

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00338/2016

RESERVED ON: 10.01.2019

Jodhpur, this the 28th January, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Narayan Lal Johind S/o Bhera Ram, aged about 61 years, resident of 4/117, Purani Housing Board, Pali, Marwar Junction.

.....Applicant

By Advocate : Mr K.S. Yadav.

Versus

1. Bharat Sanchar Nigam Limited through its Managing Director, BSNL, Headquarter, New Delhi.
2. Chief Manager Telecom (Doorsanchar), Jaipur.
3. General Manager, Doorsanchar, Bhilwara.
4. Telecom District Manager, Doorsanchar, Pali, Marwar.
5. Assistant General Manager (Admn.), Doorsanchar, Pali Marwar.

.....Respondents

By Advocate : Ms K. Parveen.

ORDER

This Original Applications has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

- (a) Letter No. Q331/NLJ/2016-17 dated 08.07.2016 (Annex. A/2) passed by the Assistant General Manager (Admn) Doorsanchar, Marwar Pali so also Order No. Q331/NLJ/Retired/2016-17 dated 02.05.2016 (Annex. A/1) passed by the Assistant General Manager (Admn.)

Doorsanchar, Marwar Pali may kindly be quashed and set aside.

- (b) The respondents be directed to accept the applicant's two options and grant him all consequential benefits of fixing his next date of increment as 01.07.2005 under order (Annex. A/3) and fixing his next date of increment as 01.07.2014 under order (Annex. A/4).
- (c) The respondents be directed to pay to the applicant the whole arrears of his outstanding salary and pension after revising the same by treating 01.07.2005 as his next date of increment under order (Annex. A/3) and also be treating 01.07.2014 as his next date of increment under order (Annex. A/4).
- (d) The respondents may be directed to pay the revised pension as above throughout the petitioner's life.
- (e) The respondents may be directed to pay the above arrears with 24% of compound interest.
- (f) Any other appropriate relief which this Hon'ble Court Tribunal deems just and proper in favour of the applicant may kindly be granted to the applicant.

2. Facts relevant to adjudicate the present matter, as stated by the applicant, are that applicant was appointed in the respondent-department w.e.f. 03.06.1976 and he retired w.e.f. 31.07.2015 on completion of 60 years of age after rendering 39 years of satisfactory service on different posts. While applicant was working on the post of Sr. T.O.A. (Phones) in the year 2011, options were invited by the respondents from employees for Non-Executive Promotion Policy-I (Hereinafter referred to as NEPP-I). The applicant, however, could not submit his option in prescribed time period as he was not informed about the same by the respondents. Also, he could not submit option for his date of next

increment due to his family circumstances. Thus, applicant's upgradation was made w.e.f. 01.10.2004 vide order dated 05.03.2011(Annex. A/3) whereas he was intending to opt the same from his date of next increment w.e.f. 01.07.2005. The real benefits of upgradation were granted w.e.f. 01.04.2008. Thereafter, applicant was granted benefit of NEPP-II w.e.f. 22.02.2012 vide order dated 10.07.2014 (Annex. A/4). The applicant submitted his option form for fixation of pay on upgradation within 30 days as stipulated in the said order but due to inadvertent human error, he opted pay fixation as October 2014 instead of July, 2014 though the applicant submitted his option form in July, 2014. He, therefore, submitted representations dated 28.02.2015 (Annex. A/5), 21.05.2015 (Annex. A/6), 02.03.2016 (Annex. A/7), 02.04.2016 (Annex. A/8). However, vide order dated 02.05.2016 (Annex. A/2) respondents informed the applicant that competent authority ordered to consign his representations to record. Under these circumstances, applicant served legal notice dated 02.06.2016 (Annex. A/9) upon the respondents through his counsel and in reply to the said notice, respondents issued order dated 08.07.2016 (Annex. A/1), which has been challenged by the applicant in the present OA seeking reliefs mentioned in foregoing paragraph. The applicant has stated that other similarly situated employee namely Shri Mamraj

Pareek, have been granted relief by accepting their delayed option whereas the applicant has been discriminated.

