

Central Administrative Tribunal, Principal Bench

Original Application No. 2518 of 1993

New Delhi, this the 20th day of August, 1999

Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Mr. N. Sahu, Member (Admnv)

1. Shri B.S.Batra s/o Shri T.R.Batara,
r/o 388, Model Town, Gurgaon
(Haryana).
Office Address: Asstt. Director,
(EA-I) Deptt. of Telecommunication
Telecom Directorate, Sanchar Bhawan,
New Delhi.

2. Shri P.D.Dhanukar, s/o Shri
H.B.Dhanuka, r/o Qtr. No.140 Type
IV, Sector III, R.K.Puram, New
Delhi.
Office Address: Asstt. Director,
(BGI) Deptt. of Telecommunication
Telecom Directorate, Sanchar Bhawan,
New Delhi.

3. Shri Sushil Kumar Sharma, s/o Sh.
N.S.Sharma, R/o 52, Nehru Line,
Maujpur, Delhi-110053
Office Address: Asstt. Director,
(ESL-II) Deptt. of Telecommunication
Telecom Directorate, Sanchar Bhawan,
New Delhi.

4. Shri K.K.Madan, s/o Shri J.D.Madan,
r/o 830, Laxmi Bai Nagar, New
Delhi.110023
Office Address: Asstt. Director,
(ECM-I) Deptt. of Telecommunication
Telecom Directorate, Sanchar Bhawan,
New Delhi.

5. Shri Shiv Ram, s/o Shri Lakhu Ram,
r/o C-8/30A, Lawrence Road,
Delhi.110035.
Office Address: Asstt. Director,
(XC-2) Deptt. of Telecommunication
Telecom Directorate, Sanchar Bhawan,
New Delhi.

6. Shri T.R.Ahuja, s/o Shri Daswandi
Ram Ahuja, r/o WZ411, Srinagar
Colony, Delhi.110034.
Office Address: Asstt. Director,
(BTI) Deptt. of Telecommunication
Telecom Directorate, Sanchar Bhawan,
New Delhi.

7. Shri F.C.Chopra, s/o Shri Laxmi Das
Chopra, r/o. AM-72, Shalimar Bagh,
Delhi.110052
Office Address: Asstt. Director,
(Trks)Department of Telecommunication
Telecom Directorate, Sanchar Bhawan,
New Delhi.

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8. Shri Dev Sharma, s/o Shri Bhagat Ram
Shastri, r/o Janta Flat, Sector 3,
Dr. Ambedkar Nagar, New Delhi
110062.
Office Address: Asstt. Director,
(XK-I) (Retired on 31.8.93 from
Dept. of Telecommunication) Telecom
Directorate, Sanchar Bhawan, New
Delhi.

9. Shri V.P.Pahuja, s/o Shri Mool Raj,
r/o 517/7, Subash Nagar, Gurgaon,
Haryana.
Office Address: Asstt. Director, RD
TF-5 Deptt. of Telecommunication,
Telecom Directorate, Sanchar Bhawan,
New Delhi.

10. Shri O.P.Jain, s/o Shri S.L.Jain,
r/o C-112, Suraj Mal Vihar,
Delhi.110092.
Office Address: Assistant
Director, (CT-2) Deptt. of
Telecommunication, Telecom
Directorate, Sanchar Bhawan, New
Delhi.

11. Shri Naurata Ram Gupta, s/o Sh.
Dalip Chand, r/o 81-C, Mainwali
Colony, Gurgaon (Haryana).
Office Address: Asstt. Director,
(MW-I) Deptt. of Telecommunication
Telecom Directorate, Sanchar Bhawan,
New Delhi.

12. Shri L.N.Gupta, s/o Shri Sohan Pal,
r/o N-290, Sector VIII, R.K.Puram,
New Delhi.110022
Office Address: Asstt. Director,
(XC-3) Deptt. of Telecommunication
Telecom Directorate, Sanchar Bhawan,
New Delhi.

13. Shri Jaswant Singh, s/o Shri Tara
Singh, r/o 10/154, Lodhi Colony, New
Delhi.110003
Office Address: Asstt. Director,
(RDTF-3) Deptt. of Telecommunication
Telecom Directorate, Sanchar Bhawan,
New Delhi.

14. Shri P.K.Saxena, s/o Sh.
N.S.Saxena, r/o. B-5/8, Sector 8,
Rohini, Delhi.110085
Office Address: Oficiating Div.
Engineer (E-10B), Shakti Nagar
Telephone Exchange, Mahanagar
Telephone Nigam, Delhi.

