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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

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Date of Decision: 17.07.92

OA 2420/91

NAVENDRA KUMAR & ORS. ... APPLICANTS.

Vs.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

THE HON'BLE SHRI J.P. SHARMA, MEMBER (J).

For the Applicants ... Shri M.L. Chaula.

For the Respondents ... Shri A.K. Sikri.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporters or not ?

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J).)

The applicant and 4 others are Assistant Engineer and have filed this application for removal of anomaly as a result of implementation of the order dated 11.7.1990 granting two advance increments to Junior Telecom Officers/ Officers of TES Group-B etc. for acquiring a degree in Engineering or equivalent qualifications while in service. The applicants being senior to one Shri T.R. Khanna in the TES Group-B cadre, are being paid less pay than their said junior. The said order dated 11.7.1990 is reproduced below:-

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***Sub: Grant of Advance Increments for acquiring higher qualification in Engineering.**

The question of grant of advance increments to the Telecom Officials/officers for acquiring a degree in Engineering or equivalent qualification while in service was under consideration of the Department. It has now been decided that -

- (i) Two advance increments in the respective grade may be granted to those Junior Engineers, Junior Telecom Officers, Officers of TES Group-B and Officers of ITS in the Junior Time Scale and Senior Time Scale promoted from TES Group-B, who acquire or have acquired a degree in Engineering in any one of the disciplines of Mechanical, Electrical, Telecommunication, Electronics, Radio Engineering and Computer Sciences from a recognised University or its equivalent qualification while in service.
- (ii) Advance increments under these orders will be effective from 1.5.90 i.e. advance increments may be granted to eligible officers with effect from 1.5.90, in the scale of pay of the post which they hold on 1.5.90.
- (iii) The (eligible) Officers who acquire the prescribed qualification on or after 1.5.90, may be granted advance increments from the 1st of the month following the month in which results are declared.
- (iv) The grant of advance increments under these orders will not alter the date of increment in the normal course.
- (v) Advance increments under these orders will not be admissible to those officers who have already received advance increments under the earlier order(s).

This issues with the concurrence of Telecom Finance vide their No.2073/90-FAI dated 11.7.90."

The applicants claimed the relief for a direction to the respondents to remove the anomaly and fix the pay of the applicants at par with Shri T.R. Khanna by stepping up their pay from the date Shri T.R. Khanna drew higher pay with all consequential benefits of arrears. They have also claimed interest on this amount.

2. The facts in the short are that the applicants joined as Junior Engineers in the Department of Telecommuni-

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cation against the vacancies of recruitment year 1965 and 1966. Applicants No.1 & 4 were appointed against the vacancies of the year 1965 while the remaining applicants were appointed against the vacancies of the year 1966. The scheme of 2 advance increments was restored by the order dated 11.7.1990 and on our introduction of these two advance increments the pay of Shri Khanna was fixed at the stage higher to the applicants at the revised rates of increments. The applicants made representation to the respondents individually but to no effect. However, the Department of Telecommunication issued instructions on 17.6.91 (Annexure-IV) noting therein "You are requested to work out the number of such cases and intimate the same alongwith the nature of anomaly with one illustration in each type of case, so that the matter could be examined for removal of this kind of pay anomaly."

3. The respondents contested the application taking the preliminary objections that the application is premature and the matter is pending before the Department of Telecommunication and the department has invited information about such cases for consideration thereof. That Shri T.R. Khanna was benefitted with advance increments as the acquired degree in Engineering in May, 1975. There is nothing in the FR/SR under which the senior is entitled to stepping up of pay under the given circumstances. However, the stepping up of

pay is permissible as provided under FR 22-1(a) on promotion and not as a result of grant of advance increments granted for special qualification. It is further stated that two advance increments will not be admissible to those who have already received upto six advance increments under earlier orders. All the applicants have been granted advance increments. If they are granted two advance increments then they would have been doubly benefitted i.e. 6 advance increments granted earlier and two advance increments by way of stepping up with reference to their junior which is against the DOT orders dated 11.7.1990. The respondents have also annexed a copy of the decision taken on the Joint Charter of Demands submitted by JTOA and TESA dated 11.6.90. Para 3 of this agreement goes to show that two advance increments in the respective grades will be granted to these JTOs, TES Group-B Officers, JTS/STS promoted from Group-B, who acquire or have acquired a degree in Engineering or its equivalent qualifications while in service. This will be effective from 1.5.1990. The officers, who already received such benefits earlier, will not be eligible for this grant. This counter was accepted on the basis of MP 1514/92 as the right to file counter was forfeited but was subsequently allowed. The respondents have also filed another MP for hearing of the aforesaid OA alongwith other OA pending in other Benches on the similar cause of action. But since the matter was old and partly heard, the prayer could not

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be acceded to. The MP 1667/92 is also to the same effect. Another MP 1959/92 was filed on behalf of the respondents for adjourning the matter but after the case has been heard partly, the same cannot be put on sine die list. All these MPs, therefore, stands disposed of.

