions of C.C.S. (R.P.) Rules, 1986. Based on the issues raised, following clarifications are issued for the guidance of all concerned:—

**Point raised.**—(1) In case of a Government servant whose increment accrued in the pre-revised scale on 1-1-1986, whether the increment in the pre-revised scale is to be allowed first and pay fixed in the revised scale under C.C.S. (R.P.) Rules, 1986, later or pay fixed in the revised scale first and increment allowed later in the revised scale.

**Clarification.**—Increment in the pre-revised scale is to be allowed first on 1-1-1986 and pay fixed in the revised scale thereafter.

**Point raised.**—(2) Where increment(s) has/have been allowed under provisos 3 and 4 to Rule 8 of C.C.S. (R.P.) Rules, 1986, whether the next increment would be allowed after the qualifying period of 12 months reckoned from the date of last increment in the pre-revised scale or after completion of qualifying period of 12 months from 1-1-1986.

**Clarification.**—The next increment in revised scale to Government servants to whom the benefit of increment(s) under provisos 3 and 4 to Rule 8 of C.C.S. (R.P.) Rules, 1986, has been given would be admissible after qualifying period of 12 months from 1-1-1986, under F.R. 26. In other words, the next increment in such cases would accrue on 1-1-1987, subject to the maximum of the revised scale not being exceeded.

**Point raised.**—(3) Whether the benefit of one more increment under fourth proviso to Rule 8 of C.C.S. (R.P.) Rules, 1986, could be granted to a Government servant who has been stagnating at the maximum of the pre-revised scale for more than two years as on 1-1-1986, but has not actually been granted an *ad hoc* increment on account of some court case/vigilance/disciplinary proceedings pending against him.

**Clarification.**—As the grant of an *ad hoc* increment on account of stagnation at the maximum of the existing scale is subject to vigilance clearance, among other things, such cases may be decided in due course in the light of the outcome of court case/vigilance or disciplinary proceedings.

**Point raised.**—(4) Whether a Government servant, who has been stagnating at maximum of the pre-revised scale for more than two years

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but has not been actually granted *ad hoc* increment, could be allowed one more increment under proviso 4 to Rule 8 of C.C.S. (R.P.) Rules, 1986.

**Clarification.**—If ultimately the *ad hoc* increment for stagnation is more increment under proviso 4 to Rule 8 of C.C.S. (R.P.) Rules, 1986, one would become unallowable on 1-1-1986.

**Point raised.**—(5) Whether a Government servant, who would have completed a period of two years of stagnation at the maximum of the existing scale after 1-1-1986 and would have been granted one *ad hoc* increment on account of stagnation but for introduction of Revised Scale of pay, could opt for coming over to the revised scales of pay after 1-1-1986.

**Clarification.**—A Government servant who has already reached maximum of the pre-revised scale has no due of next or subsequent increment in the pre-revised scale and he will be left no option to opt for the revised scale of pay from next or subsequent increment after 1-1-1986, as stagnation increment allowed in terms of O.M. dated 27-7-1983, is in the form of *ad hoc* pay.

**Point raised.**—(6) Whether in the case of a Government servant who

had an increment before 1-1-1986, he can in the revised scale irrespective of the fact that he was not entitled to have this draw in the old scale.

**Clarification.**—While fixing pay under C.C.S. (R.P.) Rules, 1986, the pay occurring after initial fixation of pay irrespective of whether a Government servant had crossed, or not crossed or had been held up at Rule 8 to C.C.S. (R.P.) Rules, 1986.

**Point raised.**—(7) What will be the mode/manner of fixation of pay under C.C.S. (R.P.) Rules, 1986, of persons who are drawing reduced pay as on 1-1-1986, in the existing scale on account of imposition of penalty under the provisions of C.C.S. (C.C.A.) Rules, 1965?

**Clarification.**—The pay in such cases may be fixed as under—

- on the basis of pay actually drawn on 1-1-1986; and
- on the basis of pay which would have been drawn but for the penalty.

