

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 271/93, 409/93 and 45/93

DATE OF DECISION 11-5-1994.

Mr. Balkishan
Mr. Gireeshkumar,
Mr. Suthar

Petitioner

Mr. M.S. Trivedi

Advocate for the Petitioner (s)

Versus

Union of India and Others

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. V. Radhakrishnan

Member (A)

The Hon'ble Mr. Dr. R.K. Saxena

Member (J)

Shri Balkishan
D.E. Telecom Project
Officer Fibre Project DN-I,
M/w Building, Navrangpura,
Ahmedabad.

Applicant in O.A. 271/93

Shri G.H. Gireeshkumar
D.E.T., CO-AXIAL, M.T.C.E.
Rajkot.

Applicant in O.A. 409/93

Shri O.P. Suthar
D.E.(Int.) NVP
Ahmedabad

Applicant in O.A. 45/93

Advocate Shri M.S. Trivedi

Versus

1. Union of India, (through)
The Director General of Communication
Government of India, Deptt. of Telecom.,
Sanchar Bhavan, New Delhi
2. The Directors (Admn.)
O/o C.G.M. Telecom Projects
Bombay, Phbenix Mill Compound
Bombay.
3. The Director Telecom Project
M/w Building, Gujarat Area
Navrangpura, Ahmedabad.

Respondents in O.A. 271/93

Respondents in O.A. 409/93

1. Union of India (through)
Chairman, Telecom Commission
Government of India Depptt. of Telecom
Sanchar Bhavan, New Delhi
2. The Chief General Manager..
O/o, G.G.M. Telecom Project
462, S.B. Marg, Bombay 13.
3. Chief General Manager,
Western Telecom Mole Circle
11th & 12th Floor, Telephone House,
Veer Savarkar Marg, Bombay.

Respondents in O.A. 45/93

1. Union of India,
Through, The Director General of Communications
Government of India, Deptt. of Telecom,
Sanchar Bhavan, New Delhi.
2. The General Manager, (Telecom)
Ahmedabad Telecom District,
Ramnivas Building, Ahmedabad.

Advocate Mr. Akil Kureshi.

J U D G M E N T

Date: 11-5-94

In

O.A. 271/93, O.A. 409/93 & O.A. 45/93

Per Hon'ble

Dr. R.K. Saxena

Member (J)

All these three applications are related^q to one common question and, therefore, they are being disposed of by this common judgment.

2. In the first case the applicant Shri Balkishan challenges the circular dated 2-12-1991 whereby the fixation of pay of Assistant Divisional Engineer, Telecommunications officiated^{ing} as Divisional Engineer and drawing increment on the officiated^{ing} service, is dealt with. Shri Bal kishan was appointed as Assistant Divisional Engineer, Telecommunications on 22-6-1987 in the Junior Time Scale Group A of Rs. 2200- 75-2500-EB-100-4000. He was promoted on local officiating basis to the grade of Divisional Engineer on 22-1-1990, vide Annex. A-2, an order dated 22-1-1990 which was passed by the Divisional Officer (Admn), Bombay. Since the promotion on local officiating basis could not be allowed to be continued beyond 180 days as was mentioned in Annexure A-2, the applicant was reverted to his original post of Assistant Divisional Engineer, Telecommuni-cations on 22-5-1990. He was, however, again promoted on 31-5-1990 and continued to work on the said post because in the meantime the case was filed before the Bombay Bench of Central Administrative Tribunal and directions were given that A.D.E.T (Assistant Divisional Enginner, Telecommunications) should not be reverted. In the meantime, the process of regular promotion took place and the applicant was promoted on 22-5-1992.

3.