3. Respondents filed their joint reply on 24.04.2017 and denied the claims of the applicant. Respondents have inter-alia stated that applicant while working as Sr. TOA (P) in Pali had exercised his option to opt for NEPP dated 06.01.2011 (Annex. R/1). After opting for NEPP, he was granted 1st upgradation under NEPP in the pay scale NE-11 from NE-10 w.e.f. 01.10.2004 vide order dated 05.03.2011 (Annex. R/2). In order dated 05.03.2011, it was explained that concerned official may exercise his option with regard to fixation of pay from the date of next increment, within a period of one month from the date of issuance of the said order. But, as the applicant did not exercise his option within stipulated time, therefore, his pay was fixed from the date of upgradation, i.e. 01.10.2004 as per NEPP. Thereafter, applicant was granted 2nd upgradation in the pay scale of NE-12 under NEPP vide order dated 10.07.2014 (Annex. R/2) and again option was invited to the officials for pay fixation from the date of next increment within a period of one month from the date of issuance of aforesaid order. This time, applicant exercised the option for pay fixation from the date of next increment, i.e. w.e.f. 01.10.2012 and respondents have fixed the pay of the applicant accordingly. Hence, respondents had not discriminated the applicant with others.

Further, the representation dated 22.07.2014 submitted by the applicant was also examined in light of NEPP and as per rules and the same was replied vide letter dated 02.05.2016. Reply to legal notice served by the applicant through his counsel has also been given vide letter dated 08.07.2016 (Annexure-R/6).

With regard to case of Shri Mamraj Pareek who was working as Sr. TOA (Phones) in Pali, the respondents stated that case of the said official was totally different from the case of the applicant as he had changed his option II to opt NEPP at the initial stage before giving any promotion/upgradation under the NEPP whereas the applicant wanted to change his option for fixation of pay after promotion which was given under NEPP for 1st IDA upgradation (NE-10 to NE-11). Respondents thus prayed that OA may be dismissed with costs.

4. Applicant filed rejoinder to reply on 19.05.2017 inter-alia stating that Shri Mamraj submitted his option only on 07.01.2013 and had the option submitted by Shri Mamraj prior to 07.01.2013, the notesheet in that respect would have been made on or seen after submitting the option. Whereas, to the best of applicant's knowledge, Shri Mamraj had submitted the option on 07.01.2013 and the first notesheet in respect thereof had been drawn only on 07.01.2013. Had the option was submitted by Shri Mamraj prior to 07.01.2013, the notesheet would have been drawn soon thereafter. The case of the applicant is exactly similar to Shri

Mamraj and since Shri Mamraj had been granted all the benefits, the applicant deserves to be granted all the benefits to avoid any discrimination with him.

5. An additional affidavit has also been filed by the respondents annexing Non-Executive Promotion Policy (NEPP) circulated vide No. 27-7/2008-TE-II dated 23.03.2010.

6. The applicant filed Misc Application No. 290/00097/2018 reiterating averments made in the OA, submitted that Shri Mamraj is similarly situated person and option form submitted by Shri Mamraj and the applicant regarding promotion under NEPP Scheme and note sheet as well as all orders passed thereon may be produced by the respondents. The said Misc. Application was allowed by this Tribunal on 06.08.2018.

7. Thereafter, in pursuance of the directions issued in MA No.97/2018, the respondents filed another additional affidavit on 30.08.2018 annexing therewith the copy of note sheet as well as copy of application alongwith revised second option in respect of Shri Mamraj.

