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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20.08.2025

+ W.P.(C) 12564/2025

MAHANAGAR TELEPHONE NIGAM LIMITED & ORS.

.....Petitioners

Through: Mr.Saket Sikri, Mr.Ajay Pal
Singh, Mr.Jasbir Bidhuri,
Mr.Akshit Gupta, Advs.

versus

ASHOK KUMAR AGRAWAL & ANR.Respondents

Through: Mr.A.K.Kaushik, Adv. for R-1.
Mr.Nitinjya Chaudhry, SPC,
Mr.Gokul Sharma, GP,
Mr.Rahul Mourya, Advs. for R-
2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

CM APPL. 51220/2025 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 12564/2025 & CM APPL. 51219/2025

2. This petition has been filed, challenging the Order dated 30.01.2025 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in O.A. No.3186/2015, titled *Ashok Kumar Agrawal v. Union of*



India & Ors., allowing the said O.A. filed by the respondent herein with the following terms:

“7. CONCLUSION:

7.1. In view of the aforesaid analysis, the impugned orders dated 09.01.2015, 24.03.2015 and 13.01.2015 are set aside and the respondents are directed to grant an option form for fixation of pay to the applicant in terms of CCS (Revised Pay) Rules, 2008 within 30 days from the receipt of a certified copy of this order. The applicant shall exercise the said option within a week thereafter.

7.2. Upon receipt of such option form exercised by the applicant, the respondents shall re-fix the basic of the applicant at par with Ms. Prabha Gupta and apply the same to all his subsequent increments. The applicant shall also be entitled to arrears thereto. The said exercise of re-fixation of pay and increments at par with Ms. Prabha Gupta shall be carried out by the respondents within a period of three months from the date of receipt of option form exercised by the applicant.

7.3. The OA is disposed of in the aforesaid terms. Pending MAs, if any, shall stand disposed of. No costs.”

3. The learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate that as per F.R. 22(I)(a)(1) the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under the said rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be



refixed in accordance with this rule on the grade or post.

4. He submits that the learned Tribunal further failed to appreciate that in the present case, on two occasions, that is, 01.10.2000 and 01.10.2004, options were called from the employees to defer financial benefits of the upgradation. While Ms. Prabha Gupta, with whom the respondent claims parity, deferred the financial benefits of the upgradation in order to first take the increment in the running grade and then subsequently take the benefit of the upgradation in terms of F.R. 22(I)(a)(1), the respondent did not exercise such option. The anomaly in the pay scale occurred because of the decision of the respondent himself.

5. He further submits that the OA filed by the respondent before the learned Tribunal was barred by the limitation inasmuch as the respondent had superannuated on 31.07.2011 and though he made a representation for stepping up his pay in the year 2011 itself, he filed the said OA in the year 2015. To justify this delay, the respondent had contended that his representation was rejected by a letter dated 13.01.2015. However, in terms of Section 21(1)(b) of the Administrative Tribunal Act, 1985, in case the representation is not decided within a period of six months, the OA should be filed within a period of one year from the expiry of such six months period. He submits that therefore, the respondent could not have got the benefit of extension of the limitation only because the petitioners failed to decide on the representation made by the respondent.

6. The learned counsels for the respondents, who appeared on advance notice of this petition opposes both the above submissions of



the learned counsel for the petitioners.

7. We have considered the submissions made by the learned counsels for the parties.

8. As far as the submission of the learned counsel for the petitioners on merit is concerned, we may only note that this issue is no longer *res integra*. In **Gurcharan Singh Grewal v. Punjab State Electricity Board**, (2009) 3 SCC 94, the Supreme Court held that a senior cannot be paid lesser than a junior. Even if there was a difference in the incremental benefits in the scale given to the junior, such anomaly should not have been allowed to continue and ought to have been rectified by the Department itself.

9. This Court also, in its Judgment in **Union of India & Anr. v. Sushil Kohli**, 2024:DHC:294, has held that the stepping up of pay of a senior at par with the pay being drawn by his junior, is the norm. This stepping up can, however, be refused in certain cases as referred to in Clauses 2(a) to 2(f) of the Office Memorandum dated 04.11.1993 issued by the Department of Personnel and Training. In the present case, admittedly, none of the circumstances mentioned in Clause 2(a) to 2(f) of the said OM were applicable to the respondent. The only reason for the respondent to draw lesser pay than his juniors was on account of alleged non submission of the option by the respondent. In our view, the same would not justify that the senior draws a lesser pay than his junior.

10. On the question of limitation, though the respondent could have approached the learned Tribunal after the expiry of six months of his representation, in our view, the effect of wrong fixation of the pay of



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the respondent was a continuing cause of action, as explained by the Supreme Court in *Union of India & Ors. v. Tarsem Singh*, (2008) 8 SCC 648. Therefore, the learned Tribunal has rightly rejected the said submission of the petitioners.

11. In view the above, we find no infirmity in the Impugned Order passed by the learned Tribunal. The petition is, accordingly, dismissed. Pending application is also disposed of as infructuous.

NAVIN CHAWLA, J

MADHU JAIN, J

AUGUST 20, 2025/Arya/ik