The revised pay as fixed at (a) above may be allowed from 1-1-1986, from the date following the date of the expiry of the penalty after allowing increments, if any, that might have normally fallen due in the revised scale during the period from 1-1-1986, to the date of expiry of the penalty.

The next increment in the revised scale will be regulated in accordance

with Rule 8 of the C.C.S. (R.P.) Rules, 1986.

275

RECORDED  
S. P. D. S. P. D.  
Counsel to the Appellants

## Annexure-3

14

111

O.M. M.F. No. 1 (2)-E.III/95, dated 23-3-1995

Option available to those whose increment fell on 1-1-1986 to get  
their pay revised from 1-1-1986

The undersigned is directed to refer to this Ministry's O.M. No. 7 (21)-E. III/87, dated the 4th May, 1987, on the subject mentioned above and to say that a clarification was furnished against the point raised at Sl. No. 4 of this OM that increment in the pre-revised scale is to be allowed first where the increment fell on 1-1-1986 and then the pay fixed to the revised scale of pay.

2. The Staff Side demanded in the National Council (JCM) that a Government servant whose increment fell on 1-1-1986 should have his

May, 1995

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Swamyaswamy

pay fixed in the revised scale without taking into account the increment and that the increment may be allowed in the revised scale of pay. The matter has been under consideration of the Government for some time. It has now been decided that a Government servant whose increment fell on 1-1-1986 may be allowed an option to get his pay revised from 1-1-1986 in the following manner:

"The pay in the revised scale as on 1-1-1986 may be fixed without taking into account the increment due on 1-1-1986. After the pay to the revised scale is so fixed, the increment may be allowed on 1-1-1986 in the revised scale."

3. The option may be exercised by the concerned employees within a period of six months from the date of issue of these orders. In case no option is exercised, it shall be presumed that the Government employee has opted to get his pay fixed by drawing increment in the pre-revised scale and thereafter the pay being fixed in the revised scale in accordance with the provisions of O.M. No. 7(21)-E. III/87, dated 4-5-1987.

4. The Ministry of Home Affairs, etc., are advised to bring the provisions of this OM to the notice of all concerned. Option once exercised shall be deemed as final.

TRUE COPY  
D. B. Mehta  
Counsel for the applicant

## Annexure - 4

Options:

Terms of Ministry of Finance Department  
of Expenditure New Delhi FNC(2)E-III/95 dated 23-8-1995

I, G. Lazarus Sub Post master cumcum East  
(Markapuram) hereby exercise my options to have  
my Pay on the revised Pay Scales 1986 fixed  
on the revised Scales of 975-1660, without taking  
into account the increment from the stage of Rs  
316 to that of Rs 324 in the pre-revised scale of Rs  
260-480 due on 1-1-1986. My Pay on 1-186, may be  
fixed at Rs 1180/- in the same scale of Rs 975 to 1160  
and arrears of Pay and allowance may please be  
Paid to me.

Station: Cumcum (E)  
Date : 18-12-95

Chowdhury  
18-12-95

No/50/ dated cumcum East the 18-12-95

Submitted to the Post master Markapuram  
for favour of disposal

Chowdhury  
18/12/95  
Sub Post Master  
CUMCUM East,  
Pincode 523333

TRUE COPY  
J. M. Choudhury  
Courtier for the applicant

## Annexure-5

Dept. of Post: India

POST MASTER  
MARKAPUR  
623316.

To  
 ① Sri G. Lagadu  
SPM  
Cumbum Post  
 ② Sri L. Sundaram  
LCA PA  
Cumbum (K)  
 ③ Sri V. Rangaswamy  
MO  
Cumbum (K)

No: 4/14 Pay/96-97 dated 26.3.96

Sub: Non receipt of increment  
w.e.f. 1.1.86 - fixation of  
pay w.e.f. 1.1.86 - as

Ref: O.O.M No. 1 (2)-E III/95  
and dated 23.3.95 of Ministry of Finance  
Dept. of Expenditure New Delhi.

② your options dated 18.12.95  
and 17.1.96  
③ your representations dated  
26.3.96  
④ SPM NCL No. B6/6.DA/CE  
dated 2.4.96.

you have not exercised  
the option within the stipulated time  
as required in para 3 of O.M cited above  
since you are not eligible for fixation of  
pay w.e.f. 1.1.86.

