

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 255 of 2014

**Present: Hon'ble Mr. Gokul Chandra Pati, Administrative Member
Hon'ble Mr. Swarup Kumar Mishra, Judicial Member**

Kartik Chandra Ghadei, aged about 59 years, S/o Late Brundaban Ghadei, permanent resident of Vill – Gopapur, PO – Chhatia, Dist. – Jajpur (Ofisha), presently working as Sr. Postmaster, BBSR GPO.

.....Applicant.

VERSUS

1. Union of India represented through its Secretary, Ministry of Communication & IT, Department of Posts, Dak Bhawan, New Delhi – 110001.
2. The Chief Post Master General, Odisha Circle, Bhubaneswar – 751001, Dist. – Khurdha (Odisha).
3. The Director of Accounts (Postal), Cuttack – 753004, Dist. – Cuttack (Odisha).

..... Respondents.

For the applicant : Mr.T.Rath, counsel

For the respondents: Mr.A.K.Mohapatra, counsel

Heard & reserved on : 20.12.2018

Order on : 3.1.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant, being aggrieved by non-acceptance of his revised option dated 8.1.2007 for fixation of his pay, has filed this Original Application (in short OA) under section 19 of the Administrative Tribunals Act, 1985 for the following main reliefs as stated in the OA:-

- “(a) Quash the order dated 11.06.2013 under Annexure-A/17.
- (b) Direct the respondents to accept the revised option dt 08.01.2007 of the applicant for fixation of his pay in the scale of Rs 6500-10500/- from 01.03.2000 in the ACP (ASPO) cadre.”

2. The facts in brief, are that the applicant was first appointed as Clerk on 4.8.1973 and was promoted to the cadre of inspector of post offices on 27.5.1988. On introduction of Assured Career Progression (in short ACP) Scheme w.e.f. 9.8.1999, the applicant, after completion of 24 years of service in

1997, was granted the upgraded pay scale of ASPO i.e. Rs. 6500-10500/- w.e.f. 9.8.1999 vide the order dated 10.5.2001 (Annexure-A/1). It is stated in the OA that without giving the applicant to submit the option for pay fixation, his pay was fixed on the upgraded scale w.e.f. 9.8.1999. On 1.7.2002, the gradation list was circulated and the applicant found that a junior official Sri Ramdas Soren was getting same pay as the applicant. He submitted a representation dated 18.8.2003 (Annexure-A/2), after which his increment was antedated at par with Sri Soren vide order at Annexure-A/3, passed by the respondent no. 2. But it was not correctly implemented in the ACP scale w.e.f. 9.8.1999, retaining the increment date to be August instead of February.

3. The applicant, thereafter, submitted a fresh/revised option dated 31.1.2004 (Annexure-A/4) for fixation of his pay after upgradation under ACP, which was rejected by the respondent no. 2 vide the order dated 20.5.2004 (Annexure-A/8). The applicant submitted a fresh representation dated 16.6.2004 (Annexure-A/9), which was duly considered and vide order dated 29.12.2006 (Annexure-A/12), his increment was changed to March every year after 1.1.1996. The applicant, thereafter, submitted afresh revised pay fixation option dated 8.1.2007 (Annexure-A/13), on which no action was taken by the authorities, in spite of representations. The applicant files OA No. 31/2013 which was disposed of by the Tribunal vide order dated 4.2.2013 (Annexure-A/16), directing the respondents to dispose of the representation dated 8.11.2012 in this regard to the respondent no. 1. In compliance, the impugned order dated 11.6.2013 (Annexure-A/17) has been passed rejecting the revised option furnished by the applicant.

4. The grounds advanced in the OA are as under:-

(i) As per the OM dated 25.2.2003 (Annexure-A/5) of the Department of Personnel and Training (in short DOPT), an employee may furnish the revised option for pay fixation in the event of any unforeseen developments or change in rules, which is to be decided on merits by the concerned Ministry on case to case basis. The antedating of the date of increment to March was not anticipated by the applicant earlier.

(ii) In case of another employee, Sri BK Rao, revision of pay was done due to an earlier punishment order and he was allowed to exercise revised option after such revision of pay. The applicant's junior Sri Ramdas Soren was allowed to antedate his date of increment in ASPO cadre after ACP to March every month as against August for the applicant.

5. The respondents have filed counter stating that the ACP benefit was given to the applicant w.e.f. 9.8.1999 and although there was specific mention about exercise of option under FR22(l)(a)(1) within one month, the applicant did not submit any option, for which his pay was fixed with August being the date of his increment. The applicant submitted a belated option dated 30.1.2004 (Annexure-A/4) to fix his pay from 1.2.2000 and the request was rejected as it was furnished late. Thereafter, vide order dated 29.12.2006, his date of increment in Inspector cadre was changed to March at par with Sri Soren, after which, the applicant again fresh revised option dated 8.1.2007 (Annexure-A/13). This was examined and it was found that there was no unforeseen development or any change of rules necessitating the revised option belatedly submitted by the applicant. Hence, it was rejected vide the impugned order dated 11.6.2013 (Annexure-A/16).

