

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. /7/91
T.A. NO.

DATE OF DECISION 28.11.1997

Ta/ubhai K.Gorwadia

Petitioner

Mr. B.B. Gogia

Advocate for the Petitioner [s]

Versus

Union of India & ors.

Respondent

Mr. Akil Kureshi

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishna : Vice Chairman

The Hon'ble Mr. P.C. Kannan : Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? ✓
- 2, To be referred to the Reporter or not ? ✓
- 3, Whether their Lerdships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? ✓

Shri Tapubhai K.Gorwadia

Hindu, Adult, Aged about 61 years,
Occupation : Retired Govt. Employees,
Laxmi Nivas, 5, Bhagawatipura,
Rajkot.

Applicant

Advocate Mr. B.B. Gogia

versus

1. Union of India, Through :
The Secretary,
Department of Post,
Government of India,
Sanchar Bhavan,
New Delhi.
2. Post Master General,
Gujarat Circle,
Ahmedabad.
3. Shri C.M. Rajyaguru,
LSG Sorter,
Sub Record Office, RMS,
Junagadh.
4. Shri V.K. Jadeja,
LSG Sorter,
Sub Record Office,
Railway Main service,
Bhuj.

Respondents

Advocate Mr. Akil Kureshi

ORAL ORDER

O.A.7/91

Date: 28.11.1991

Per Hon'ble Mr. V. Ramakrishnan

: Vice Chairman

The applicant is aggrieved by the action of the department in recovering what they regard as excess payment of salary paid to him for the period from 1.3.1988.

2. Mr.Gogia is not present today. However, we find that we are in a position to dispose of the O.A. on the basis of the materials on record and with the assistance received from Mr.Kureshi.

3. The applicant is an employee of the Telecom Department. He has stated that some juniors namely S/Shri Rajyaguru and Jadeja were given ad hoc officiating promotion to the level of Lower Selection Grade (LSG) and that the same was not given to the applicant. However, the applicant got promoted on regular basis to the LSG. In view of the fact that the junior officers had officiated on short term vacancies as per local arrangement, the date of their increments in the post of LSG was earlier than that of the applicant. On the recommendation of the 4th pay commission, the pay of the applicant was fixed at Rs.1600- in the pay scale pf Rs.1400-2300/- on 1.1.86. According to the applicant's version as seen on page-3 of the O.A., the pay of his juniors namely S/Shri Rajyaguru and Jadeja were fixed on 1.1.86 at the higher post of Rs.1720- and 1640/- respectively. However, we find from para-5 of the order dated 5.3.90 of the Post Master General,Ahmedabad that the pay of the applicant as well as Shri Jadeja was at par with as on 1.1.86 but Shri Jadeja started drawing the increments from 1.5.86, whereas the date of increment of the applicant was 1.12.1986. The applicant had

earlier approached the Tribunal in O.A. 13/89 which was disposed of by the Tribunal by its order dated 7.11.89 as at Annexure A-3. The Tribunal had directed that the respondents should make a decision on merits by means of a speaking order giving reasons as to whether they accept the pleas taken by the applicant in his O.A. or not. Accordingly, the matter was considered by the Post Master General who inter alia had gone into the reasons and held that the applicant and his junior Shri Jadeja were drawing pay at the same stage as on 1.1.86. We may in this connection reproduce part of para-8 of this order dated 5.3.1990, as at Annexure A-4.

* It is also examined as to how Shri Gorwadia though senior to S/Shri Rajyaguru and Jadeja, happened to be drawing pay as on 1.1.86 at the stage of Rs.545/- in the scale of Rs.425-640 in the cadre of lowerselection grade at par with Shri Jadeja and Shri Rajyaguru. It is seen that this happened because of S/Shri Rajyaguru and Jadeja is officiating in higher cadre i.e. in LSG cadre while working at SRO Junagadh and Bhuj in short term vacancies in local arrangements and Shri Gorwadia was not willing to accept such promotions. Further he never objected to the officiating of his juniors in the LSG cadre in localarrangements. The official has shown willingness to officiate in the higher cadre i.e. LSG only in the year 1988 and he was posted as LSG HSA at SRO Bhuj."

4. We inquired from Mr.Kureshi as to how the department came to the conclusion that the applicant was not willing to accept the local promotion when in the O.A. it was clearly stated that he had not

expressed any such unwillingness and he has also specifically taken the plea that he did not refuse to officiate in the higher posts. The department is not able to show the basis on which they came to the conclusion. As there is a dispute with regard to the factual question as to whether the applicant had expressed his unwillingness to officiate on ad hoc basis, it was necessary for the department to give an opportunity to the applicant to substantiate his claim that he had never refused nor expressed any unwillingness to officiate in the higher posts. But the department proceeded on its own and came to a finding that there is no merit in the case of the applicant.

5. In view of this, we hold that the order of the Post Master General, Ahmedabad dated 5.3.1994 cannot be sustained and we set aside the order and direct the department to come to a finding on the basis of the relevant materials regarding unwillingness or otherwise of the applicant to officiate in the higher post after giving an opportunity to him and take further action. While taking the decision, the respondents shall keep in view the practice followed by them regarding grant of ad hoc promotion whether it is division wise or not and if division wise whether a chance is given first to the senior most for such promotion.

This exercise should be completed within a four months from the date of receipt of a copy of this

order.

6. With the above directions, the O.A. is finally disposed of. No order as to costs.

P. Kannan

(P.C.Kannan)
Member (J)

V.Ramakrishnan

(V.Ramakrishnan)
Vice Chairman

SNS