

OA.No. 060/00874/2014
OA. No.060/00875/2014

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Pronounced on: 3.1.2016
Reserved on : 25.01.2016

**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J)
HON'BLE MRS.RAJWANT SANDHU, MEMBER(A)**

(I) OA. No. 060/00874/2014

Prem Pal Singh, son of Sh. Bachit Singh, age 55 years working as Sr. TOA (P) in the office of Microwave Telephone Exchange, BSNL, Gill Road, Ludhiana.

.....Applicantss

BY ADVOCATE: Sh. P.M. Kansal

Versus

1. Bharat Sanchar Nigam Limited, Sanchar Bhawan, 4th Floor, New Delhi-110 001 through its Chairman-cum-Managing Director.
2. The Chief General Manager, BSNL, Punjab Telecom Circle, Chandigarh.
3. The General Manager Telecom District, Ludhiana.
4. The SDO (T), Samrala, Punjab.

.....Respondents

BY ADVOCATE: Sh. D.R. Sharma

(II)OA. No. 060/00875/2014

Darshan Singh son of Sh. Mukhtiar Singh working as Sr. TOA (P), Telephone Exchange, Khamano, District Ludhiana in the office of SDO (T), Samrala.

.....Applicantss

BY ADVOCATE: Sh. P.M. Kansal

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Versus

1. Bharat Sanchar Nigam Limited, Sanchar Bhawan, 4th Floor, New Delhi-110 001 through its Chairman-cum-Managing Director.
2. The Chief General Manager, BSNL, Punjab Telecom Circle, Chandigarh.
3. The General Manager Telecom District, Ludhiana.
4. The SDO (T), Samrala, Punjab.

.....Respondents

BY ADVOCATE: Sh. D.R. Sharma

ORDER

BY HON'BLE MRS. RAJWANT SANDHU, MEMBER(A):-

1. Since the background of the matter and issues involved are identical, both these OAs are disposed of through a common order. However, for convenience, the facts are taken from OA No. 060/00874/2014 titled Prem Pal Singh Vs. UOI wherein relief has been sought as follows:-
- (i) That impugned order-in-appeal dated 17.09.2013 (Annexure A-10) and order dated 30.03.2013 (Annexure A-6) be quashed and set aside in the interest of justice.
- (ii) That the respondents be directed to fix the pay of the applicant at par with his juniors taking his Date of Next Increment (DNI) as 1st of January with effect from the year 2003.
- (iii) That in the matter of option, the applicants be held entitled to benefit of decisions of the Hon'ble Courts vide Annexures A-15 to A-17.
- (iv) That in the alternative, the respondents be directed to step up the pay of applicants with all consequential benefits with his juniors from the date his juniors are placed in higher grade and to pay arrears to applicants alongwith interest @ 18% per annum and revise his pensionary benefits accordingly.

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(v) That applicants be held entitled to all consequential benefits and relief with effect from the due dates, in the interest of justice.

2. Averment has been made in the OA that the applicant joined the Department of Telecommunications on 16.02.1979. He was promoted as Operator on 06.11.1986 and as Sr. TOA Grade II on 01.01.1994. After the incorporation of BSNL, the applicant became an employee of BSNL. As per the OTBP Scheme introduced by the Department of Telecommunications of Government of India, applicant was entitled to grant of benefit of promotion in the next higher grade on completion of 16/26 years of service. Vide Memo No. E-I/Promotion/TOs/IV/105 dated 17.02.2003 (Annexure A-1), the applicant was promoted to the next higher grade in the pay scale of Rs. 7100-200-10100 under OTBP Scheme w.e.f. 07.11.2002 (1st financial upgradation) i.e. by taking 16 years of service w.e.f. 06.11.1986. This order mentioned that the officials may exercise their options for fixation of pay within one month under FR-22 if they so desire. However, this order was never communicated to the applicant due to which he could not exercise the option for fixation of pay within one month under FR 22. Copies of Dispatch Register of relevant period of time supplied under the RTI Act, 2005 are annexed, indicating that the promotion orders passed from time to time were sent to the office of applicant and not got noted from the applicant. It was also admitted by the respondents vide RTI reply dated 17.01.2014 that the Dispatch Register dated 19.02.2003 is not traceable, therefore, for the lapse on the part of office, the applicant

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cannot be made to suffer. No opportunity to exercise option to get the pay fixed was given to the applicant, therefore, on coming to know such requirement, applicant exercised the option in the month of November, 2004. Earlier, on promotion under OTBP Scheme, the pay was fixed under FR-22(1)(a)(1) but later on vide order dated 19.7.2005 (Annexure A-2), the pay was revised and fixed under FR-22 (1)(a)(2) and the Date of Next Increment (DNI) was given as 1st of November instead of 1st of January.