8. Heard Mr K.S. Yadav, learned counsel for the applicant and Ms Kausar Parveen, learned counsel for the respondents.

9. Learned counsel for the applicant submits that there is discrimination in the act of the respondents because on the one hand they rejected the claim of the applicant whereas on the other hand they accepted the delayed option form of similarly situated person i.e. Shri Mamraj Pareek. He further submits that since the respondents did not inform the applicant in time regarding the submission of the option form in compliance of Annexure-A/3 order, therefore, he could not submit the same in time. However, in compliance of order Annexure-A/4, the applicant submits his option well in time. Therefore, the applicant states that for the error on the part of the respondents, the applicant may not suffer.

10. Per contra, learned counsel for the respondents submitted that the respondents have rightly granted the 1st IDA upgradation to the applicant vide order dated 05.03.2011 w.e.f. 01.01.2004 and after that, he was granted 2nd IDA upgradation w.e.f. 22.02.2012 vide order dated 10.07.2014. The action of the respondent is perfectly just and proper being in accordance with the Rules. She further submits that the case of Shri Mamraj Pareek is different from the case of the applicant as the applicant did not submit his option in time whereas Shri Mamraj Pareek had submitted his option in time but as his option form was not traceable in the office of HRD, he was permitted to submit a review of the same.

11. After hearing both the parties and carefully going through the record, it is noted that during course of hearing upto final hearing, the emphasis of the applicant has finally shifted to the claim that Shri Mamraj is similarly situated person to him and he had been allowed to change his option by the respondents whereas, the applicant has been treated differently. Therefore, respondents may be directed to consider his representation for change of option for pay fixation under NEPP-I and NEPP-II on the ground that he is also facing loss Rs 1,000/- approx. per month in pension due to non-submission of option in time (NEPP-I) as well as due to inadvertent human error of opting pay fixation from a non-beneficial date.

12. It is worthwhile to take note of Non-Executive Promotion Policy of the respondents before adjudicating the case made out by the applicant. The respondents circulated NEPP vide letter dated 23.03.2010 (Annex. R/7) whereby, a non executive recruited by DOT prior to 01.10.2000 will be considered for four upgradations on completion of 4 years of service in the IDA pay scale from 01.10.2000 and 7 years service after the 1st upgradation, and eight years each for 3rd and 4th upgradations. As per para 5.1 of the policy, OTBP/BCR/Grade IV/ACP promotion schemes etc. were ceased to exist. However, option

was given to an individual non-executive to opt to remain out of the purview of the policy. Para 5.1 of the NEPP is as under :

'5.1 All the non-executive employees will automatically and uniformly be covered by this promotion policy. Existing OTBP/BCR/Grade IV/ACP policy will cease to exist from date of notification of this Non-Executive Promotion Policy, as a general measure. An individual non-executive employee may, however, opt to remain out of the purview of this scheme to continue in his erstwhile time bound promotion scheme. Such option to remain out of the purview of this policy will have 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 this Non-Executive Promotion Policy and accordingly he/she will be governed by the provisions of the Non-Executive Promotion Policy. The Option Form is annexed herewith.

Thus, it is clear that there were options available to the non-executive employees to opt for NEPP or continue in erstwhile policies of time bound promotion. However, to remain in the erstwhile time bound promotional policies viz OTBP/BCR/ACP etc. one has to exercise option in prescribed form. In case of non-submission of such option form, person was deemed to be covered under NEPP Scheme. Hence, there was no requirement to fill up option form to opt for NEPP Scheme. Further, vide circular dated 05.03.2011 (Annex. R/2), it has been circulated by the respondents that concerned employee can opt for pay fixation under NEPP Scheme from date of next increment.