*True*  
POST MASTER  
MARKAPUR  
623316

copy to the SPM's rendyulu for info confirmation  
with his signature  
w.e.f. 4.4.96

TRUE COPY (Sd) —  
S. N. Narendar  
Counsel for the applicant  
POST MASTER  
MARKAPUR  
623316

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Annexure - b

From

G. Lazarus,  
Sub Post Master,  
CUMBUM EAST-523 333.

To

The Superintendent of Post Offices,  
Nandyal Division,  
NANDYAL - 518 501.

Respected Sir,

Through the SPM Cumbum East TSO

Sub:- Non fixation and non drawal of increment as per central civil services (Revised pay) Rules 1986 - Case of Sri G. Lazarus, SPM Cumbum East, TSO (Markapur HO) - Regarding.

I am to submit the following few lines in connection with non fixation of increment as per C C S (Revised pay) rules 1986 for favour of issuing favourable order.

Sir, very recently I came to know from audit party during their audit inspection of Markapur H.O, in the month of December '95, that I am eligible to get my pay fixed in the revised pay scales of 1986 since my increment was due on 1-1-86.

They also told me that the pay on the revised scale as on 1-1-86 can be fixed without taking into account of increment due on 1-1-86, after the pay in the revised scales is so fixed, the increment may be allowed on 1-1-86 in the revised scale.

In this connection, I submit Sir, that the circular containing the above said information was not at all received by me and I am not aware of <sup>the</sup> fact that option has ~~not~~ been exercised within a time limit for the purpose of fixation of pay as per the C C S (Revised pay) rules 1986.

Only on knowing the fact from the audit people, I have submitted my option to the Post Master Markapur H.O, on 18-12-95 and also sent a representation on 26-3-96 requesting him to fix up my pay accordingly.

Surprisingly the Post Master Markapur has replied me in his letter No. 11/AC/Pay/96-97, dated 3-4-96 that it could not be fixed now, as my option was not received by him in the stipulated period.

(P.T.O.)

13  
11211

Sir, when the circular calling for option was not at all received by me or heard from anybody about it, how it can be possible for me to send my option!

Only on hearing the news of C.G.S (Revised Pay) Rules 1986 from the audit party, I have immediately sent my option and a representation requesting him to fix up the pay in the revised scale, but the Post Master Markapur has never asked for any option from me, also the circular or any other materials calling for option, were not received by me and hence I could not exercise my option.

In view of these circumstances, I request you Sir, to kindly issue instructions to Post Master Markapur to fix up my pay in the revised scale as on 1-1-86 without taking into account the increment due on 1-1-86. And after the pay in the revised scale is so fixed and allow the increment on 1-1-86 in the revised scales and to draw the arrears of amount so arrived at till to date.

Thanking you Sir,

CUMBUM EAST

20.4.1996

Yours faithfully,

(G. LAZARUS)  
20/4/96

No/67/ add al-Cumbum East TSO the 20-4-96.

Exhibited to the Super of Post Office Nandyal  
Division Nandyal for favour of disposal.

20/4/96  
Sub Post Master  
CUMBUM East.  
Pinovt. 523399

TRUE COPY  
J. M. Lazarus  
Counter

From

Kunnamangalam

G. Lazarus

Sub Post master

Cumbum East TSO  
623333

24  
The Seape of Post Office

Nandiyar division

Nandiyar TSO

19 ~~ff~~

Through the Sub Post master Cumbum East TSO.

Sub: Non-Fixation and non operation of increment as per Central Civil Services

(Revised Pay) Rules 1986 Case of Sri

G. Lazarus SPM Cumbum East TSO  
(Markapura HO) - Regarding

Respected Sir:

Kindly refer my representation dated 20.4.78  
for increment of pay of 10% of increment from  
1-1-1986, Hence I request your Sir, to kindly

Issue instructions to Post master Markapura to  
fix up my Pay in the revised scale as on 1-1-86.