4. I have heard the learned counsel for both the parties at length and have gone through the records of the case. Though, on the last occasion only Shri J.K. Pepli, departmental representative addressed the Bench on behalf of the respondents. The only issue involved in this case is whether the applicants can be discriminated as one Shri T.R. Khanna has already been given two advance increments. The applicants have filed the bio-data of applicants No.1 to 5 and also that of Shri T.R. Khanna, as given out in Annexure-II at page 15 of the application. Applicant No.1 Navendra Kumar has been recruited against the vacancy of the year 1965 and he passed the degree of Engineering while in service in 1971. He was also covered by Rules Prevalant before 1973 and he got three increments and the basic pay was enhanced to Rs.210/- to Rs.240/-. His date of next increment was 15.1.72. He was promoted to TES in July, 1981 and his basic pay fixed at Rs.710/- in TES Group-B. His seniority No.3252 and in June, 1990 he was getting Rs.2825/-.

5. Applicant No.2, Shri Hardas Singh, Seniority No.3052, passed the Engineering Degree in 1970 and was recruited against the vacancy of the year 1966 and was granted four

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increments on the basic pay of Rs.200/- which was enhanced to Rs.240/- and his pay on promotion as TES Group-8 on 27.5.81 was Rs.680/- and in June, 1990 he was getting Rs.2825/-.

6. Applicant No.3, Shri Vidya Prakash Gupta, Seniority No.3272, passed the Engineering degree in 1971 and was recruited against the vacancy of the year 1966 and he got three increments and his pay was enhanced to Rs.210/- to Rs.240/-. On promotion to TES Group-8 on 29.5.81 his pay was fixed at Rs.680/- and in June, 1990 he was drawing Rs.2825/-.

7. Applicant No.4, Shri Abnashi Lal, Seniority No.2517, passed the Engineering degree in 1970 and was recruited against the vacancy of the year 1965. He got three increments and the basic pay was enhanced Rs.210/- to Rs.240/- and on promotion to TES Group-8 on 27.5.81, his pay was fixed at Rs.680/- and in June, 1990 he was getting Rs.2825/-.

8. Applicant No.5, Shri P.C. Joshi, Seniority No.3266, passed the Engineering degree in 1979 and was recruited against the vacancy of the year 1966 and he got five increments and his pay was enhanced Rs.190/- to Rs.240/- and on promotion of TES Group-8 on 27.5.81 his pay was fixed at Rs.680/- and in June, 1990 he was getting Rs.2825/-.

9. Now taking the case of Shri T.R. Khanna, Seniority No.3738, passed Engineering degree in 1975 and was recruited against the vacancy of the year 1966. He was promoted to

TES Group-B on 9.6.1981 and his pay was fixed at Rs.680/- and in June, 1990 he was drawing Rs.2975. It is also relevant to note that Shri T.R. Khanna opted for the Fourth Pay Commission w.e.f. 1.6.1987 while the applicants, named above Shri Hardas Singh and Vidya Prakash Gupta opted for the new pay scale w.e.f. 1.5.1987. Shri Abnashi Lal and Shri P.C. Joshi opted revised pay scale w.e.f. 1.3.1987 and Shri Navendra Kumar opted the new pay scale from 1.5.1987. The case of the applicants is that the higher pay of Shri T.R. Khanna is due to the DOT letter dated 11.7.1990, referred to above. This letter of 11.7.1990 is on the subject of advance increments for acquiring higher qualifications in Engineering. The advance increments under this order will be effective from 1.5.1990 in the scale of pay of the post which they hold on 1.5.1990. In April, 1990, the pay drawn by Shri T.R. Khanna was Rs.2750/- which was the same pay which was drawn by the applicants Shri Abnashi Lal, Vidya Prakash Gupta and Shri Navendra Kumar and at that time Shri Hardas Singh and Shri P.C. Joshi were drawing Rs.2825/- each. In May, 1990 all the five applicants were drawing Rs.2825/- but Shri T.R. Khanna was drawing Rs.2900/- and in June, 1990 the pay of Shri T.R. Khanna was further increased to Rs.2975/- while the pay of above five applicants remained Rs.2825/-. The respondents, in their reply or during the course of the arguments could not show that how this anomaly has occurred. The only contention raised by the respondents is that the

