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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No.147 of 1994

This 3rd day of June, 1994

Hon'ble Mr. B.K. Singh, Member (A)

Sudhir Kumar Beri,
Superintendent Incharge,
International Telegraph Office,
Bangla Sahib Marg,
New Delhi.

Applicant

By Advocate: None. Applicant in person

VERSUS

1. Union of India through:
The Secretary,
Ministry of Communications,
Department of Telecom,
Sanchar Bhavan,
New Delhi.

2. The Chief General Manager,
(Maintenance), Northern Telecom Region,
Kidwai Bhavan,
New Delhi.

Respondents

By Advocate: Shri Madhav Panikar

O R D E R

(Hon'ble Mr. B.K. Singh):

This OA No.147/94 has been directed against the impugned letters No.4-31/92-PAT dated 31.5.93 and 38-40/92-94-CS(SR)/21 dated 12.1.1994. These are annexure A-1 and A-2 respectively annexed to the paper-book.

2. The applicant joined the basic cadre of Telegraph Traffic Service grade 'C' through All India Competition held in 1972. His name figured at Sl. No.263 in TTS 'C' gradation list issued by the Department of Telecom. He was promoted in 1984 to TTS Group 'B' (gazetted) and his name figured at Sl. No.70201 in the gradation list of the cadre in the scale of pay of Rs.650-1200. These are annexure 4 and 5 of the paper-book. It is alleged that one Shri P. Panjiara, an officer junior to the applicant in the gradation

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list of TTS Group 'C' at Sl. No.322 of the gradation list issued in 1979 by the D.O.T. (annexure 3) and after promotion in 1989 in gazetted rank of TTS group 'B' at Sl. No.70261 (annexure 4) is drawing ^{than} ~~higher pay/~~ the applicant. The applicant has claimed parity/ his junior ^{with} saying drawing a higher pay ~~/~~ that his case is fully covered under FR 22-C which reads as follows:-

".....In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1.4.61 drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increment the above provisions will not be invoked to step up the pay of the senior officer.

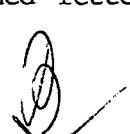
The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay.

(G.I. M.F. O.M. No. F.2(78)-E.III(A)/66 dated 4th Feb.1966"

This rule is applicable to those hard cases where on account of the date of increment, anomaly creeps in as a result of revision of pay-scales and introduction of replacement scales as a result of recommendations of Pay Commission.

3. The applicant has come before the Tribunal since his representation submitted to Respondent NO.1 on 9.11.92 for stepping up his pay to the level of his junior who has been drawing a higher pay than the applicant in TTS group 'B' cadre, ^{the} was rejected by the impugned letter dated 31.5.93 conveyed to the

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applicant vide the impugned letter dated 12.1.1994.

4. The applicant has sought the following reliefs:-
 - (a) to quash the impugned orders dated 31.5.93 and 12.1.1994.
 - (b) to direct the respondents to step up the pay of the applicant to the level of his junior Shri P. Panjiara from the date he has been drawing higher pay than the applicant;
 - (c) to direct the respondents for grant of consequential benefits of arrears of pay and the allowances becoming due on account of the stepping up of pay;
 - (d) to award the costs of the application; and
 - (e) to grant such other relief as this Hon'ble Tribunal deem fit.

5. A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for. Heard the applicant in person and Shri Madhav Panikar, learned counsel for the respondents.

6. The learned counsel for the respondents argued that the application is time barred since the representation filed by the applicant (annexure 8 to the OA) is dated 9.11.1992 and this OA has been filed by him in 1994. Secondly, he argued, that Shri P. Panjiara against whom the application is directed, has not been made a party and any judgment made in favour of the applicant may adversely affect Shri Panjiara. This is a case of non-joinder of the necessary parties. He also quoted the verdict of Hon'ble Supreme Court in the case of Prabodh Verma Vs. State of U.P. (AIR 1985 SC 167) wherein it was held that the High Court ought not to hear and dispose of a writ petition under Article 226 without the persons, who would be vitally affected by its judgment.

