

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO.152/1998

NEW DELHI, THIS THE 31ST DAY OF DECEMBER, 2002.

HON'BLE MR.JUSTICE V.S.AGGRAWAL, CHAIRMAN
HON'BLE MR.V.K.MAJOTRA, MEMBER (A)

1. RAJ KUMAR

s/o Shri Deep Chand Gupta
Senior Section Supervisor
o/o SSW(E) Deptt. of Telecom
Devika Tower, 9th Floor
Nehru Place/New Delhi.

RESIDENTIAL ADDRESS

RAJ KUMAR

1729 Janta Flats
Nand Nagri, Delhi.

2. RAJ SINGH

s/o Sh. Kanwal Singh Yadav
Sr. Section Engineer
o/o Exe. Engineer
Tele Com Electrical D. No. III
Dept. of Telecom/Nehru Place
New Delhi.

RESIDENTIAL ADDRESS

RAJ SINGH

WZ-92 Jawala Heri
Pandav Nagar/Delhi.

3. BALBIR SINGH

s/o Shri Bhullar Singh
Sr. Section Supervisor
o/o Supdtg. Engineer Surveyor of Works
Dept. of Telecom/9th Floor
Devika Tower/Nehru Place, N. Delhi.

RESIDENTIAL ADDRESS

BALBIR SINGH

1/4017 Ram Nagar Extension
Mandali Road/shahdara, Delhi.

4. KHUSHAL CHAND

s/o Shri Cheerter Ram
Sr. Section Supervisor/ Office of
Sr. Architect/Dept. of Telecom, 13th floor
Devika Tower/Nehru Place, N. Delhi.

RESIDENTIAL ADDRESS

54/4463, Regharpura Khas
New Delhi-110 055.

56

5. CHANDER BHAN
s/o Shri Deep Chand
o/o Executive Engineer
Postal Electrical Division
Meghdoot Bhawan/New Delhi.
RESIDENTIAL ADDRESS

CHANDER BHAN
578, Vil. & P.O. Poothkalan
Delhi-110 041.

6. RAM KUMAR
s/o Shri Hoti Lall
Sr. Section Supervisor/Office of
Supdtg. Surveyor of Works,
Dept. of Posts, Dak
Parliament Street/New Delhi.
RESIDENTIAL ADDRESS

RAM KUMAR
2785, Gali Arya Samaj,
Site Ram Bazar, Delhi.

7. JAI CHAND
s/o Shri Puran Chand
Sr. Section Supervisor
o/o Executive Engineer (Civil)
Telecom Civil Dn No. 2
P.O. Bldg. Chanakyapuri,
New Delhi.

RESIDENTIAL ADDRESS

JAI CHAND
6995, Mandi Ghas/Pahari Dhiraj,
Delhi.

8. N.K.JAIN
s/o Shri B.S.Jain
Sr. Section Supervisor Office of
Supdtg. Surveyor of Works,
Department of Telecom/ARA Centre
Jhandewalan, New Delhi.
RESIDENTIAL ADDRESS

B-976, Shastri Nagar/Delhi-52.

9. RANJIT SINGH s/o Sh. R.D. Singh
Sr. Section Supervisor/Office of
Exe. Engineer(Civil)/MTNL Civil Dn
Bhikaji Cama Place/New Delhi.
RESIDENTIAL ADDRESS

RANJIT SINGH
J-146, Laxmi Nagar, Delhi.

42

10. **SUBHASH CHAND**

Sr. Section Supervisor,
O/o Supdtg. Engineer, Telecom
Electrical Civil, Shadipur Depot,
New Delhi.

RESIDENTIAL ADDRESS

SUBHASH CHAND

Subhash Nagar, New Delhi.

11. **Smt. SUSHEELA BHAGAT**

O/o Shri Har Kishor Lall
W/o Shri Ashok Raj
O/o Supdtg. Surveyor of Works
Dak Bhawan/Parliament Street
New Delhi.

RESIDENTIAL ADDRESS

Smt. SUSHEELA BHAGAT

182-A Block-I Laxmi Nagar
Delhi.

12. **HIRA LAL BHARADWAJ**

O/o Shri Shiv Lal
Retd. Sr. Section Supervisor
O/o Exe. Engineer MTNL
Civil District/Eastern Court
New Delhi.