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matter is still under consideration and the applicants have prematurely filed this application. However, the applicants have already waited for more than six months after filing their representations, a copy of which has been annexed as Annexure-III-A,B,C,D & E to the application. These representations were made in September, 1990. The present application has been filed in October, 1991. Thus, the applicants have already waited for a considerable period and their grievance has ^{not} been departmentally remedied. The DOT orders passed by the respondents that DOT was aware of this fact and ordered an enquiry for furnishing the requisite information by 31st July, 1991. The case of the applicants is that there was a similar anomaly arising as a result of grant of enhanced rate of qualifications and pay of Rs.30/- pm. to Auditors in the Indian Audit & Accounts Department and Clerk Grade-II in the Railway Accounts Department, who have passed the departmental examination and on the basis of OM dated 6.7.1990, filed as Annexure-V to the application, the anomaly has been removed. On the same pattern the applicants desired that their pay be also stepped up to the level of their junior Shri T.R. Khanna. Thus, there is nothing to justify the non-grant of prayer made by the applicants in the present application.

10. The respondents have also filed a copy of the Judgement, passed in a bunch of OA by the Principal Bench, decided on 22.4.92. But the issue involved in those cases

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is totally different from the present application, i.e. with regard to the fixation of seniority. The respondents have filed a copy of CCP in a bunch of cases decided by the Principal Bench on 28.2.92 but that too is not relevant.

11. On the principles of equity and fair play, there cannot be any discrimination in the fixation of pay and when two incumbents belong to the same cadre and posts initially appointed and promoted to identical post and cadre in the same scale of pay then a junior, if getting higher pay, not as personal pay or special pay then a senior has to be stepped up to the same unless there is a specific reason. The respondents themselves have stated that they have considered the matter but they have not yet decided. The learned counsel for the applicant has also referred to the decision in the case of T.R. Sunderraja Iyengar Vs. PMG, reported in 1989 Vol.I CAT Bangalore Bench, P.238, para-24 is relevant and is reproduced below:-

"I have bestowed considerable thought on the rival pleadings and also examined carefully the relevant material placed before me. The entire case of the applicant hinges on the fact, whether the cut-off date, namely, 1.1.1973 specified in the aforesaid instructions of the DG, P and T in his letter dated 29.8.1975 (vide para-2) for resolving the anomaly in pay between a junior and a senior, for grant of benefit of stepping-up of pay is legal and rational. The argument of Sri Bhaktavatsalu, that his client should be given the benefit of stepping-up of pay, on the very same principle adopted in the case of the beneficiaries under the provisions of FR 22-C, in that, the benefit of stepping-up of pay should be granted regardless of the cut-off dates viz., 1.1.1973 initially stipulated, seems plausible and well-founded. The intention underlying that principle is, that as far as possible the senior should not be at a disadvantage as compared to his

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junior, in regard to his pay, by imposing an impediment in the form of cut-off date in an arbitrary manner. The anomaly was glaring, Shri Bhaktavatsalu said, as it was perpetuated in an identical post, held both by the junior as well as the senior, owing to the higher rate of advance increment drawn by Shri Srinivasan, in the scale of pay revised with effect from 1.1.1973, consequent to the junior attaining a higher professional qualification. The applicant who was senior to Shri Srinivasan, he submitted, drew advance increment similar, but in the pre-revised pay scale, which incentive he said, was virtually nullified by the higher rate of increment, drawn by his junior in the revised scale of pay."

12. In view of the above facts, the application is allowed and the respondents are directed to step-up the pay of the applicants to the level of the junior Shri T.R. Khanna with all consequential benefits of pay and allowances. The respondents are directed to comply with the directions within three months from the date of receipt of a copy of this order. However, this order shall be subject to any change in the seniority list which may be prepared by the respondents on the directions issued in any judgement of CAT.

In the circumstances, parties to bear their own costs.

Jomarp
17.7.92
(J.P. SHARMA)
MEMBER (J)