

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 706 OF 1993

~~**O.A.NO.**~~

DATE OF DECISION 5.9.1997

R.W. Tidke Petitioner

Mr. M.D. Rana Advocate for the Petitioner [s]
Versus

The Union of India & Ors. Respondent s

Mr. Akil Kureshi, Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

The Hon'ble Mr. T.N. Bhat, Judicial Member.

JUDGMENT

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

R.W. Tidke
Aged 52 years
Serving as TTS Group-B
(Welfare Officer) in the
office of the Chief General
Manager, Residing at P & T
Colony, Satellite Road,
Ahmedabad.

.... Applicant

(Advocate; Mr. M.D. Rana)

Versus

1. The Union of India,
(Notice to the Secretary,
Government of India)
Ministry of Communications,
New Delhi.
2. The Chairman,
Telecom Communication,
Sanchar Bhavan, New Delhi.
3. Chief General Manager,
Telecommunications,
Gujarat Circle,
Ahmedabad.

.... Respondents

(Advocate; Mr. Akil Kureshi)

ORAL ORDER

O.A.No. 706/1993

Date; 5.9.1997

Per; Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

Heard Mr. M.D.Rana for the applicant and
Mr. Akil Kureshi for the respondents.

2. The applicant, an employee of the Telecom Deptt.
is aggrieved by the stand of the respondents in
rejecting his request for stepping up of his pay at
par with that of one Shri Baleswar Singh, who is his
junior, on his promotion to TTS Group B.

3. The applicant had been serving at the lower level of ASTT in the pre-revised scale of Rs.425-750. His seniority in the TTA Group C cadre was at Sr.No.181 whereas that of his junior ~~Shri~~ Baleswar Singh was at Sr.No. 252. It is seen from the enclosure with the representation dated 29.10.1992 of the applicant as at Annexure A-3 that Shri Baleswar Singh was promoted to TTS Grade B on 27.8.73 whereas the applicant has promoted to the TTS Gr. C on 4.9.73. The pay of both these persons was fixed on promotion in the pre revised scale of Rs. 425-750. The applicant was promoted on regular basis as TTS Group B on 22.9.82 where the junior was promoted about 2 years later on 23.6.84. On promotion Shri Baleswar Singh got his pay fixed at the level of Rs. 810/- in 1984. On that date the applicant was drawing the pay of Rs. 680/- with the date of next increment being due on 1st September 1984. The applicant claims that as Shri Baleswar Singh is ^{his} being junior, his pay should be stepped up to be at par with his pay from the date of ^{Shri Singh's} the promotion to Group B cadre. He further brings out that the pay as on 1.5.93 of Shri Baleswar Singh in the revised scale was Rs. 3125/- whereas the applicant's salary on 1.9.93 was Rs. 2675/-.

4. Mr. Rana for the applicant states that in view of the admitted position that the applicant is senior, his pay has necessarily to be stepped up to be at par with that of Shri Baleswar Singh. He relies in this connection on the decision of the Supreme Court in the Union of India V/s. P. Jagdish, 1997 Lab.I.C. 1281.

According to him, the Hon'ble Supreme Court had held that a senior has a right to get his pay stepped up equal to that of his junior and same has been brought out in para 7 of the judgment.

5. Mr. Kureshi resists the application. He draws our attention to the decision of the Full Bench of the Tribunal in 1997(1) ATJ page 1, in the case of B.L. Somayajulu & Ors. v/s. Union of India & Ors., He contends that stepping up cannot be claimed as a matter of automatic right by the senior and the same can be granted only if there is a legal right available to him and not by mere comparison on the basis of seniority. He also submits that the pay of Shri Baleswar Singh got fixed at higher level on account of the fact that by way of local arrangement, he had been given adhoc promotion to the level of TTS Group B in the U.P. circle whereas the applicant was in Maharashtra circle and did not receive such promotion. He refers to para 8 of the reply statement which brings out that when regular promotions are ordered, after conducting DPC, the seniormost ASSTs (on all India basis) subject to good CRS and Special Reports, are selected and posted by the Director General, DoT, New Delhi, But when there is any vacancy in any Circle due to leave, death, resignation, etc. will regular arrangements are made by DoT, the head of the circle is empowered to make officiating arrangements from within the staff in his circle (normally not exceeding 179 days in any one instance). In view of this specific provision,