RESIDENTIAL ADDRESS

HIRA LAL BHARADWAJ
No. RJK-56 Kamal Park
New Delhi-110045.

....APPLICANTS....

(BY SHRI G.D.BHANDARI, ADVOCATE)

VERSUS

1. UNION OF INDIA through

The Secretary

Ministry of Communication

Dept. of Telecom/Sanchar Bhawan
Ashoka Road/New Delhi.

2. Superintending Engineer(Civil)

Telecom Civil Circle

Dept. of Telecom, Curzon Road
Barracks, New Delhi.

3. Shri Ame Singh

Senior Section Supervisor

O/o Executive Engineer

Telecom Electrical Division

13th Floor, Devika Tower

Nehru Place, New Delhi.

... RESPONDENTS

(BY SHRI R.P.AGGARWAL, ADVOCATE)

O R D E R

Justice V.S. Aggarwal:-

By virtue of the present application, the applicants seek a direction to step up their pay at par with respondent No.3 retrospectively from the date of his fixation at higher pay stage with arrears and interest on the amount.

2. Some of the facts relevant are that the applicants 1 to 10 have been working as Senior Section Supervisors TOA Grade III and applicant No.11 as Section Supervisor in the Department of Telecommunication under the coordination control of Superintending Engineer, Telecommunication. In the wake of introduction of Electronics Exchange, the Department of Telecom had abolished the Ministerial cadre of LDC/UDC and converted the posts of LDC/UDC's cadre to TOA cadre. They were given an opportunity either to remain in the LDC/UDC cadre or to switch over to the new TOA cadre by way of option. It was stated that in case of those opting out of the scheme, the posts of LDC/UDC/Selection Grade UDC/Dy. Office Superintendent/Office Superintendent will be personal to the incumbents and those posts would be abolished subsequently.

3. The pay of the optees i.e. LDC/UDC who opt for TOAs cadre and who have not completed 16 years of service had to be fixed under FR-22 and those who have completed 16 years of service would

VS Ag

be fixed under FR-22 treating this promotion to the higher scale. The applicants had submitted their options along with respondent No.3 with effect from 9.9.1992. In this process, all the applicants were covered under this scheme. The options had been accepted by the respondents. Thereafter, an order was issued by respondent No.3 mentioning that some of the officials who had already been working in the pay scale of Rs.1600-2660 were converted in the BCR Scheme as Senior Section Supervisors and officials who had already been working in the scale of Rs.1600-2660 and Rs.1400-2300 would retain their position i.e. their supervisory posts.

4. Shri Ame Singh private Respondent No.3, it is contended that in pursuance of the aforesaid policy and option exercised by him, was firstly converted to TOA pattern and was placed in TOA Grade II post in the scale of Rs.1400-2300 and later on promoted to TOA Grade-III as Senior Section Supervisor with retrospective effect. He was neither covered under the roster nor under the BCR Scheme. He had not completed 26 years of service for conversion to TOA Grade-III but had been given an undue benefit of service so rendered by him in the LSG cadre in which he was posted prior to conversion to TOA pattern. In this regard, therefore, the applicants' claim similar treatment and the abovesaid relief has been pressed.

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5. Respondent Nos.1 and 2 have contested the application. As per the respondents 1 and 2, the TOA pattern scheme was introduced and was initially implemented stating:-

"(i) The officials holding the posts of Works Clerk Grade.II/Works Clerk Grade.I having 16 years of service were directly placed in the OTBP pay scale of Rs.1400-2300 and designated as TOA Grade.II (Section Supervisor).

(ii) Few officials belonging to SC/ST community holding the post of Works Clerk Grade.II having 10 years of service were also placed in OTBP pay scale of Rs.1400-2300 against the shortfall of vacancies reserved for them in TOA Grade.II. The relaxation to that extent was given as per clarification to point No.5 issued by Department of Telecommunications, New Delhi under its letter No.10.5/94-CSE dated 21.7.1995.

(iii) Head Clerks/Works Clerks Grade.I having 26 years of service were directly placed in the BCR scale of Rs.1600-2660 & designated as TOA Grade.III (Senior Section Supervisor).