7. On merits also the learned counsel argued that the applicant was appointed as Tele Typist much later than the Shri Panjiara and as such he was not similarly placed as Shri Panjiara

is. It is further argued that the applicant completed his prescribed training on 10.11.1974 and was promoted to TTS Group 'C' w.e.f. 11.11.1974 and his pay was fixed at Rs.425/- whereas Shri Panjiara was promoted as TTS Group 'C' w.e.f. 9.1.74 after completing the prescribed training and his pay was fixed at Rs.425/- much earlier than that of the applicant. The applicant was ranked senior to Shri Panjiara by virtue of post -training marks in TTS Group 'C' and consequently, he was promoted TTS Group 'B' w.e.f. 7.8.1984 earlier than Shri Panjiara, although the applicant was promoted to the cadre of TTS group 'C' much later than Shri Panjiara. Shri Panjiara was promoted to TTS Group 'C' w.e.f. 9.1.1974 and his pay was fixed at Rs.425/- from that date whereas the applicant was promoted w.e.f. 11.11.1974, i.e., practicably 10 months later. Shri Panjiara continued to draw a higher pay in the TTS Group 'B' right from the date of his appointment. It is only during the course of TTS training that the applicant secured higher marks and was ranked senior to Shri Panjiara. It was further argued that Shri Panjiara was drawing a higher pay at all stages upto the cadre of TTS Group 'C'. In this connection the learned counsel drew our attention to the chart showing comparision of Shri Panjiara and the applicant. The said chart is re-produced below:

	<u>Shri P. Panjiara</u>		<u>Shri S.K. Beri (Applicant)</u>
1.	Appointed as Telegraphist Pay: Rs.114/-	28.8.62	Appointed as Tele-Typist Pay: Rs.114/-
2.	Promoted as TTS Gr. 'C'	16.8.89	Promoted as TTS Gr. 'C'
3.	Promoted as TTS Gr. 'B' Pay: 2675/-	16.8.89	Promoted as TTS Gr. 'B' Pay: Rs.710/-
4.	Pay in 1993: Rs.2975/-		Pay In 1993: Rs.2825/-

8. It is not controverted that Shri Panjiara got earlier promotion in TTS Group 'C' and that his pay was fixed at Rs.425/- w.e.f. 9.1.1974 whereas the applicant's pay in TTS Group 'C' was fixed w.e.f. 11.11.1974. It was further argued that the cause of

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in the OA arose action on 16.8.89 on the promotion of Shri Panjiara to the cadre of TTS group 'B', but the applicant made a representation for stepping up his pay only on 9.11.1992 and as such it was argued that it is hopelessly time barred. On merits also it was said that the case is not at all covered under FR 22-C since it is not a case of anomaly. The communication dated 31.5.93 from the DOT is a general communication wherein it is stated that stepping up of the paya cannot be allowed under the existing orders. The fact that Shri Panjiara was promoted earlier in TTS Group 'C', is not denied by the applicant. It was further argued that Shri Panjiara had been given officiating promotion in TTS Group 'B' in Bihar Circle for a longer period and on his regular promotion this officiating period was counted and he carried all his increments and emoluments earned by him in TTS group 'C' along with the benefits of officiating promotion given to him in the exigencies of public service, when he was regularised. It has nothing to do with the seniority of the applicant in the gradation list. It was not rebutted that the officer allowing officiating promotion to Shri Panjiara in TTS group 'B' in Bihar Circle, was a competent authority and as such this officiating promotion in the light of various judgments of Hon'ble Supreme Court will count for purposes of increments and further promotion when there is no break in officiating promotion and the period gets regularised subsequently and the service continues to be uninterrupted.

9. In the facts and circumstances of the case, we conclude that it is not a case of stepping up of the pay under FR 22-C and no grievance is available to the applicant to be agitated before the Tribunal. The applicant has filed a rejoinder reiterating the facts stated by him in the OA. The application is devoid of any merit or substance and hence it is dismissed leaving the parties to bear their own costs.

(B.K. Singh)
Member (A)