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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.3037/91

Date of Decision: 7-7-92

Shri Madan Lal Chawla & Ors.

Applicant

Shri G.L. Gandhi

Counsel for the applicant

vs

Union of India & Ors.

Respondents

Shri P.P. Khurana

Counsel for the respondents

CORAM:

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. B.N. Dhoundiyal, Member (A)

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

JUDGEMENT

(of the Bench delivered by Hon'ble Member Shri B.N. Dhoundiyal)

This OA has been filed by 27 applicants challenging the impugned order No. SR/Gen1/ATMs/OTB.Prom./90-91 dated 24.4.91 passed by the Office of the Chief Superintendent, Central Telegraph Office, New Delhi, read with Order No. Memo No. STT/Teleg/ATMs-Merger/87-89/54 dated 9.8.1990, passed by the office of the Chief General Manager, 'NTR', New Delhi, relating to fixation of their pay.

2. The applicants were working as Assistant Telegraph Masters in the pay scale of Rs.260-480 and were promoted on adhoc basis outside the general line of promotion as Assistant Telegraph Masters in the pay scale of Rs.380-560 between the years 1980-82. The normal channel of promotion of the telegraphist was to the post

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of Lower Selection Grade Telegraph Master in the scale of pay of Rs.425-640. While the rules relating to the post of Assistant Telegraph Master were under consideration, it was decided that this cadre should be abolished by merging 85% of the posts with those of Lower Selection Grade Telegraph Masters and 25% of the posts being downgraded to those of telegraphists. Yet another scheme known as 'One Time Bound Promotion Scheme' was later introduced on the basis of which those telegraphists who had put in 16 years of service were to be given the next higher scale of pay of Rs.425-640 wef. 30.11.83. The order clearly stated that the pay of the officials, so promoted, would be fixed under FR.22-C. The applicants were among those who were reverted from the post of ATM Telegraphists and later given promotion under the One Time Bound Promotion Scheme. Their retrospective reversion from the post of ATM to Telegraphists was quashed by the Delhi High Court by the order dated 24.4.85 in CWP No.274 of 1985. Meanwhile the applicants had been granted promotion under One Time Bound Promotional Scheme wef. 30.11.83 by order dated 12/16th of August, 1985.

3. The respondents changed the date of promotion from 30.11.83 to 6.12.84. In OA.42/1987, decided on 15.5.90, another Bench of this Tribunal quashed this order and directed that applicants may be treated as having been granted promotion under this scheme wef. 30.11.83 itself. On that date, the applicants were working as ATMs in the pay scale higher than that of Telegraphists. Even though their pay was protected during refixation, it was provided that notional pay of the applicants as Telegraphists would be the basis for such fixation and the difference between the notional pay and the pay actually being drawn as ATMs should be treated as personal pay to be absorbed in future increments. A CCP filed by the applicants was rejected on 5.8.91, as this Tribunal felt that there was no wilful violation of directions by the respondents

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and the extent of financial benefits due could not be adjudicated in a contempt petition.

4. The applicants have also mentioned that the agreements to give the benefits of FR 22-C was linked with higher productivity and was arrived at between the staff and the Government in the JCM. The applicants have prayed that the respondents be directed to fix their pay under Rule FR-22C, as has been held in the case of their junior officers who were promoted along with the applicant in terms of orders dated 31.3.84.

5. The respondents have contended that the applicants were working as Assistant Telegraph Masters which is voluntary and adhoc cadre and before giving them the time bound promotion, they were reverted to their substantive post of Telegraphists. Their pay on promotion was required to be fixed with reference to their substantive pay (notional) as per instructions contained in the Department of Personnel and Training circular of 7.11.90. Thus the pay of the applicants has been fixed under FR 22-C on the basis of their substantive pay (notional) ^{as} _^ Telegraphists on 30.11.83. The same principle was followed in the case of those Assistant Telegraph Masters who were upgraded to the post of LSG Telegraph Masters and who were senior to the applicants. The pay drawn by the applicants as Assistant Telegraph Masters was protected and ^{BN} _{the difference} was treated as their personal pay. The essence of the One Time Bound Promotion Scheme was to benefit those employees who had not received any promotion even after completing 16 years of service in the cadre of Telegraphists. Since the applicants were reverted to their substantive cadres of Telegraphists, they became eligible for One Time Bound Promotion Scheme.

6. We have gone through the records of the case and have heard the learned counsel for both the parties. In their circular dated 16/18.7.84, the respondents have provided that the pay of the

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applicants on promotion is to be fixed under FR 22 C with reference to their substantive pay as Telegraphists. In the circular dated 17.8.83, it was provided that the pay of the ATMs who were reverted to the post of Telegraphists was to be protected by grant of personal pay to be absorbed in the future increments in pay. On promotion, the pay of such employees was to be fixed under normal rules, with reference to their pay as Telegraphists.

FR 22 C provides as follows:

"Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued"

7. Both the applicants and the respondents agree that the pay should be fixed on the basis of this Rule but whereas the applicant would like their pay to be fixed on the basis of the pay they were drawing as ATMs, the respondents have fixed their pay on the basis of notional pay in the substantive cadre of Telegraphists though some protection have been given to them treating the difference between the emoluments actually drawn and their notional pay as Telegraphists as a personal pay to be absorbed in the future increments.

8. As has been observed by the Full Bench in R.P. Upadhyay Vs. Union of India, reported in Full Bench Judgements of the Central Administrative Tribunals' (1989-91) Vol.II, page 210 at 227-28, "deputation to an ex-cadre post carrying a higher scale of pay cannot

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be treated on a par with promotion in the normal line within the cadre. Very often such deputation is not based on any procedure of selection from among all the eligible officers of the parent cadre and as such, may be said to be of a fortuitous nature. By giving the benefit of fixation of pay on reversion to the parent cadre on the basis of the last pay drawn in the ex-cadre post, would also give an unintended benefit to the deputationists and result in gross injustice to the seniors in the cadre, who for one reason or other, were not fortunate to go on deputation to such an ex-cadre post.¹¹ We reiterate the same view.

8. By the amendment to the proviso to FR 22, vide notification dated 13.11.65, benefit of service rendered in ex-cadre posts, counting for increments in cadre posts, even on an identical scale is no longer admissible. It is clear, that in view of the fact that the respondents have already protected the basic pay being drawn by the applicants as ATMs, there has been no violations of the rules. The very justification of the introduction of the One Time Bound Promotion Scheme is examined ^{by} that the incumbent has not been able to get any promotion even after rendering more than 16 years as Telegraphists. Hence the applicant cannot claim the benefit of this type of scheme as well as the benefit of an adhoc promotion which was later withdrawn.

9. We therefore do not find any merit in the application and dismiss the same, leaving the parties to bear their own costs.

B.N. Dhoudiyal
(B.N. DHOUDIYAL) 7/7/92
MEMBER(A)

Devi 7.7.92
(T.S. OBEROI)
(MEMBER(J))