(iv) Few officials belong to SC/ST community holding the post of Works Clerk Grade.I having 17 years service were also directly placed in BCR pay scale of Rs.1600-2660 against the shortfall of vacancies reserved for them in TOA Grade.III. The relaxation to that extent was given as per clarification to point No.5 issued by Department of Telecommunications, New Delhi under its letter No.10.5/94-CSE dated 21.7.1995.

(v) Few Head Clerks working in the pay scale of Rs.1400-2300 & belonging to SC/ST community having 17 years of service were also directly placed in BCR scale of Rs.1600-2660 with effect from 9.9.1992 as per instructions contained in Para-1(C) of Department of Telecommunications, New Delhi letter No.27-4/87-TE.II dated 18.3.92.

18 Aug

(5)

- (vi) The officials holding the post of Office Superintendent in the pay scale of Rs.1600-2660 were straightaway converted into TOA Grade.III(Senior Section Supervisor) in the same pay scale attached to TOA Grade.III irrespective of whether they had 26 years service or not.
- (v) The promotions to TOA Grade.IV (10% quota) were made from amongst the officials in Grade.III on the basis of their inter-se seniority in Grade.III which was prepared as per instructions contained in Department of Telecommunications, New Delhi letter No.10-5/94-CSE dated 17.10.1995."

In pursuance of the decision of this Tribunal dated in OA No.1455/1991 in the case of Smt.Santosh Kapoor & ors. vs. Union of India & ors. rendered on 7.7.1992 which was upheld by the Supreme Court on 9.9.1993, the procedure for promotion to TOA Grade.IV was revised. As per revised procedure, the promotion of TOA Grade IV was to be made from amongst the officials in TOA Grade.III on the basis of their seniority in the basic grade and not on the basis of inter-se seniority. The judgement of the Supreme Court dated 9.9.1993 related to the procedure to be followed for promotion from TOA Grade.III to TOA Grade IV (10% quota) and nothing beyond the same. The provisions of FR 22 will not be applicable because it has been pointed that private respondent Ame Singh was promoted as TOA Grade.III in the scale of Rs.1600-2660 from 9.9.1992 from the post of Head Clerk in the scale of Rs.1400-2300 which he was holding before the introduction of TOA pattern. Applicants were

Ms Ag

promoted as TOA Grade III in the pay scale of Rs.1600-2660 from the post of Works Clerk Grade.I (UDC) in the scale of Rs.1200-2040 which they were holding before introduction of TOA pattern. Shri Ame Singh belongs to the Scheduled Caste community and was holding the post of Head Clerk in the scale of Rs.1400-2300 on 9.9.1992, the date from which TOA pattern came into being. He fulfilled the eligibility condition of 17 years' service prescribed for SC/ST officials instead of 26 years for promotion to TOA Grade.III in the scale of Rs.1600-2660 thereby directly placing him in TOA Grade.III in the scale of Rs.1600-2660. It is denied that he was not entitled to the grade granted to him. In the alternative, it has further been pleaded that cause of action had arisen in the year 1994-95. Since private respondent Ame Singh had been working in the higher scale much earlier than the applicants, the contention of the applicants to the contrary was controverted.

6. On behalf of the applicants, reliance was being placed on the decision of this Tribunal in OA No.1455/1991 rendered on 7.7.1992 in the case of Smt.Santosh Kapoor and others (supra). In the cited case, the applicants had been working as Telegraph Masters/Section Supervisors. Their basic cadres were of Telegraphist/Telegraph Assistant. There were two channels of promotion, one under

Ms Ag

normal channel and the other under one time bound promotion. As per the counter filed, the scale after 16 years under OTBP was Rs.1400-2300 and after 26 years under BCR Scheme was Rs.1660-2660. The question under consideration was whether for promotion to 10% posts in the scale of Rs.2000-3200, the seniority in the scale of Rs.1600-2660/1400-2300 had to be taken into consideration. The application so filed had been allowed and a direction was given that the promotion of 10% posts in the scale of Rs.2000-3200 would have to be based on seniority in basic cadres subject to fulfilment of other conditions in the BCR.