I shall be ever thankful to your Sir.

Thanking you Sir

Yours faithfully

Chennai  
31.7.96

(G. Lazarus)

Station: Cumbum

Date: 31.7.96

TRUE COPY

J. M. Narayanan  
Counsel for the applicant.

CKW



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2)

it is informed that you are ~~Postmaster~~  
 particular that you have not exercised  
 the option within the period of 18 months  
 time in terms of O.M. No. 1103-E-521 (P)-  
 86 dated 23-3-85 and hence you are not  
 eligible for classification of Pay from 1st-86.  
 This is in for information.

286, 10th March 1986 (210/1201) 995 P.M.

माल एवं वायनाड  
मंत्री विभाग

Supdt. of Post Office  
MANGALURU - 574 001

TRUE COPY  
D. M. Nayak  
Counsel for the Applicant

## Annexure-9

22

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

O.A.No.1402/96

Date of Order: 4.12.96

BETWEEN:

G.Lazarus

AND

Union of India rep. by:

1. Chief Postmaster General,  
B.P.Postal Circle, Hyderabad
2. The Supdt. of Post Offices,  
Nandyal Postal Division,  
Nandyal, Kurnool Dist.
3. The Post Master, Markapur Head  
Post Offices, Markapur,  
Prakasam Dist.



## .. Respondents

Counsel for the Applicant

.. Mr. K.S.R.Anjaneyulu

Counsel for the Respondents

.. Mr. K.Bhaskara Rao

COUNSEL:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

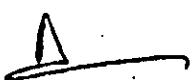
HON'BLE SHRI B.S. JAI PARAMESHWAR : MEMBER (JUDL.)

JUDGEMENT

X Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.) ) (

Heard Mr.D.Subramanyam for Mr. K.S.R.Anjaneyulu, learned counsel for the applicant and Mr.Sunil Kumar for Mr. K.Bhaskara Rao, learned standing counsel for the respondents.

2. The applicant is a postal assistant joined in the department on 12.1.78. His increment normally falls on the first date of January. The IV Pay Commission Recommendations were accepted w.e.f. 1.1.86. But that recommendation was accepted with retrospective effect in the month of October 1987. In that the applicant was granted the increment in the Postal Assistant grade in the usual manner w.e.f. 1.1.86. Thereafter when the IV Pay



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Commission Recommendations were accepted his pay was fixed at the appropriate stage in the scale of pay of ~~recommendations~~ as per the approved recommendations of the IVth Pay Commission.

3. A notification was issued No.1 (2)-E.III/95, dt. 23.3.95 (A-3) wherein it is stated for those whose increment fell on 1.1.86 may get their pay fixed in the IVth Pay Commission scales of pay before granting them the increment in the lower scales of pay. The increment which fell on 1.1.86 will be fixed in the revised scales of pay later. Thus it is stated that the above referred O.M. gives advantage to the applicant to get some extra remuneration due to the method indicated above. The memorandum also stipulates that option should be exercised for the above method within six months from the date of issue of that office memorandum, i.e. the option should be given on or before 22.9.95. The applicant submits that he has submitted an option to fix his pay as above by his option dt. 18.12.95 (A-4). The applicant further submits that he came to know of the memorandum dt. 23.3.95 only when the audit party visited the office and asked him the reasons for not exercising his option in terms of memorandum dt. 23.3.95. On the basis of that prodding by the audit party the applicant submitted his option form and also submitted a representation dt. 20.4.96 (A-6) for fixation of his pay as per that memorandum. R-2 rejected his representation by letter No.AC/R.P.R./1986/Dlgs/ dt. 13.8.96 (A-1) on the ground that he has not exercised his option within the period stipulated in OM dt. 23.3.95.

4. Aggrieved by the above, he has filed this OA for setting aside the rejection letter dt. 13.8.96 (A-1) by holding it as arbitrary, unlawful and for a consequential direction to fix his pay in accordance with the memorandum as per his option exercised by him.