3. It is further averred that vide letter No. 27-7/2008-TE-II dated 23.03.2010, the BSNL introduced Policy in respect of Non-Executive Employees known as Non-Executive Promotion Policy (NEPP) providing maximum 4 upgradations in BSNL, irrespective of any upgradation provided to such employee before formation of BSNL (Annexure A-3). Para 5 of NEPP provided for exercising of option to continue in erstwhile time bound promotion schemes. Such option was to be exercised within one month from the date the circle authority/SSA Head asks for such option at the time of implementation of the policy with reference to the first review date. If option is not exercised within the stipulated time period, it would be construed as if the concerned Non-Executive has opted for NEPP and accordingly he/she will be governed by this policy. The promotion of such person who opts to continue in his/her erstwhile time bound promotion scheme viz. OTBP/BCR/Grade-IV/ACP etc. is governed by the provisions of the schemes that existed on 01.10.2000 on which BSNL was formed, unless any change is

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specifically ordered or agreed by the BSNL Management after issue of this policy. However, no opportunity to exercise option to opt for NEPP or to continue in erstwhile time-bound promotion scheme i.e. OTBP/BCR/Grade-IV/ACP etc. was given to applicants. Nothing was got noted down from the applicants by the office, Circle Authority/SSA Head. Vide order dated 23.03.2011, the applicant was granted 2nd upgradation under NEPP in the pay scale of Rs. 14900-27850 w.e.f. 07.11.2009 on completion of 7 years service w.e.f. 07.11.2002 (Annexure A-4). These orders were also not communicated to the applicant due to which he could not exercise the option for fixation of pay either under FR 22 within the stipulated time period. As such, vide order dated 12.4.2011, the pay fixation of applicant on grant of said 2nd upgradation under NEPP was done under FR-22(i)(a)(i) by taking DNI in the month of November instead of January (Annexure A-5).

4. It is further stated that on coming to know that junior to him, one Smt. Amarjeet Kaur, was drawing higher pay than him, the applicant represented on 16.08.2012 and 04.09.2012 requesting for removing of pay anomaly that had arisen on grant of 1st and 2nd upgradation. While the applicant was promoted as Operator on 06.11.1986 and as Sr. TOA on 01.01.1994, junior, Smt. Amarjeet Kaur, a direct recruit, was appointed as Operator in 1988 and Sr. TOA on 01.01.1994. She was granted increments w.e.f. November, 2002. At present, the salary of junior is Rs. 24280/- whereas applicant is getting salary of Rs. 23,820/- only. Vide letter dated

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30.03.2013, the respondent No. 4 (Sr. GMTD, Ludhiana) through A.O. (Estt.) intimated that in the light of prevailing instructions from Corporate Office, his claim for pay fixation at par with junior is not admissible as per rules. However, neither any instructions nor rules were disclosed in the letter nor were supplied to the applicant. The applicant preferred appeal dated 01.04.2013 (Annexure A-7) taking categorical plea that at the time of grant of promotions from time to time and under NEPP Scheme, he was not duly informed by the office for exercising of option of pay fixation under FR 22. Hence, he could not exercise the required option at that time and which lead to pay anomaly and junior started getting more than him. Hence this OA.

5. In the grounds for relief, it has, interalia, been stated as follows:-

- (i) Due to non-communication of promotion order dated 17.02.2003 and 23.03.2011, the applicant could not exercise the option for fixation of pay within one month under FR 22. On coming to know such requirement, the applicant exercised the option in the month of November, 2004 but still his pay is fixed by taking DNI as 1st of November instead of 1st of January much to his disadvantage as he is being paid less salary than his juniors. The said promotion orders were supplied vide RTI letter dated 17.1.2014.
- (ii) It has been admitted by the respondents vide RTI reply dated 17.1.2014 that the Dispatch Register dated 19.02.2003 is not traceable, therefore, for the lapse on the part of the office, the applicants cannot be made to suffer. The promotion orders came to be supplied to applicants only under RTI Act pursuant to filing of application and appeal under the RTI Act, 2005 and making of representations for fixation of pay under FR 22. The promotion order dated 17.2.2003 vide which applicant was promoted to the next higher grade in the pay scale of Rs. 7100-200-10100 under OTBP Scheme w.e.f. 07.11.2002 (1st financial upgradation) provided for exercising of the option for fixation of pay within one month under FR 22 but was never conveyed to