We ^{find that} ~~think~~ the dispute is ^{whether} ~~that when~~ the applicant
..4..

was promoted on 22-1-1990 on local officiating basis his substantive pay ^{of} was Rs. 2350/- ^{could it be} which was fixed at Rs. 3000/- in the Senior Time Scale on the said date, i.e. on 22-1-1990. The respondents came with the version that this mistake was committed in several cases and when the Department came to know about it, circular fixing the correct pay ~~scale~~ and making recovery of excess payment, was issued. The applicant contends that his pay which was fixed at Rs. 3000/- on his being placed in the Senior Time Scale and on completion of one year, should not be ~~reverted~~ ^{reduced} on the mistaken belief of the Department ^{and} of excess payment should not be allowed to be recovered. The respondents ^{emphasis on the contents of} on the other hand laid ~~the charge~~ in para 4 of the reply in which details of rate of substantive pay, officiating pay and total salary have been given. According to that ^{chart} ~~charge~~ the applicant on his being promoted on local officiating basis, the basic pay was Rs. 2350/- and he would get Rs. 330/- as officiating pay under F.R. 35 and his total pay would have been Rs. 2650/- On being reverted to his original post, the officiating pay shall be deducted and he would be entitled to his basic salary. When the applicant was again promoted on 31-5-1990 he was again entitled to the officiating pay of Rs. 330/- and in this manner his salary should have been calculated at Rs. 2650/- till 1-6-90. It appears that one increment fell due and thus the basic salary was stepped up from 2350/- to 2425/- and with officiating pay, the total was disclosed at Rs. 2755/-. Since the applicant was promoted on regular basis with effect from 22-5-1992, his salary was fixed at Rs. 2500/- and since the Grade of Senior Time Scale ^{at} starts from 3000/- it was fixed at the amount of Rs. 3000/- It is in this view that the respondents came with the plea that there was mistake

and the salary of the applicant was incorrectly fixed. It is further contended that the Department has got the authority to rectify the mistake, and if any excess payment is made, it can be recovered.

4. The facts of the case Shri G.H. Gireeshkumar (O.A. 409/93) are also of similar nature. He too was appointed as Assistant Divisional Engineer Telecommunication on 1-3-1988 in Junior Time Scale Group 'A'. He was also promoted on local officiating basis on 2-8-1990 with a rider that the benefit would continue for 180 days, but he could not be reverted because of the direction of the Bombay Bench of the Central Admn. Tribunal in O.A. 862/90. Shri Gireeshkumar was promoted on regular basis in the Senior Time Scale on 26-11-1992. His basic salary as Assistant Divisional Engineer Telecommunication was Rs. 2350/- and when he was promoted in the Senior Time Scale on local officiating basis on 2-8-1990, it was fixed at Rs. 3000/- On completion of one year, one increment was added and thus the mistake which was committed initially, was perpetuated. The respondents contend, as was discussed in the reply of the application of Shri Bal kishan, that on officiation in the Senior Time Scale, the incumbent should get the basic salary of his original post alongwith officiation-allowance. In this case also the respondents came with the plea that the Department has got right to rectify the mistake and if any excess payment is made to the incumbent, it can be recovered.

5. The third case (O.A. 45/93) is of Shri Suthar. He filed this application on the ground that he was recruited as Assistant Divisional Engineer, Telecommunication in Junior Time Scale Group 'A' in the year 1985 but he could not be allowed to officiate on local officiating basis. He had made request several times for being allowed to officiate in the Senior Time Scale but it was not ~~done~~^{allowed}. The applicant was, however, promoted on regular basis on 22-5-1992 and his pay was, therefore, fixed at Rs. 3000/- in the year 1992 whereas juniors to him, were getting more salary. The applicant has given names of Shri Vijendra Kumar, Shri Devesh Kumar, Shri Ravi Bhargava. and Shri Mani who were juniors to him but their basic pay was fixed at Rs. 3200/- in the Senior Time Scale. He has, therefore, come with the plea that the benefit which was given to other officers in the matter of fixation of salary in Senior Time Scale, should be allowed to him as well. The decision in the first two cases shall be determining factor in the case of Shri O.P. Suthar ^{as well}.