5. The only point for consideration in this OA is whether the OM dt. 23.3.95 was circulated. If it was not circulated in time

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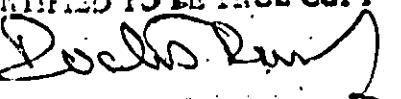
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to enable the officials to exercise their option than the applicant may have a case. R-2 has rejected the option of the applicant as that option was not exercised in time. But whether the contents of the memorandum dt. 23.3.95 was brought to the notice of the officials concerned is to be seen. Each department has its own method of bringing to notice of <sup>Concerned</sup> officials any important memorandum. If those methods were adopted in accordance with the rule then the applicant cannot have any grouse for non-display/non-bringing to the notice of the concerned official in accordance with the rules/practice/precedence. It is a factual verification. No adjudication is required in this connection. If the notification <sup>was</sup> not brought to the notice of the <sup>Official</sup> ~~memorandum~~ in time then the official cannot be penalised by granting him the relief as per the memorandum. If it has brought to the notice of the concerned official and the concerned official <sup>did</sup> ~~does~~ not take any action on the basis of the memorandum then the Government cannot be held responsible for not implementing the orders of the memorandum.

6. In view of what is stated above R-1 should examine this issue in toto and decide the issue in accordance with the rules. Time for compliance is three months from the date of receipt of a copy of this order.
7. The OA is ordered accordingly. No costs.

प्राप्तिकर्ता  
CERTIFIED TO BE TRUE COPY



प्राप्तिकर्ता  
COURT OFFICER  
S. S. SHARMA, M.A.  
Central Administrative Tribunal  
Hyderabad  
HYDERABAD BENCH

TRUE COPY  
D. M. Mehta  
Counsel for the applicant.

**Pratex-10**

**Pratex-20**

and 1992-1993 (1994) 27 Administrative Tribunals Cases 869 of 1992 on  
Instituted on 1991 (Supreme Court of India) (Delhi HC) dated 11-1-1992  
in matter of (Before KULDIP SINGH, J.S. VERMA AND R.M. SAHAI, JJ.)  
CHANDER BHAN GILL (Appellant)

versus (Respondent)  
UNION OF INDIA

Civil Appeal No. 3958 of 1992, decided on July 14, 1994

Increment in Pay — Upward Revision in Date of Increment and date of commencement of revised pay scale — Increment on that date whether to be granted in the old scale or the revised scale — Revised pay scales coming into effect on 1-1-1986 and the appellant completing one year's service and thereby becoming entitled to annual increment on a subsequent date of the same month and year (26-1-1986) — In absence of opting to remain in existing scale, deemed under rules to have opted revised scale from 1-1-1986 — Rules providing that date of next increment in the revised scale would be the same as would have been in the pre-revised scale — OM providing that increment would be admissible from the first of the month in which it falls due — In such circumstances, held, the increment due on 1-1-1986 ought to have been granted in the revised pay scale — Granting increment on 1-1-1986 in the old scale and then fixing the pay on that date in the revised pay scale, held, improper — Provision in OM, in respect of employees whose increment in old scale accrued on

<sup>h</sup> From the Judgment and Order dated 13-4-1992 of the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2254 of 1991

1-1-1986, for allowing increment in the old scale first on 1-1-1986 and fixing pay in the revised scale thereafter, whether contrary to rules — Question left open — G.L., OM dated 7-1-1971 and 4-5-1987 — CCS (Revised Pay) Rules, 1986, Rr 5, 6(3), 7 and 8 (Paras 9 and 7)

H-M/13236/CLA

**Appeal allowed**

Advocates who appeared in this case

S.M. Houda and Bhal Singh Malik, Advocates, for the Appellant;

K. Lahiri, Senior Advocate (Ms. Niranjana Singh and Ms. Anil Kaur, Advocates, with him) for the Respondent.

The Judgment of the Court was delivered by

KULDIP SINGH, J. — Chander Bhan Gill (Gill) joined Central Government service on 25-1-1985. The Central Civil Services (Revised Pay) Rules, 1986 (the Rules) came into force on 1-1-1986. On completion of one year's service Gill was granted annual increment in the existing scale (unrevised). His claim for grant of annual increment in the revised pay scale was rejected by the Government. Gill challenged the action of the Government by way of an application before the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal). The Tribunal by its judgment dated 13-4-1992 dismissed the application. This appeal by Gill is against the judgment of the Tribunal.

