

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

Original Application No. 253/2010

Order reserved on: 21/07/2015

Date of order: 24/07/2015

CORAM:

HON'BLE MR. JUSTICE HARUN UL RASHID, JUDICIAL MEMBER
HON'BLE MR. R. RAMANUJAM, ADMINISTRATIVE MEMBER

Sugan Chand Jain S/o Late Shri BhagwanSahai Jain, Age about 62 years R/o Bhaylapura, Hindaun City, District Karauli Retired as Junior Telecom Officer, SawaiMadhopur SSA.

.....Applicant
(Mr. Dharmendra Jain, counsel for the applicant.)

VERSUS

1. Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, 5th floor, Janpath, New Delhi through Chairman-Cum-Managing Director.
2. Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur.
3. Communication Accounts Officer, Controller of Communication Accounts, Department of Telecom, Jhalana Institutional Area, Jaipur.
4. Telecom District Manager, Bharat Sanchar Nigam Limited, SawaiMadhopur.

.....Respondents

(Mr. Mukesh Agarwal counsel for the respondent No. 1.)
(Mr. N.S. Yadav, counsel for the respondents No. 2 to 4.)

ORDER

(Per : Mr. R. Ramanujam, Administrative Member)

The applicant is aggrieved by action of the respondents in changing the date of his increment from 01/03/2002 to 01/09/2002 by memo dated 08/08/2006 and consequent recovery of excess amount paid to him from his gratuity. The change in the date of increment has also resulted in his getting less pension than that would have been due to him, but for the said revision. The applicant states that one Shri Suresh Chand Jain who was junior to him, though similarly placed, has not been subjected to such a change in the date of increment. As a result of this, the said junior is now drawing a higher pension and higher retiral benefits than the applicant. Representations submitted by the applicant have not been considered by the respondents.

2. The respondents in their reply have contested the claim as time barred. On merits, the respondents contend that the applicant exercised his first option dated 31/12/2001 (Annexure-A/2) on his promotion as JTO in CDA scale for pay fixation from the date of his next increment (DNI) in the lower scale falling on 01/03/2001. Accordingly, his pay was fixed on 24/09/2001 at Rs. 7100/- and re-fixed on his date of next increment on 01/03/2001 at Rs. 7300/- in the JTO scale 6500-200-10500. This was with reference to his pay of Rs. 6950/- with DNI as 01/03/2001 at Rs. 7100/- in lower CDA scale of 5000-150-8000. Subsequently, however, on his absorption in BSNL w.e.f. 01/10/2000 in IDA pay scale, he exercised a revised option dated 09/08/2004 in respect of his promotion to the JTO pay scale of Rs. 9850-250-14600 (Annexure-R/1) for fixing his pay from the date of promotion i.e. 24/09/2001 in the IDA scale. He did not exercise the option for pay fixation from the date of next increment (DNI) in the lower scale. Consequently, the applicant's next increment fell due on 01/09/2002 only and not on 01/03/2002. Accordingly, his pay was raised to Rs. 11,100/- on 01/09/2002 from Rs. 10850/- after allowing increment as per the provisions of FR 22 1 (a) (i) read with FR 26 i.e. after completion of 12 months on the

promotion post. The respondents had wrongly taken the date of his increment as 01/03/2002 whereas in terms of para 22 of FRSR, the due date of his increment was 01/09/2002. The mistake came to notice at the time of his superannuation. It was found that the applicant had not submitted his option for pay fixation on promotion from the date of next increment in the lower scale within the time limit and, therefore appropriate correction had to be made by order dated 08/08/2006. This was only a correction of error and not a withdrawal of right already conferred on applicant. It is lawful for the employer to re-determine and correct the pay and date of increment at the time of superannuation.

3. Heard the learned counsel for the applicant and respondents and perused the documents on record. Learned counsel for the applicant drew our attention to the Annexure-A/2 document by which on 31/12/2001 he had submitted his option for fixation in pay in the JTO cadre after drawal of next increment in the scale applicable to the lower post which was due on 06/03/2002. Attention was also drawn to Annexure-H which is a comparative statement of pay and pension of the applicant and his junior Shri Suresh Chand Jain. It was contended that fixation of pay of the applicant was correctly done on the basis of his option at the relevant time and respondents are not justified in revisiting the whole issue at the time of retirement to the detriment of the applicant. He cannot be brought down to a situation where he draws less pension than his junior who is otherwise similarly placed. The learned counsel for the respondents, however, submits that Annexure-A/2 was for fixation of pay in the CDA pay scales. The applicant's subsequent option exercised after he moved into the IDA pay scales would override his previous option. The order dated 08/08/2006 (Annexure-A/4) by which the applicant's pay fixation was revised has not been challenged by the applicant. The applicant has only himself to blame for not exercising the correct option and, therefore, the respondents were fully

justified in making a recovery of excess payments after correcting the mistake at the time of his superannuation.