6. After going through the facts mentioned above on behalf of the parties, questions which arise for determination is whether the department has got a right to consider the cases of incorrect fixation of salary, and whether the salary of the applicants was wrongly fixed or was not properly fixed. The second question which is closely connected is whether the Department or the Government has got the right to recover the amount of the excess payment, if it is found that because of incorrect fixation of pay, excess payment has been made. In this connection, the contention of the applicants namely

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Shri Balkishan and Shri Gireeshkumar is that their pay which was fixed at the time when they were promoted on local officiating basis, was correctly fixed and it should not be reduced. On the other hand, the respondents have clearly averred that the pay of the applicants is required to be fixed under F.R. 35 and accordingly fixation which was initially made in the cases of Shri Balkishan and Shri Gireeshkumar was not correct. A copy of F.R. 35 has been produced by the respondents, which speaks that the Central Government can fix pay of an officiating Government servant at an amount less than that admissible under these rules. In this connection, some decisions were *taken* & by the Government of India and orders were passed. In order to appreciate and to reach a decisive conclusion, their perusal becomes necessary. It reads as :

F.R. 35. The Central Government may fix the pay of an officiating Government servant at an amount less than that admissible under these rules.

GOVERNMENT OF INDIA'S ORDERS

(1) No restriction of officiating pay in cases of regular cadre promotions — Under the existing orders provisions of F.R. 35 operate only in respect of appointments by transfer on deputation. Recently a question was raised as to whether the said provisions of F.R. 35 would also apply to cases of promotions within the cadre.

The matter has been considered. It has been decided that the restrictions of officiating pay under F.R. 35 should not be invoked in respect of regular cadre promotions where the employee becomes due for promotion, falls within the zone of consideration and fulfills all qualifications prescribed for promotion. (G.I., M.H.A., Dept of Per.&A.R. O.M. No.F1/23/80-Estt-(Pay) 10 dated the 5th August 1981)

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(2) Restriction of officiating pay under F.R. 35 in cases of cadre promotions not on regular basis — In order (1) above it was decided that the restrictions of officiating pay under F.R. 35 should not be invoked in respect of regular cadre promotion where the employee who becomes due for promotion, falls within the zone of consideration and fulfills all the qualifications prescribed for promotion.

2. It has been decided that in cases of appointments on promotion in the normal line within the cadre but which are not on regular basis, the pay may be restricted under F.R. 35 ~~so~~ as not to exceed the basic pay by more than the amount shown below —

- | | | |
|-----|---|--|
| (a) | For employees in receipt of basic pay above Rs. 2,200. | 12½% of basic pay or Rs.330 whichever is more. |
| (b) | For employees in receipt of basic pay above Rs. 1000 up to Rs. 2200 | 15% of basic pay or Rs.220 whichever is more. |
| (c) | For employees in receipt of basic pay of and below Rs. 1000/- | 20% of basic pay. |

3. It has been decided that in the cases where pay in the manner indicated above comes to more than the minimum or at the minimum of the promotional post, the employee concerned will be allowed pay at the minimum of the scale.

(G.I. Dept. of Per & Trg. OM. No. 18/12/85-Estt (Pay-1) dated the 18th July 1986 and O.M. No. 18/26/86 Estt (Pay-I) dated the 29th July 1987.)

(3) Promotion not on regular basis— pay to be fixed under F.R. 22 (I)(a) (1) initially an restricted under F.R. 35 — Prior to issue of this Department's Notification No.1/10/89-Estt(Pay-I) dated 30-8-1989 amending F.Rs. 22, 22 C 30 and 31, F.R. 22-C was

applicable for pay fixation on promotion on regular as well as on ad hoc basis. It has, however, now been provided in the amended rule that F.R. 22(1) (a) (1), will apply in all those cases of pay fixation where the promoted persons fulfil the conditions of eligibility prescribed in the relevant rules for promotion. With the issue of the said amendment, it has become necessary to specify, under what circumstances the restrictions imposed under F.R. 35 and as communicated in GIO (2) above would apply.

2. The matter has been considered and it has been decided that in cases of appointment on promotion in the normal line within the cadre but which are not on regular basis initially the pay may also be fixed under F.R. 22 (1) (a) (1) (erst-while F.R. 22-C). If there is substantial increase in pay so fixed, the pay may be restricted under F.R. 35 in accordance with the provisions contained in O.M. No. 18/12/85- Estt. (Pay I) dated 29-7-1987 (GIO (2) above)

3. The effect of this order is that restrictions under F.R. 35 are not to be invoked where a Government servant holding the post in substantive or temporary or officiating capacity as the case may be.