2. We may notice the necessary facts. Gill was selected for appointment as Assistant (Legal) in the Department of Legal Affairs, Ministry of Law and Justice, Government of India. He joined the Ministry as such on 25-1-1985 in the pay scale of 425-15-500-EB-15-560-20-700-EB-25-800. One S.S. Dhaiya was also selected and appointed as Assistant (Legal) along with the appellant. He joined service on 4-3-1985 in the same pay scale.

3. The existing pay scale for the post of Assistant (Legal) (425-800) was revised to 1640-60-2600-EB-75-2900 under the Rules with effect from 1-1-1986. Gill completed one year's service on 26-1-1986 and became entitled to the grant of an annual increment. The short question for consideration is whether he was entitled to the increment in the revised scale of pay (Rs 60) or in the unrevised scale (Rs 15).

4. The Government of India Instructions contained in the office memorandum dated 7-1-1971 are as under:

"The undersigned is directed to invite a reference on the recommendation of the Third Pay Commission contained in para 29 of Chapter 8 in Volume I of their Report to the effect that in future, an increment should be granted from the 1st of the month in which it falls due instead of from the actual date on which it accrues, and to say that Government have accepted the aforesaid recommendation of the Commission vide Item No. 5 in the annexure appended to the Resolution No. 70(34)-Imp. Cell dated 1-1-1973. The sanction of the President is accordingly conveyed hereby to the increment of employees being admitted from the 1st of the month in which it would fall due under the operation of the general rules and orders regulating increments.

2. These orders shall take effect from 1-1-1973 and shall cover only Central Government employees in Classes II, III and IV."

point 5. The Government of India issued office memorandum dated 4-5-1987 wherein various clarifications in respect of the Rules were given. The clarification at Serial No. 1 of the memorandum which is relevant is as under:

Sl. No.	Points raised	Clarifications
a	to "Sl. No. 1 of" (1) "was given in the memorandum dated 4-5-1987.	(3)
b	In case of a government servant whose increment in the pre-revised scale accrued in the pre-revised scale on 1-1-1986, whether the increment is to be allowed first on the revised scale or pay fixed in the revised scale thereafter.	(A)
c	In case of a government servant whose increment in the pre-revised scale accrued in the pre-revised scale on 1-1-1986, whether the increment is to be allowed first on the revised scale or pay fixed in the revised scale or pay fixed in the revised scale on 1-1-1986.	(A)
d	The appellant completed one year's service on 26-1-1986 and as such an increment accrued to him on the said date but keeping in view the Government instructions dated 7-1-1971 he was to be given the increment from 1-1-1986.	(A)
e	Relying upon the clarification dated 4-5-1987 the Government of India granted the increment to the appellant in the pre-revised scale, Rs 15 were added to his basic pre-revised pay of Rs 425 thereby making a total of Rs 440. After doing the exercise of granting him increment in the pre-revised scale he was given the revised pay scale and his basic pay on 1-1-1986 was fixed as Rs 1640.	(A)
f	It is not necessary for us to go into the question as to whether the clarification dated 4-5-1987 is contrary to the Rules. The clarifications are ordinarily issued with a view to relieve the anomalies in the working of the Rules. In the facts of this case, however, the clarification has — rather — created an anomaly. We see no logic in the clarification. It is applicable only to the government servants whose increment accrued on 1-1-1986. All those who earned the increment any time between 1-2-1986 to 31-12-1986 were given the increment in the revised scale. Had the appellant joined in the month of February 1985 or thereafter he would have got the increment in the revised scale. As mentioned above S.S. Dhaiya was selected and appointed along with the appellant. He joined on 4-3-1985 and was given his annual increment with effect from 1-3-1986 in the revised scale. The Government action based on the clarification dated 4-5-1987 has obviously worked to the detriment of the appellant.	(A)
g	We may examine the appellant's claim under the Rules. Rules 5, 6(3), 7 and 8 of the Rules, to the extent relevant, are reproduced hereunder:	(A)
h	5. <i>Drawal of pay in the revised scales.</i> — Save as otherwise provided in these rules, a government servant shall draw pay in the revised scale applicable to the post to which he is appointed.	(A)
i	Provided that a government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.	(A)
j	6. <i>Exercise of option.</i> —	(A)