15. Shri B.M.Seekary, s/o Sh.
J.R.Seekary, r/o B-128, Gali No.8,
Bhajanpura, Delhi.110053.
Office Address: Asstt. Director,
(TFT-I),Dept. of Telecommunication,
Telephone Directorate, Sanchar
Bhawan, New Delhi.
(By Advocate - None)

- Applicants

Versus

Union of India, through Chairman, Telecom Commission, Department of Telecommunication, Telecom Directorate, Sanchar Bhawan, New Delhi. - Respondents

(By Advocate - None)

ORDER

By Mr. N. Sahu, Member (Admn) :-

15 applicants recruited as Junior Engineers in the Department of Telecommunication and approved for promotions commonly to TES Group 'B' post have filed this OA seeking a direction to the respondents to step up their pay on par with the pay of their junior colleague Shri R.K. Sethi notionally with effect from 14.3.1978 and thereafter pay to them arrears as admissible. The respondents by the impugned order dated 31.5.1993 denied stepping up of pay of the applicants on par with their junior Shri R.K. Sethi on the ground that Shri Sethi is drawing higher pay due to fortuitous promotion.

2. This OA was fixed for hearing on 13.7.1999. No one was present either for the applicant or for the respondents. We have carefully perused the pleadings on record and we dispose of this OA as under.

3. The relief is prayed on the ground that the applicants and the junior colleague belong to the same department, same cadre and were promoted on the basis of common seniority list as TES Group 'B' officer and they are similarly placed in respect of duties and responsibilities. They cited the decision of the Hyderabad Bench of the Tribunal in the case of Smt.

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Lalitha and others vs. Union of India and others.

(1992) 18 ATC 569. In this decision the Hyderabad Bench held that the senior is entitled to the fixation of his pay on par with the pay of the junior. A similar decision was also cited in the case of Vivekanands vs. Secretary, Ministry of Water Resources, OA No.622 of 1989 (date of decision not given) which held that not having had the benefit of fortuitous adhoc promotion the senior should not be at a disadvantage in pay fixation and, therefore, directed the respondents to step up the pay of the applicants therein on par with their junior.

4. The respondents after notice submitted in the counter that Shri R.K.Sethi was recruited in the year 1959 whereas the applicants were recruited in the year 1963. Shri Sethi was promoted on adhoc/ fortuitous basis in another circle as TES Group 'B' before giving him regular promotion due to exigency of service. The seniority list of JTO is prepared on circle basis whereas the seniority list of TES Group 'B' is prepared on all India basis. It is submitted that higher pay of junior due to such adhoc promotion is not discriminatory since the junior actually worked on the post carrying higher duties and responsibilities. Under FR 26 all duties in a post on a time scale counts for increment in that time scale. Therefore, junior would like to draw more pay than the senior on account of his officiation on adhoc basis in higher grade. The junior has been given officiating promotion due to exigency of administration. The respondents cited FR 22 on pay fixation and state that

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this rule does not permit stepping up of pay of the seniors when increments to juniors were given due to adhoc promotions.

5. In the rejoinder the facts are admitted but it is stated that the department was wrong in not filling up the vacancies from JTO cadre to TES Group 'B' cadre causing several JTOs to work on adhoc basis against the post of TES Group 'B' officer in various Telecom Circles. It is emphasised that Shri R.K.Sethi stands junior in the seniority of TES Group 'B' cadre. He is getting more pay after the refixation of pay because he worked in adhoc post of TES Group 'B' cadre.

6. Unfortunately the applicants' long line of Tribunal's decision is no longer good law in view of the law laid down by the Hon'ble Supreme Court in the case of Union of India Vs. R.Swaminathan, (1997) 7 SCC 690. In that case it is held that stepping up of pay is not admissible to the senior under such circumstances as are noted in the present OA. A more recent case is that of Union of India Vs. M.Suryanarayan Rao, (1998) 6 SCC 400. In that case the junior was getting more pay than the senior on account of his adhoc promotion within the circle to which he belonged, while senior who belonged to a different circle was not considered and was not offered adhoc promotion. Under these circumstances the question before the Hon'ble Supreme Court was whether the senior was entitled to stepping up of pay with reference to junior's pay. The Supreme Court

reaffirmed the decision in Swaminathan's case and rejected the plea of the applicant that Swaminathan's case requires reconsideration. The stepping up of pay does not make a distinction between adhoc officiation for a long period or a short period and such stepping up is not admissible to the senior even if junior's adhoc officiation was for a long period. In Suryanarayan's case the Hon'ble Supreme Court reaffirmed the Swaminathan's case after interpreting FR 22(I)(a)(1)[old FR 22-C] and FR 27.

7. In view of the law laid down by the Supreme Court, there is no merit in this OA and it is accordingly dismissed. There is no need to go into other aspects raised by the respondents, namely, limitation etc. In the circumstances of the case, the parties shall bear their own costs.

KM
(K.M. Agarwal)
Chairman
DS
(N. Sahu)
Member (Admnv)

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