7. It is obvious from the recitations of the facts that this is not in controversy herein as would be noticed hereinafter that the case of private respondent No.3 which is being relied upon to get the monetary benefit is not at par with what was the decision rendered in the case of Smt. Santosh Kapoor (supra).

8. Private respondent, Shri Ame Singh is a member of the Scheduled Caste. In this regard, it was pointed that he had already been granted the higher scale before the present applicants and

MS Ag

others. A detailed chart has been given in the reply which reads:-

S. No.	Name	Community	Date of appointment as Works Clerk Gr. II (LDC).	Date of motion as seniority list of Works of Head Clerk Gr. I (UDC)	S.No.	Date of motion as seniority list of Works of Head Clerk Gr. I (UDC)	Date of place-ment as TOA Gr. III
1.	Ame Singh	SC	12.5.72	10.11.76 26	29.7.91	9.9.92	
2.	Khushal Chand	SC	4.8.66	8.6.77 30	Not pro-moted.	9.9.92	
3.	Balbir Singh	SC	31.5.71	22.3.84 58	-do-	22.7.95	
4.	Ranjeet Singh	Nei- ther	29.5.71	10.12.85 62	-do-	29.5.97	
5.	Raj Kumar	Nei- ther	1.6.71	28.8.86 65	-do-	1.6.97"	

This clearly shows that in terms that Shri Ame Singh had been promoted before placement in TOA Grade.III. At that time, the applicants Khushal Chand, Balbir Singh and others had not even been promoted. Necessarily he got the benefit of the higher scale. In that backdrop, the urge that the applicants should be awarded the benefit of FR 22 necessarily is a plea which has to be repelled.

9. The import of FR 22 had been considered by a Full Bench of this Tribunal in the case of B.L.Somayajulu and Others v. Telecom Commission and Others, (1997) 35 ATC 26. It was held:-

"7. If a junior gets a higher pay, that does not mean that the senior also

As Ag

should necessarily get it without a foundation for such a claim in law. Fortuitous events are part of life. Fixation of pay is generally with reference to an individual. Various reasons may account for the grant of a higher pay to a junior. For example, undergoing a vasectomy operation or achieving excellence in sports or belonging to a certain community or even a wrong fixation of pay may bring about a situation where a junior gets a higher pay. If a junior is granted a higher pay for any of those reasons, that will not confer a corresponding right in a senior to get the same. If, for example, wrong fixation of pay in the case of a junior is to bring about a corresponding fixation in the case of a senior by applying the principle of equality, that would be an instance of using Article 14 to perpetuate illegality. If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a junior. He cannot acquiesce in a wrong, and make a gain from that wrong by a comparison. Without disguise the attempt of the senior, is to get the benefit of a higher pay, by comparison. Without challenging the wrong, he cannot claim a remedy from a wrong. Such collateral reliefs are alien to law. The decision of the Supreme Court in Chandigarh Administration v. Jagjit Singh, AIR 1995 SC 705 supports the view.

8. Ultimately the question boils down to this, what is the right of the senior and where does he find that right? Certainly he does not find that right in any law. The law governing the subject is FR 22-C which is now FR 22 (1)(a)(i). Incidentally this rule is not challenged. It follows that only those anomalies that are directly referable to that rule, are amenable to the curative process thereunder namely, stepping up, and no other. Equity does not offer a cause of action, as we have already pointed out. Discrimination arises only vis-a-vis law. Difference on facts- often non-actionable facts, does not give rise to a cause of action in law. The Supreme Court of India in comparable circumstances held State of A.P. v.G.Sreenivasa Rao, (1989) 10 ATC 61, that difference per se, is not discrimination."

Almost similar question had been raised in the case of S.C.Sharma v.Union of India & ors. in OA

18 Ag

No. 1274/1997 decided on 19.8.1998 and the contention so raised had been repelled. We have no hesitation in following the ratio deci dendi of the Full Bench decision and hold that in the peculiar facts when private respondent Ame Singh had already been promoted, the applicants cannot press into service FR 22. It has no role to play in the present case as referred to above.

10. Resultantly, it must be held that the original application is without merit. It must fail and is dismissed. No costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

/sns/

V.S. Aggarwal

(V.S. Aggarwal)
Chairman