18(1)-(3) If the intimation regarding option is not received within the time mentioned in sub-rule (1), the government servant shall be deemed to have elected to be governed by the revised scale of pay with effect on and from the 1-1-1986.

7. *Fixation of initial pay in the revised scale.*— (1) The initial pay of a government servant who elects, or is deemed to have elected under sub-rule (3) of Rule 6 to be governed by the revised scale on and from the 1-1-1986, shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely—

(A) *In the case of employees.*—

(i) an amount representing 20 per cent of the basic pay in the existing scale, subject to a minimum of Rs 75, shall be added to the 'existing emoluments' of the employee;

(ii) after the existing emoluments have been so increased, the pay shall thereafter be fixed in the revised scale at the stage next above the amount thus computed: Provided that,—

(a) if the minimum of the revised scale is more than the amount so arrived at, the pay shall be fixed at the minimum of the revised scale;

(b) if the amount so arrived at is more than the maximum of the revised scale, the pay shall be fixed at the maximum of that scale.

8. *Date of next increment in the revised scale.*— The next increment of a government servant whose pay has been fixed in the revised scale, in accordance with sub-rule (1) of Rule 7, shall be granted on the date he would have drawn his increment had he continued in the existing scale.

9. It is not disputed that the appellant did not give any option under Rule 5 of the Rules and as such under Rule 6(3) he became entitled to the revised scale of pay "with effect on and from the 1-1-1986". Since the minimum of the revised scale of the appellant was more than the amount worked out under Rule 7(1)(A)(i)(ii) he became entitled under Rule 7(1)(A)(a) to be fixed at the minimum of the revised scale. It is clear from the combined reading of Rules 6 and 7 of the Rules that the appellant was entitled to be fixed at Rs 1640 as his basic pay with effect from 1-1-1986 in the revised scale. The pre-revised scale ceased to operate on 31-12-1985. Rule 8 of the Rules clearly lays down that "the next increment of a government servant whose pay has been fixed in the revised scale in accordance with sub-rule (1) of Rule 7 shall be granted on the date he would have drawn his increment, had he continued in the existing scale". The language of the rule makes it clear that the appellant, whose annual increment became due on 1-1-1986, was entitled to the grant of the said increment in the revised pay scale. We are, therefore, of the view that the appellant-Gill was

1994] 41

H.S. ATWAL v. UNION OF INDIA (SC)

873

entitled to the grant of Rs 60 as increment with effect from 1-1-1986 and his basic pay in the revised scale should have been fixed at Rs 1700 from 1-1-1986.

10. We allow the appeal and set aside the judgment of the Tribunal. We allow the application filed by Gill before the Tribunal in the above terms. We direct the respondents to fix the pay of the appellant as Rs 1700 with effect from 1-1-1986 and give him all the consequential benefits. This should be done within three months from the date of the receipt of this judgment. The appellant shall be entitled to his costs which we quantify as Rs 10,000.

**(1994) 27 Administrative Tribunals Cases 873**

Supreme Court of India  
(BEFORE KULDIP SINGH AND B.L. HANSARIA, JJ.)

**H.S. ATWAL AND OTHERS** *versus* **UNION OF INDIA AND OTHERS**

**Appellants;** *versus* **Respondents.**

Civil Appeal Nos. 1654-55 of 1990, decided on July 27, 1994.