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it had so happened that in U.P Circle by way of local arrangement Mr. Singh was given adhoc promotion to Group B and when he was regularly promoted to this level in June 1984, he got his pay fixed in terms of the relevant rules including FR 26 which permits taking into account past service in the identical scale for the purpose of increments in the new scale. Mr. Kureshi states that the relevant orders for stepping up of pay are contained in FR 22; in particular he refers to Government of India's order 22 below FR 22 (G.I.M.F. O.M. dated 4th February 1966). This stipulates that the stepping up can be granted subject to fulfilment of the following conditions;

- “(a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of F.R.22-C. For example if even in the lower post, the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.”

In the present case, the so called anomaly of the applicant drawing less pay than his junior has arisen not on account of the operation of FR 22C but on account of FR 26. He also submits that the decision of the

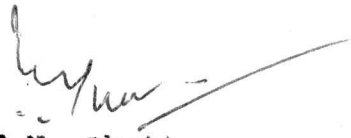
Supreme Court relied upon by Mr. Rana is clearly distinguishable from the present case. In that case, the issue involved was regarding taking into account the special pay of Rs. 35 per month drawn by a junior ^{at the time when} the official ~~was~~ promoted to the posts of Head Clerk. He also submits that the Apex Court had referred to the relevant rules which govern stepping up of pay and had not laid down ^{any} ~~in the~~ new principle. ^{He} /relies on the decision of the Full Bench in Somayajulu's case referred to supra where it is clearly stated that if a junior gets a higher pay, that does not mean that the senior also should necessarily get it without a foundation for such a claim in law. If a senior is denied what he is entitled to get, he must challenge that difference or that preferment extended to a junior. He cannot acquiesce in a wrong and seek to make a gain from that wrong by a comparison. In the present case, Shri Baleswar Singh was allowed to officiate in the higher grade by way of local arrangement and which was ~~done~~ as per the relevant instructions of the Department of Telecom which had remained unchallenged all along. Mr. Kureshi states that there is no legal right available to the applicant to get his pay stepped up and the O.A. deserves to be dismissed.


6. We have carefully considered the submissions of both the learned advocates. We find force in the submission of Mr. Kureshi that the case relied upon by Mr. Rana can be distinguished from the present case. The Hon'ble Supreme Court has referred to the provisions

of Fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post. The relevant Fundamental Rule is FR 22 read with Government of India's order No. 22 below FR 22 vide O.M. dated 4th February, 1966 which has been referred to earlier. In the present case, the anomaly has arisen not on account of the operation of FR 22 ^{or} ~~and not~~ ^{but} on account of the fact that the junior ~~is~~ officiated in a higher post earlier than the senior by way of local arrangement by the competent authority as per the relevant instructions and when he was regularly appointed to Group B, his earlier officiation counted for the purpose of grant of increment in Group B scale. We also take note of the decision of the Full Bench in Somayajulu case where the Full Bench has laid down that stepping up can be granted only on the basis of a legal right and not on pervasive notions of equity or equality, unrelated to the context of statutory law. On going through the judgment of the Hon'ble Supreme Court in Jagdish's case we find that the Supreme Court has not laid down any law contrary to the principle enunciated by the Full Bench. We also take note of the ^{fact} ~~government~~ that the applicant according to his own statement, was promoted as TTS Gr.III on 4.9.73 and Shri Baleswar Singh was promoted on 27.8.73. In view of this, Shri Baleswar Singh would have got the next increment of Rs. 450/-

on 1.8.74 when the applicant would have got the same on 1.9.94 and as such it is seen that the applicant was drawing less pay even in the lower scale even though for a short period at the level of ~~TES~~ Gr.III. Government of India's order No.22 below FR 22 is not of any ^{avail to} ~~aware~~ of the applicant and there is no other rule or instruction which would entitle the applicant to have his pay stepped up at par ^{with that} ~~that~~ of Shri Baleswar Singh.

7. For the reasons discussed above, we hold that the O.A. is devoid of merit and dismiss the same. No order as to costs.


(T.N. Bhat)
Member (J)


(V. Ramakrishnan)
Vice Chairman

vtc.