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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 2346/1996

New Delhi, this 22nd day of August, 1997

Hon'ble Shri S.P. Biswas, Member (A)

S/Shri

1. NR Gurnani
47/18, East Patel Nagar, New Delhi
 2. RK Khaneja
270, Hakikat Nagar
Kingsway, New Delhi
 3. Vinod Kumar Gera
2/50, Old Rajendra Nagar
New Delhi
 4. Surinder Kumar Sethi
GH-13/Flat No.611(SFS)G-17 Area
Paschim Vihar, New Delhi
 5. Rajeshwar Kumar Sood
Pkt F-1/20B(MIG)-GB Area
Harinagar, New Delhi
- .. Applicants

(By Shri GK Aggarwal, Advocate)

versus

Union of India, through

1. Secretary
Dept. of Telecom & Chairman of
Telecommunication Commission
Sanchar Bhawan, New Delhi
 2. Sr. Dy. Director General(BW)
Dept. of Telecom
Sanchar Bhawan, New Delhi
- .. Respondents

(By Advocate Shri R.V. Sinha)

ORDER

All the applicants, belonging to Group B Telecom Engineers, are aggrieved because the benefits arising out of the decisions in OAs 2173/93 and 781/94 have been allowed by A-1 order dated 7.9.95 only to those who were applicants therein. As per the applicants, they are similarly placed like the applicants in the above said two OAs filed at Ernakulam Bench of this Tribunal.

2. Heard the rival contentions of both the parties.

3. As per the learned counsel for applicants, order at A-2 dated 18.8.94 passed by the Ernakulam Bench of this Tribunal enunciated the rule position as regards stepping of pay and would apply to those governed by that rule whether they were or not parties to the proceedings wherein that order was passed. In other words, the respondents' stand that the benefits of Ernakulam Bench's order are applicable to the applicants therein and not to others, like the applicants herein, on the ground that they were not parties have been challenged.

4. The applicants 1, 2, 3 and 4 are seniors to Shri D.K. Roy and applicant 5 is senior to Shri K.V. Ashokan but both the juniors were promoted as AEs(C) without considering their cases. Consequently, all the applicants have claimed pay fixation as indicated in col.10 from the respective dates and consequential benefits. Applicants 1 to 4 had earlier filed an OA 2188/90 in October, 1990 and since seniority was refixed during the pendency of his OA, the infructuous and disposed of accordingly with the instruction to file a separate OA for pay qua juniors. Thus, in the present OA, the claim for arrears have been limited to 3 years prior to October, 1990 (11.10.90) in respect of applicants No.1 to 4. As per the counsel, the promotion to the post of AEs(C) or AEs(E) from JEs(C) and JEs(E) are made on the basis of all-India seniority list from suitable candidates. Had the applicants' case been considered, they would have been promoted before their juniors as the promotion was to be offered

on seniority-cum-fitness basis and the applicants were bound to be promoted since they were not only seniors but fit as well.

5. The respondents have submitted that the application is highly barred by limitation since the matter relates to events during 1978 and 1985 respectively when Shri D.K.Roy and Shri Ashokan were promoted on local officiating basis which enabled them to draw more pay than drawn by the applicants. The applicants failed to raise that matter at the relevant time and cannot be allowed to agitate the issue after 19 years and the Tribunal has no jurisdiction to hear the case in accordance with CAT Act. The scheme of such local arrangements promoting juniors prior to the promotion of seniors has not been challenged. The respondents have further submitted that the case of the applicants is not covered for "stepping up" under the DGP&T's instructions dated 4.2.96. This is because the anomaly in this case is not as a result of application of FR 22-C now called FR 22(1)(a)(i). For stepping up of pay, it is necessary that both the senior and the junior should belong to the same circle, whereas in this case the applicants and Roy and Ashokan belonged to different circles in the grade of JE(C).

6. The question that falls for determination is whether a senior can claim stepping up of pay with reference to the pay of juniors, though they work in two different circles. In other words, what are the

circumstances under which such stepping up can be claimed and what is the basis upon which stepping up can be allowed.