(a) **A. Demobilised Indian Armed Forces Personnel (Reservation of Vacancies) in the Himachal Pradesh Administrative Service Rules, 1974** — R. 4(1)(a) — Provisions for counting military service towards seniority in the civil service — Applicability — Held, not applicable where the opportunity to join civil service was not available during the period of the military service — Seniority

(b) **B. Seniority** — Military service followed by civil service — Fixation of seniority in civil service — Provision for counting military service towards seniority in civil service subject to the condition that date of appointment in the civil service would be determined on the assumption that the civil service was joined at the first opportunity available after joining the military service — In such circumstances, held, benefit of the provision would be essentially subject to the fulfilment of the said condition and not dehors the same — Purpose of the provision taken into consideration for interpretation — **Demobilised Indian Armed Forces Personnel (Reservation of Vacancies) in the Himachal Pradesh Administrative Service Rules, 1974, R. 4(1)(a)** — Interpretation of Statutes

Appellant 1 remained in army during 1963-68. He joined the Himachal Pradesh State Administrative Service in 1975. The first examination which had been conducted to enable any person to join the State Administrative Service was in 1973. Appellant 1 was given seniority from 25-7-1971, the date on which H.P. got Statehood. Although the first opportunity available to appellant 1 was in 1973, he claimed the benefit of Rule 4(1) dehors the condition in clause (a) thereof, which provides for determination of date of appointment on the assumption that the person concerned joined the service at the first opportunity available after joining military service. Dismissing his appeal, the Supreme Court held that the condition in clause (a) of Rule 4(1) was not applicable.

Held: The purpose of the rule apparently is to see that the persons who joined military service to defend the country from external aggression which took place in 1962 do not suffer from disadvantage as regards their seniority in civil services which they had joined after demobilisation.

† From the Judgment and Order dated 22-12-1989 of the Himachal Pradesh Administrative Tribunal in TA Nos. 263 of 1986 and 92 of 1987 in the above-mentioned case to migrants.

TRUE COPY  
B. M. Mehta  
Counsel for the applicant

2. This OA is filed for the following reliefs:-

"To call for the records relating to his fixation of pay and declare the orders of the Superintendent of Post Offices, Nandyal in his letter No.AC/CAT/13/96, dated:1-9-1997, be declared as arbitrary and unlawful and set aside the same on the ground that the case is covered by the Judgment of Supreme Court in Chanderbhan Gill Vs Union of India (Annexure.10, page.25), reported in (1994) ATC 27 - 869 and orders dated:23-3-1995 as envisaged in the orders for exercising the option within the stipulated time. The Superintendent of Post Offices may be further directed to take into account the option given by the applicant on 18-12-1995 and the pay of the applicant in the revised scale be fixed in terms of OM No.1(2)E/III/95, dated:23-3-1995(Annexure.3, page.14) i.e., to fix the pay of the applicant as on 1-1-1986 in the revised scale without taking into account, the increment due on 1-1-1986, and after the pay in the revised scale is so fixed, the increment may be allowed on 1-1-1986 in the revised scale and to pay arrears on account thereof".

3. When the OA was taken up for hearing, the learned Counsel for the Applicant submits that this OA has become infructuous.

4. In view of the above submission, the OA is dismissed as infructuous. No costs.

प्रमाणित. प्रति.

CERTIFIED TRUE COPY

क्रमसंख्या

CASE NUMBER

क्रमांक

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

D.A.No.1740 OF 1997.

DATE OF ORDER:16-3-1999.

BETWEEN:

G.Lazarus.

.....Applicant

and

Union of India, represented by:

1. Chief Post Master General,  
Andhra Pradesh, Postal Circle,  
Hyderabad.
2. Superintendent of Post Offices,  
Nandyal Postal Division, Nandyal,  
Kurnool District.
3. The Post Master, Markapur Head  
Post Office, Markapur, Prakasam  
District.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr.KSR.Anjaneyulu

COUNSEL FOR THE RESPONDENTS :: Mr.B.Narasimha Sharma

CORAM:

THE HON'BLE SRI R.RANGARAJAN, MEMBER(ADMN)

AND

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER(JUDL)

: ORDER :

ORAL ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER(A) )

Heard Mr.KSR.Anjaneyulu, learned Counsel for the  
Applicant and Mr.Jacob for Mr.B.Narasimha Sharma, learned  
Standing Counsel for the Respondents.

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