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the applicants. From the perusal of promotion order dated 17.02.2003 itself, it is also clear that no copy has been endorsed to the applicants and only copy of order has been ordered to be placed on the P/File and S/File of the applicants. At the time of granting 2nd financial upgradation vide order dated 17.02.2003, no opportunity to exercise option to opt for NEPP or to continue in erstwhile time bound promotion scheme viz. OTBP/BCR/Grade IV/ACP etc. was given to applicants as per Para 5 of Policy. Nothing was got noted down from the applicants by the office of Circle Authority/SSA Head.

- (iii) It is the duty of every employer to get the option exercised by every member within the time specified. In the following cases, the Hon'ble Courts has held that where the document/circular for exercising of option was not brought to the notice of the employee, he cannot be denied from exercising the same later on:-
 - (a) Ram Chander Vs. UOI (CWP 8899-CAT of 2005) decided on 27.01.2009 (P& H High Court (DB)) (Annexure A-15)
 - (b) Mahinder Singh Vs. Executive Engineer and another (CWP 4677 of 2004) decided on 06.09.2005 (P&H High Court (DB)) (Annexure A-16)
 - (c) Inspector Aas Mohammad Vs. Commissioner of Police (OA No. 1121/2011) decided on 11.10.2011 (CAT Principal Bench) (Annexure A-17)

6. In the written statement filed on behalf of the respondents, it has been stated that promotion order of 2003 was delivered to the applicant through his controlling officer vide letter No. E-I/Promotion/TO's/IV/105 dated 17.2.2003. The contention of the applicant after a period of 11 years that the same was not communicated to him is denied. However, the dispatch register of 2003 is not readily traceable. Besides, the applicant was not promoted in November, 2004 and hence, the question of exercising option in the month of November, 2004 does not arise. The pay of the applicant was fixed on his promotion under OTBP Scheme under FR-22(I)(a)(i) and the same was revised on receipt of clarification

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vide CGMT, Punjab Circle Memo No. Staff/E-419/OTBP/TOA (G)/25 dated 26.6.2004 (Annexure R-1).

7. It is further stated that the applicants was granted next financial upgradation w.e.f. 7.11.2009. It is denied that this order could was not communicated to the applicant as is evident from Annexure A-4 in which the name of the applicants figures at Sr. No. 9 and applicant being beneficiary is getting the higher pay scale on financial upgradation from the due date i.e. 7.11.2009. It has also been clarified that the pay of Smt. Amarjit Kaur has been fixed correctly as per NEPP. Also as per para 6.3 of the policy, it is specifically provided that time-bound IDA pay scale upgradation is personal to non-executive concerned and no claim whatsoever can be made by comparison on grounds of seniority, class, cadre, stream, etc.

8. Replication has been filed on behalf of the applicants reiterating the content of the OA.

9. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicants in these OAs narrated the background of the matter and asserted that when the promotion orders were issued under OTBP as well as the NEPP, the orders were not served upon the applicants and hence, they were not able to exercise the option allowed under FR 22. Because of this, the applicants were getting lesser pay than their junior Smt. Amarjeet Kaur and hence, the applicants were entitled to stepping up of their pay. He stated that the relevant orders were delivered/served upon

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the controlling authority of the applicants and not the applicants themselves. He claimed that when the matter came to his notice, the applicant Sh. Prem Pal Singh submitted his representation dated 16.8.2012, but the same had been rejected by the respondents. Learned counsel stated that as per the admission of the respondents themselves, the promotion orders were served upon the Controlling Authority. Hence, he cited judgement in **Ram Chander**(supra), **Mahinder Singh** (supra) and **Inspector Aas Mohammad** (supra) to buttress his claim for refixation of his pay by taking the date of his next increment as 1st of January w.e.f. the year 2003 or in the alternative, to step up the pay of the applicant with consequential benefits at par with his juniors.