13. However, in the instant case, it is not the case of the applicant that he does not wish to be covered under NEPP and

wanted to continue in erstwhile promotional schemes. The applicant's grievance is that when 1st upgradation under NEPP was granted to him, he could not submit his option for fixation of pay from the date of next increment, i.e. 01.07.2005. The applicant submitted that he could not submit option as he was not informed and at the same time also contended that he could not submit the same due to his family circumstances. The first contention of the applicant that he was not aware of his pay fixation on first upgradation under NEPP Scheme cannot be accepted as he himself annexed upgradation order dated 05.03.2011 (Annex. A/3) based on which his pay has been fixed from 01.10.2004 (as per NEPP). However, he agitated his grievance before the respondent authorities for the first time on 28.02.2015. During this period, he must have drawn enhanced pay, therefore, now he cannot say that he was not aware of the same. As per order dated 05.03.2011 (Annex. A/3), it is clear that if concerned employee wants to fix his pay from a later date, i.e. date of next increment, he has to opt for the same and otherwise he need not exercise any option if he wants to fix his pay from the date of upgradation. The another contention of the applicant is contradictory to earlier one, that he could not exercise pay fixation option due to family circumstances which is also vague one and appears to be an afterthought as the same is not backed by any further averments as well as documents on record.

Thereafter, the applicant became entitled for 2nd upgradation under NEPP w.e.f. 22.02.2012 vide order dated 10.07.2014 (Annex. A/4) but this time, he exercised the option to fix his pay from the date of next increment. Hence, benefit of pay upgradation was granted to him in NE-12 from the date of next increment, i.e. 01.10.2012.

14. Apparently, it is clear from Annex. A/3 and A/4 orders placed on record by the applicant that in case of pay fixation on upgradation under NEPP, if concerned employee wants to fix his pay from the date of upgradation, he need not exercise any option. However, if he wants to fix his pay from a later date, i.e. from the date of next increment, option in such a case required to be exercised by the employee concerned. In the present case, when benefit of 1st upgradation under NEPP was granted to the applicant, he did not exercise his option for fixation of pay and when benefit of 2nd upgradation under NEPP was granted to the applicant, he exercised his option for fixation of pay from the date of next increment. The respondents, therefore, fixed his pay accordingly as per his option and neither the applicant questioned the same nor I find any irregularity in the same. Hence, the applicant having exercised the options as above, in my opinion, is not entitled for exercise of revised option in the matter. There is no justifiable reasons put forth by the applicant

to direct the respondents to afford him another opportunity to exercise fresh option on the purported ground of his family circumstances. Hence, I am not inclined to direct the respondents to re-open the issue. Although respondents consign the representations of the applicant to record and only replied to legal notice served by the applicant but on considering the overall facts and circumstances of the case, I am of the view that there is no need to interfere with the matter as the same has been considered by this Tribunal on merits.

15. Furthermore, thrust of the arguments and rejoinder as well as additional affidavits filed in the present case is that the applicant's case is similar to Mamraj's case. Shri Mamraj Pareek had given the option at the relevant time in the year 2011, but as the said option was not traceable in the office of HRD Branch, respondents asked Shri Mamraj Pareek to submit his option form. Notwithstanding the aforesaid contention, I find that the option in the case of Shri Mamraj is related to treating OTBP promotion as 1st upgradation under NEPP and thereafter allowing revised option in terms of clarification No. 8 issued vide letter dated 28.09.2001 (Annex. R/3) by the respondent –department as one time measure. Whereas, applicant's case is related to exercising option regarding fixation of pay after grant of upgradation. It is not disputed that applicant wanted to come under the purview of

NEPP on a later date. His case is that his pay has not been fixed from date of his next increment on grant of upgradations under NEPP due to non-submission of option of pay fixation. As such, purpose of options required to be exercised in both the cases are quite different in nature as one is related to Upgradation/Promotion Scheme and other is related to pay fixation after grant of upgradation from due date. Hence, Shri Mamraj is nowhere similarly situated employee to the applicant and applicant's case cannot be equated with him.

16. In the view of the discussions made herein above, I find no illegality or discrimination in the impugned orders at Annexure-A/1 & A/2. Therefore, no interference is called for by this Tribunal. Accordingly, the OA is dismissed with no order as to costs.

[Hina P. Shah]
Judicial Member

Ss/-