7. We find that the claims of applicants are mainly based on the following:

- (i) principles of seniority-in matters of promotion governed by all-India seniority when seniority-cum-fitness is the governing principle, the respondents should have offered the promotion to the applicants first, as submitted by the counsel;
- (ii) Provisions under Articles 14 and 16 conferring rights of equality before law. It is well settled principle in law that every claim must be based on a enforceable legal right. We also find all the issues raised in this case have been dealt with in greater details by a Full Bench of this Tribunal in November, 1996 (1997(1) ATJ). The relevant paragraphs of the judgement, applicable on all fours to different issues raised herein, are reproduced below:

"To our mind, every claim must be based on an enforceable legal right. A right arises by conferment, not by comparison. Broad notions of equity cannot be equated or assimilated to legal

rights. There is also the further question whether the Tribunal can exercise a jurisdiction in equity. We are inclined to think that jurisdiction in equity does not inhere in the Tribunal. If authority is needed for this proposition, it is found for this proposition, it is found in Joginder Singh V. UOI 1989(11)ATC 474, UOI V. Deokinandan Aggarwal (1992) 19 ATC 219 (SC). The Tribunal is to be guided by law in its adjudicatory process, and not by considerations of equity alone. It cannot travel into regions of equity and innovate remedies. Perhaps the observation of Benjamin Cardozo that a Judge is not free to seek his own ideal, it is more appropriate in the cases of Tribunals.

The argument based on Article 14 cannot advance the case of applicants. Article 14 of the Constitution confers no right, otherwise than by guaranteeing "equity before the law and equal protection of the laws". Unless there is a relevant law, there is no question of equality "before the law". True, arbitrariness is interdicted by Article 14. Then, arbitrariness also is to be tested against the touchstone of law, and not against broad notions of equity. Every dissimilarity is not discrimination in law, and every anomaly is not arbitrariness in constitutional parlance.

If a junior gets a higher pay, that does not mean that the senior also 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 performance 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 Admn. Vs. Jagjit Singh (1995) 1 SCC supports this view.

Ultimately the question boils down to this, what is the right of a 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(1)(a)(i). Incidentally this rule is not challenged, It follows that only those anomalies that are directly referable to that rule, are amendable 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 AP & ors. Vs. G.Sreenivass Rao & Ors. (1989) ATC 61, that difference per se, is not discrimination."

8. I am in full agreement with the position of law enunciated by the Full Bench as afore quoted above. The present case is not covered by DGPT's regulations under FR 22(1) (a)(i). Nor the applicants have come out with a law that prohibits altogether promotions in the circumstances under consideration. I am, therefore, of the firm view that the application fails on merits, deserves to be dismissed.

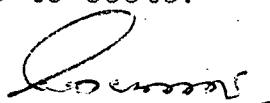
9. In respect of the respondents' plea that the claim is severely hit by limitation, it is felt that the principle laid down by the Hon'ble Supreme Court in its decision in Civil Appeal No.12407 of 1996 (Arising out of SLP(C) No.14536 of 1996) should be adhered to. In that case their Lordships held that a claim for salary, allowances and the like can be considered for a period of three years immediately preceding the date of the application to the Tribunal, whether or not the application seeks the same from a much earlier date.

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10. The learned counsel for the respondents submitted that an SLP is pending in the Supreme Court and the outcome is not yet known. It was also submitted that some of the orders of the Tribunal granting stepping up of pay on consideration of seniority have been upheld by the Hon'ble Supreme Court by rejecting the SLP. It is not possible for us to assent to the submission that the rejection of SLP is conformat of legal principle decided in the order sought to be applied against. In the event the SLP now pending with the Apex Court is dismissed in favour of the applicants, the latter will have the liberty to approach this Tribunal for appropriate relief accordingly.

11. In the light of the discussions aforequoted, and in the light of the decision of the Full Bench of the Tribunal, the OA is dismissed.

There shall be no order as to costs.


(S.P. Biswas)
Member (A)

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