10. Learned counsel for the respondents stated that since the OA had been filed belatedly, the dispatch register relating to 2003 could not be produced to show that the promotion orders had been served upon the applicants. However, regarding upgradation under the NEPP, the dispatch register did show that the individual letters regarding their promotions had been dispatched to the applicants. Learned counsel also explained that the case of Smt. Amarjeet Kaur cited by the applicants was different, as this employee had exercised the option regarding foregoing her promotion under OTBP and thereafter had got the pay fixation done under NEPP. Since the applicants did not submit any such option, they could not compare their case with Smt. Amarjeet Kaur. Learned counsel also referred to the NEPP wherein paras 6.3 and 6.4 read as under:- As _____

6.3 Time-bound IDA pay scale upgradations are personal to non-executive concerned and no claim whatsoever can be made by comparison on grounds of seniority, class, community, cadre, stream etc. Further, except as provided in the instant guidelines, there will be no claim on account of any of the other provisions of FRSR in the context of pay scale, pay fixation, substantive status etc.

6.4 Upgradation in pay scale availed by a non-executive employee on the basis of existing OTBP/BCR/Grade IV/ACP scheme etc. or by way of conversion/restructuring/pay scale upgradation etc. after 01/10/2000 and before notification of this new policy will be treated as the first upgradation under the new policy. The concerned employee may, however, opt for first upgradation as per this policy by foregoing the promotion already availed under the erstwhile OTBP/BCR/Grade-IV/ACP schemes etc. or by way of conversion/restructuring/pay scale upgradation etc.

11. In view of the content of para 6.3, the applicant could not compare their case to that of Smt. Amarjeet Kaur as the time-bound IDA pay scale upgradations were personal to the employee and no comparison could be made on the ground of seniority.

12. We have given our careful consideration to the matter. The claim of the applicant regarding non-receipt of the promotion orders for OTBP that resulted in his not being able to exercise the option against FR 22, is not maintainable in view of the aspect of limitation since there is no record available either with the applicant or the respondents to establish that the promotion order of 2003 was not served upon the applicant. An issue relating to 2003 has been brought up through this OA in September, 2014 and since the records such as dispatch register, are not maintained for such long periods of time, the claim of the applicant for relief regarding refixation of his pay under OTBP after exercising the option under FR 22 is belated and is rejected. In this regard, we also observe that the cited judgements

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(Annexures A-15, A-16 & A-17) are all distinguishable on facts and do not help the applicants' cause.

13. So far as the pay fixation under NEPP is concerned, it is seen that the orders in this regard were dispatched to the concerned individuals as borne out by the entries in the dispatch register. The NEPP was issued in March, 2010, option was required to be exercised within one month and as per documents submitted by the learned counsel for the applicant himself before the Bench, Sh. Prem Pal Singh exercised the option on 27.4.2010. As per Option Form II, he ticked option 2 i.e. "Opt for treating the promotion granted to me (date) November, 2002 under my erstwhile OTBP/BCR/Grade IV/ACP promotion Schemes etc. or by way of conversion/restructuring/pay scale upgradation etc. as my first financial upgradation under Non-Executive Promotion Policy". Similar is the case of Sh. Darshan Singh. Both the applicants in these OAs were therefore well aware of the content of the promotion order and it was for them to have exercised the option regarding FR 22 timely. The record also shows that Smt. Amarjeet Kaur opted to forego the promotion availed w.e.f. 17.10.2004 and was upgraded in the next higher pay scale on 1st upgradation as per NEPP vide Memo No. E-46/NEPP/1st Up-Gradation/TOA(P)/32 dated 14.12.2011 (placed on the record with Annexure A-10).

14. In view of the discussion above, we conclude that the applicants did not exercise the option under FR 22(i)(a)(i) timely under OTBP or under NEPP and at this belated stage, they cannot

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seek redressal in this regard. Further, their cases are not comparable with Smt. Amarjeet Kaur in view of the Option Form II that they themselves filled with option No. 2 while Mrs. Amarjeet Kaur had opted for the 1st option. Even paras 6.3 and 6.4 of NEPP do not permit comparison of pay drawn by the non-executives on the grounds of seniority. Hence, there is no merit in these OAs and the same are rejected. No costs.

15. A copy of this order may also be kept in the connected file.

(RAJWANT SANDHU)
MEMBER(A)

(JUSTICE L.N. MITTAL)
MEMBER(J)

Dated: 3.2.2016
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