4. We have carefully considered the submission made on behalf of the applicant and respondents and perused the records. It is not disputed that the applicant had indeed exercised the option for pay fixation on promotion from the date of his next increment on the lower post when he was still under the CDA scales. It is not also in dispute that the pay of the applicant had been fixed in the IDA scale of 9850-250-10500 with effect from the date of his next increment falling due on from 01/03/2002. Respondents have also not specifically denied the allegation of the applicant that he is drawing a lower pension than his junior Shri Suresh Chand Jain who is otherwise similarly placed. The only issue to be decided, therefore, is what would be the effect of Annexure-R/1 document by which the applicant had submitted a letter to TDM, SawaiMadhopur, Telecom District Manager, SawaiMadhopur dated 09/08/2004 requesting to fix his pay of JTO in IDA pay scale 9850-2500-14600 from 24/09/2001 i.e. from the date of promotion in the cadre of JTO.

5. To consider the effect of Annexure-R/1, it is necessary to understand the background of this option and whether it would override the previous option exercised by the applicant while under the CDA scales. From a plain reading of this document, it is not clear in what context this letter had been submitted by the applicant as the copy of the reference to CMD ND letter No. 1-5/2004-PAT(13) dated 30/06/2004 is not seen attached to the document. Further, there is no specific mention in this letter of the intention of the applicant to withdraw the earlier option on his promotion as JTO for pay fixation from the date of next increment on the lower post. No document has been produced by the respondents to show that persons who earlier exercised option under the CDA pay scale were allowed to exercise a revised option with regard to the date of increment on

promotion consequent on migration to the IDA scales. Nor has it been brought to light that the option so exercised would be final and irreversible. In the absence of reference to the relevant circular/rules/guidelines in the pleadings of the respondents, we are unable to draw from Annexure R-1 any conclusion that is adverse to the applicant. Unless otherwise convincingly established to the contrary, Annexure-R/1 could simply be treated as an option from the applicant to migrate to the IDA pay scales from 24/09/2001 because this was the date of his promotion and he might have considered it beneficial to move over to the IDA from this date. This may not by itself tantamount to withdrawing the earlier opinion regarding the date of pay fixation consequent to the promotion.

6. Even if it was a revised option by the applicant and should be otherwise considered binding on him, the fact remains that the respondents clearly failed to act upon such option exercised by the applicant at Annexure-R/1. The applicant also never pressed for the acceptance of the revised option. Since the respondents determined his pay as per his earlier option and paid him on this basis for as long as two years till the date of his superannuation and the applicant was also happy with the non-consideration of his revised option, such a revised option is as good as not made at all. The respondents would, therefore, be estopped from suddenly discovering this document and acting on it to the detriment of the applicant without hearing him.

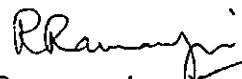
7. The purpose of granting an option to employee for pay fixation either from the date of promotion or from a prospective date after earning an increment in the lower scale is to allow the employee to choose the financially more beneficial course for himself. The authorities cannot interfere with the choice of the employee, if it is otherwise permissible under a rule or policy. The provision, if any, that once such an option is exercised it cannot be revised subsequently is essentially for

administrative convenience as it is not be possible to reopen cases every time an employee chooses to change his mind. It may also be fair not to allow a change of option subsequently if the employee has already enjoyed the benefits of a particular option which would not have been available to him if he had chosen the other alternative at the first instance. In this case, the applicant had exercised a certain option while being under CDA pay scales. We do not know whether the employee had been asked to submit a revised option with respect to pay fixation in the IDA scale along with the rider that it would override the previous option exercised by the applicant. What is clear is that the pay fixation in the IDA scale had been done in terms of his previous option under CDA scale perhaps by way of point to point fixation. This having turned out to be more beneficial, the applicant chose not to pursue his subsequent option for pay fixation on promotion from a different date. We are unable to see from the pleadings that such an option i.e., for pay fixation on the promotion post w.e.f. the date of next increment in the lower scale was impermissible under the IDA scheme. Had it been so, the applicant's junior would also have been covered under a similar dispensation and his pay would also have been re-determined. Clearly, this has not happened and hence the higher pension being granted to the junior. In the facts and circumstances of the case, therefore, we are of the view that the ends of justice would be met if the applicant is deemed to have reiterated his earlier option of pay fixation under the CDA scale for such fixation under the IDA scale as well.

8. It is not the respondents' case that the applicant has enjoyed certain financial or other benefits of pay fixation in the IDA pay scales w.e.f. 24/09/2001 i.e. the date of his promotion and therefore, he cannot be allowed the benefit of his previous option as that would lead to double benefits. In view of this we have no hesitation to hold that the action of the respondents in revising the pay of the applicant to his detriment, making a

recovery from his gratuity and lowering his pension was highhanded and entirely avoidable. As for the issue of limitation raised by the respondents, as the applicant is being subjected to continuing financial loss on account of a lower pension than he is entitled to, we are of the view that it would not be in the interest of justice to reject the OA merely on this ground.

9. In the result, the OA is allowed. The annexure-A/4 order dated 08/08/2006 by which the applicant's pay fixation was revised is hereby quashed and set aside. It is hereby held that the applicant is entitled to refund of the recoveries made from his gratuity and also for redetermination of his pension based on his last pay and other consequential benefits. The respondents shall give effect to the directions contained herein within a period of three months from the date of receipt of a copy of this order. No costs.



(R. Ramanujam)
Administrative Member



(Justice Harun Ull Rashid)
Judicial Member

VV