The decision taken by the Government with regard to F.R. 35 in relation to the officiating Government servant has been clearly laid down in sub-clause 2 reproduced above. According to it, the promotee not on regular basis, may get the salary of his basic pay ^{or} 12.5 % of basic pay or Rs. 330/- whichever is more, if the basic pay was above Rs. 2200/-. We, therefore, ^{find} ~~feel~~ that under this Rule the basic pay of the applicants was within the ^{grade of original} cadre. It has further been clarified that prior to the issue of notification No. 1/10/89-Estt. (Pay-I) dated 30-8-89, by which F.R. 22, 22-C, 30 and 31 were amended and the pay used to be fixed under F.R. 22. This position was maintainable

upto the year 1989. Since this amendment of invoking F.R. 35 for fixation of pay and the formula given thereunder was introduced in the year 1989, and the promotion of the applicants took place in the year 1990, their pay should have been fixed according to this formula alone. Thus the contention of the Department that the pay of the applicants namely Balkishan and Gireeshkumar was incorrectly fixed, is substantiated. There can, therefore, be no doubt about it that if pay has been wrongly fixed, the Government has got the power of rectifying the mistake. The applicants could not controvert this situation by showing any other provisions or case law on the point. We, therefore, hold that the salary of two applicants namely Shri Balkishan and Shri Gireeshkumar was wrongly fixed and excess payment was made to them because of the wrong fixation of the pay. We, further hold that the Government can rectify the mistake.

7. Sofar as the second question relating to the recovery is concerned, it has been argued on behalf of the applicants that if excess payment has been made because of incorrect fixation of pay, the order of recovery cannot be issued unless show-cause notice was given to the aggrieved person. In this connection, reliance on the cases of Shri C.S. Bedi Vs. Union of India and others, A.T.R. 1988(2) C.A.T. 510, Vithal Dagdoo Marathe Vs. General Manager, Central Railway and Others, A.T.R. 1989 (2) C.A.T. 68 and Sunder Lal Kureel Vs. Union of India and Others, 1993 CSJ (CAT) 250 has been placed; and in these cases it has been held that even if excess payment is made to the employee, it cannot be recovered without issuing show cause notice to him. The learned Counsel for the Respondents argued that there was no question of giving show-cause notice in this case because

there was apparent error in fixation of pay and when the rectification of the same is made or is going to be made, then necessary corollary would be to recover the excess payment. We are unable to hold this view ~~that~~ because in the above cited cases it has been clearly laid down that show-cause notice must have been given and its reason was that it becomes a matter of civil consequences to an employee which cannot be caused unless notice was given. We, therefore, are of the view that recovery from the applicants Shri Balkishan and Shri Gireesh Kumar cannot be made because no such notice was given.

12. In view of the above conclusion, the case of the applicant Shri O.P. Suthar does not stand. He cannot claim any increase in his salary.

13. The result is that the applications of Shri Bal Kishan and Shri Gireeshkumar are partly allowed, whereas the application of Shri Suthar stands rejected.

ORDER

The application No. 271/93 & 400/93 are partly allowed. The prayer of the applicants that their pay should not be re-fixed, is rejected but the prayer that the recovery of the excess payment should not be made is allowed for the reasons given above.

The application of Shri O.P. Suthar () A. No. 45/93 is dismissed. No order as to costs.

Sd/-

(V. Radhakrishnan)
Member (A)

Sd/-

(Dr. R.K. Saxena)
Member (B)

AHMEDABAD, INDIA

Application No. 04/409/03 of 19

Transfer Application No. _____ Old w. Pett. No

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated: 01.06.94

Countersigned :

AND *081614*

Section officer/Court officer.

seelal
Signature of the
Dealing Assistant.

INDEX SHEET

NAME OF THE PARTIES MR G. G. Ganeshkumar

VERSUS

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