6. Rejoinder was filed by the applicant stating that his pay was revised further vide order dated 27.1.2004 (Annexure-A/3) after upgradation under ACP and the applicant got a fresh opportunity to submit the option for pay fixation as per DOPT OM dated 25.2.2003. But the revised option furnished by the applicant was rejected by the respondent no. 2, after which, the applicant represented for condonation of delay to the respondent no.1. There was no guideline defining what could constitute unforeseen developments as mentioned in the DOPT OM dated 25.2.2003 and the respondents have rejected his revised option without application of mind and furnishing any reason, which is not as per the judgment of Hon'ble Apex Court in the case of Chairman-cum-Managing Director, Coal India Ltd. v. Ananta Saha and others 2011(1) SCC(L&S) 750. After his upgradation under ACP, he was to give his option by 30.6.2001, but the postmaster Angul disbursed the arrear salary on 15.6.2001 without waiting for the option from the applicant. It is further stated that in another case of similar nature, the respondents have condoned delay in submitting the option vide order dated 6.2.2015 (Annexure-A/23 to the Rejoinder).

7. We heard learned counsel for the applicant who reiterated the averments in the pleadings and submitted a copy of the order dated 9.4.2018 of this Tribunal passed in OA No. 731/2014 in the case of Shiva Murty Shukla vs. Union of India & others and submitted that the facts in the cited case are similar to the present OA and a copy of the judgment of Hon'ble apex Court in the case of M.R. Gupta vs. Union of India & Ors 1995(2) U.J. (S.C.) 689 in support of the applicant's case.

8. Learned counsel for the respondents in his submissions, reiterated the stand taken by the respondents in the counter.

9. The reason furnished by the respondents for not accepting the revised option for pay fixation on the part of the applicant is that he failed to submit the option within the time stipulated under the rules. It is stated by the applicant that he did not submit the option when his pay was fixed after upgradation under ACP w.e.f. 9.8.1999, since the post master drew and disbursed his arrears before expiry of thirty days period available to him to furnish his option. This reason is not very convincing since early disbursement of arrears would not prevent the applicant to furnish his option within time and after receiving the arrear salary, he could have furnished his option as per the rules. But he chose not to submit the option and got alerted when he saw the gradation list corrected as on 1.7.2002 when he found his junior getting same pay (vide para 4.3 and 4.4 of the OA).

10. Learned counsel for the applicant, at the time of oral submissions, has cited the order dated 9.4.2018 passed in the case of Shiva Murty Shukla (supra) to argue that the case of the applicant is similar to the cited case, for which, the applicant is entitled for the same relief. In the case of Shiva Murty Shukla (supra), the facts as stated in para 2 of the order dated 9.4.2018 of the Tribunal are as under:-

"2. The brief facts of the case are as follows:-

The applicant had joined as Time Scale Clerk in the Department of Posts on 15.5.1973 and was promoted to the cadre of Inspector (Posts) on 26.12.1989. His pay was fixed in the scale of Rs. 5500-175-9000/- as on 1.1.1996 consequent upon the 5th CPC's recommendations, the Date of Next Increment being due from the 1st day of May every year. The Chief Post Master General, Orissa Circle (Respondent No.2) vide Memo No.ST/20-15/ACP/2000 dated 12.8.2002 issued order for upgradation of applicant's pay to the scale of Rs. 6500-200-10500/- under the ACP Scheme with effect from 9.8.1999. The applicant claims that he did not get any chance for exercising option for fixation of his pay as well as the date of his next increment. Subsequently, he came to know from his colleague Shri R.D. Soren that the latter had submitted the option for pay fixation from the date of next increment which was accepted by the Postmaster, Baripada H.O. Therefore, the applicant also submitted his option on 1.11.2002 for fixation of his pay from 1.5.2000....."

11. It is clear from above that the case of the applicant in OA No. 731/2014 is similar to the case of the applicant in the present OA. In fact, in the present OA, it is noted that the applicant has furnished his revised option for pay fixation on 8.1.2007 in response to the order dated 29.12.2006 (Annexure-A/12), antedating the date of increment of the applicant to 1st February. Hence, we are of the view that the representation dated 18.4.2007 (Annexure-A/14) for condonation of delay needs re-examination by the respondent no.1 in the light of the case of Sri Shiva Murty Shukla, the applicant in OA No. 731/2014 and the case of Sri Rabindra Kumar Singh in OA No. 963/2013.

12. In the circumstances, the impugned order dated 11.6.2013 (Annexure A/17) is quashed and the respondents are directed to consider afresh the prayer of the applicant contained in the representation dated 18.4.2007 (Annexure-A/14) for condonation of delay in furnishing the option for pay fixation and the revised option dated 8.1.2007 (Annexure-A/13) in the light of the cases as discussed in para 11 above and pass a reasoned order within a period of three months from the date of receipt of a copy of this order. OA is allowed accordingly. No costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath