

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 11th day of JULY 2001

ORIGINAL APPLICATION NO. 874 of 1995.

Hon'ble Mr. S. Dayal, Administrative Member

Hon'ble Mr. S.K.I. Naqvi, Judicial Member

AK Gupta, S/o Sri NK Gupta,  
R/o MIG-30, B.Block Panki, Kanpur,  
Presently working as DE Phones under GM Telephoning  
AGRA, CTO Complex,  
AGRA.

... Applicant

C/A Shri RC Pathak

Versus

1. Union of India through the Secretary,  
Ministry of Telecommunication, Govt. of India,  
Sanchar Bhawan,  
NEW DELHI.
2. The Asstt. Director General (STG),  
Department of Telecommunication, Govt. of India,  
Sanchar Bhawan,  
NEW DELHI.
3. The Chief General Manager Telecommunications (West)  
UP Telecom Circle,  
LUCKNOW.
4. The Chief General Manager, Telecommunications (T&D),  
Circle, Jabalpur.
5. The Chief General Manager, Telecommunications (West)  
UP Telecom Circle, Dehradun (UP).

... Respondents

C/Rs Sri A. Sthalekar

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ORDER

Hon'ble Mr. S. Dayal, Member-A.

This OA has been filed for setting aside order dated 28.6.1994. A direction has also sought to the respondents to fix the pay of the applicant under FR-22 (I) (a) with minimum Rs. 3000/- p.m. in STG cadre <sup>in the</sup> pay scale of Rs. 3000 - 4500 <sup>as</sup> alongwith one increment ~~the~~ <sup>as</sup> the increment was held up due to delay in relieving the applicant on his regular promotion on 31.7.1992 alongwith arrears and other consequential benefits. of his adhoc promotion as DET AT (SW) New Delhi from 31.7.1990 to 30.7.1992. The applicant has also sought setting aside the order dated 30.7.1992 <sup>which fixes</sup> ~~the~~ the pay of the applicant on the basis of FR 35.

2. The applicant has mentioned in his OA that he was appointed as Asstt. District Engineer Telecom w.e.f. 1.3.1988 in junior time scale of Indian Telecom Services and was ~~was~~ drawing basic pay of Rs. 2425/- p.m. w.e.f. 1.3.1990 in the pay scale of Rs. 2200 - 4000. He was appointed to officiate <sup>as</sup> DET AT (SW) New Delhi on adhoc basis w.e.f. 31.7.1990 by order dated 24.7.1990 in the senior time scale of ITS cadre and had drawn basic pay of Rs. 3000 upto 30.5.1991, Rs. 3100/- upto 30.6.1992 and Rs. 3200/- after 30.7.1992. The applicant states that Chief General Manager T&D circle, Jabalpur issued letter dated 23.1.1991 at Jabalpur for reversion of the applicant on 26.1.1991 on account of completion of 180 days. However, the applicant continued to work on the post of DET till 30.7.1992. The applicant was

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promoted to the senior time scale of Indian Telecom Service Group 'A' on regular basis by order dated 31.7.1992 in the pay scale of Rs. 3000 - 4500. The applicant was required to be relieved immediately in the said order dated 31.7.1992, but was not relieved till 24.4.1993. The pay of the applicant from 31.7.1990 to 24.4.1993 was refixed by order of Chief General Manager T&D Circle Jabalpur dated 30.7.1993. The applicant was allowed the time scale of Rs. 2200.- 4000 alongwith officiating allowance of Rs. 300/- . He made a representation for re-fixation of pay at minimum of Rs. 3000/- p.m. on his regular promotion to senior time scale from 31.7.1992 after considering the officiating period under Senior time scale till 1990-1992. He made another representation dated 1.6.1994. The applicant was put to further loss for not being relieved to join as TD Bareilly on regular promotion w.e.f. 31.7.1992 and continued to work as officiating DET AT (SW) New Delhi on adhoc basis. He was not given annual increment for the period after 31.7.1992 upto 28.7.1993. This is led to the present OA before us.

3. The respondents in their counter affidavit have denied applicant's claim for fixation of his pay in the scale of Rs. 3000 - 4500 on his officiation as SDE T by mentioning that since the applicant has not fulfilled the eligibility condition as prescribed in the recruitment rules, his pay had to be fixed

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below the minimum of time scale of pay of STS of ITS Group 'A' by restricting the officiating pay under the provisions of FR-35. It is claimed that the initial fixation was not done as per Rules on the subject. It was subsequently revised fixing the pay of Rs. 2425/- plus officiating allowance of Rs. 300/- w.e.f. 31.7.1990. The respondents have further mentioned that the applicant has not disputed the retropective revision of his pay fixation w.e.f. 31.7.1990, in his representation dated 23.9.1993. It was only in his subsequent representation of January 1994 that he prayed for re-fixation of pay as DOT as Rs. 3000/- w.e.f. 31.7.1990. It is claimed that the letter dated 1.6.1994 is legal and valid because the General Manager's office had not fixed and refixed the pay of the applicant. The pay of the applicant had been fixed and refixed by Chief General Manager T & D, Jabalpur. It has been stated that the office of Chief General Manager, Lucknow was bifurcated into office of Chief General Manager (East) at Lucknow and Chief General Manager (West) at Dehradun, and the applicant fell within the jurisdiction of <sup>the</sup> later.

4. There is a counter affidavit filed on behalf of Chief General Manager (West) Dehradun, in which also it has been mentioned that since the applicant had never been promoted to the senior time scale in the Grade of Rs. 3000 - 4500 and, therefore, he was not entitled to pay in the scale of Rs. 3000 - 4500, but was entitled officiating allowance and, therefore, the

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pay had rightly been revised. It is also mentioned that local officiating arrangement could continue only for a period of 180 days at a time. The officiating arrangement of the applicant was discontinued on 31.1.1991 and the applicant was again required ~~to~~ to officiate on the basis of <sup>the order of the</sup> Distt Engineer Telecom and worked on the said post till 30.7.1992, for this period he was only entitled to officiating charge allowance in terms of FR 35.

5. Heard Shri RC Pathak for the applicant and Shri A Sthalekar for the respondents.

6. Learned counsel for the applicant has placed reliance on the order of Chandigarh Bench in OA 1002-HR of 1993 decided on 16.4.1998. He has mentioned that order dated 30.6.1993 which was the basis of passing the impugned order dated 30.7.1993 in the case of the applicant provided for fixation of pay of the ADE T who was ordered to officiate ~~in~~ in Senior Telecom Services Group 'A' without fulfilling the eligibility conditions was to be fixed below to the minimum of time scale of Rs. 3000 - 4500 by restricting the officiating pay under order of FR 35. This very order dated 30.6.1993 had been challenged in the OA decided by the Chandigarh Bench. The Chandigarh Bench placed reliance on the order, in case of BR Dass Chaudhary, AGM (Admn.) vs. Union of India & others in OA 750 of 1996 dated 9.4.1997 and order in case

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of Kiran Pal Singh Vs. Union of India & Others in OA 973-PB of 1996 dated 7.11.1997. In case of Kiran Pal Singh (Supra) the bench placed reliance on the case of Union of India and others Vs. R. Swaminathan JT 1997 (8) SC 61. It has also been held that instructions under FR 35 are not to be invoked where the government servants holding the post in substantive, temporary or officiating capacity is promoted or appointed in substantive or temporary or officiating capacity. It has been held that FR 26 provided that all duty in a post on a time scale counts for increments in the time scale. The orders of the respondents were, therefore, held to be illegal and arbitrary.

7. We have considered the authority relied upon by the applicant. It has been mentioned in the said authority that eligibility criteria for promotion from Junior time scale to senior time scale of Rs. 3000-4500 was 5 years service in junior time scale and passing of a departmental promotion test. The period of 5 years has normally been relaxed for service of 4 years by the department. The applicant in the said authority too did not fulfill the condition of four years service for promotion to senior time scale of Indian Telecom service Group 'A' but they were promoted as officiating senior time scale officer w.e.f. 23.4.1990 and 10.4.1990. Their pay was fixed in the scale of Rs. 3000 - 4500 alongwith allowance payable up to June 1992 when they were promoted on regular basis in continuation of their



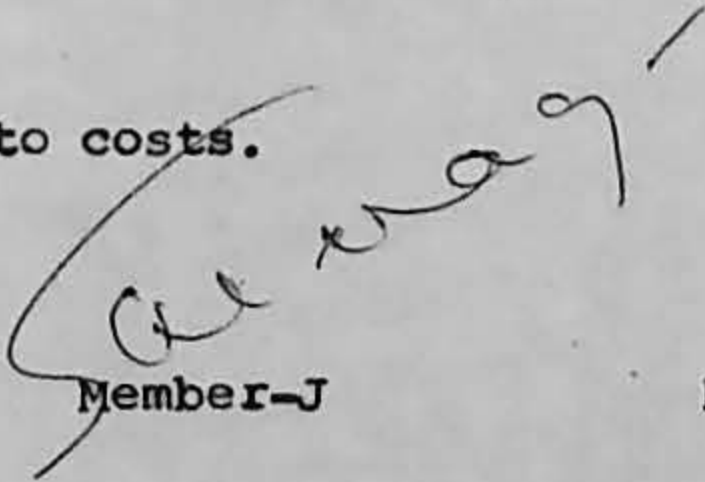
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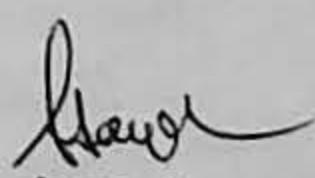
officiating promotion and their pay drawn during the period of officiating promotion was duly protected. The respondents may consider this authority at the time of deciding the reply of the applicant in terms of what is discussed and directed in subsequent paragraphs.

8. We find that the order dated 30.7.1993 in case of the applicant have been passed without giving any show cause notice to the applicant. It settled law that no such order can be passed without affording an opportunity to the applicant in accordance with the principle of natural justice. Therefore, we cannot uphold the order dated 30.7.1993 from this angle. Learned counsel for the respondents contention<sup>is</sup> that order dated 28.6.1994 ~~imp~~ impugned in this case was passed after taking representation of the applicant dated 1.6.1994 into account is not acceptable because both the said representation and the order on the said representation were after order of refixation of pay on 30.7.1993 had been passed.

9. We, therefore, set aside the impugned orders dated 20.6.1994 and 30.7.1993. If any amount is recovered on account of order dated 30.7.1993, it shall be refunded to him within a period of 2 months from the date of furnishing copy of this order by the applicant to the respondents. The respondents would have right to consider refixation of pay after giving show cause notice to the applicant and considering the reply of the applicant thereto. The OA is decided accordingly.

10. No order as to costs.

  
Member-J

  
Member-A