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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

O. A. No. 541 OF 1994

Cuttack this the 16th day of May, 1995.

Lakshmidhar Mohapatra ... Applicants
and others.

Vrs.

Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? No.
2. Whether it be circulated to all the Benches of the N.
Central Administrative Tribunals or not?

1541/1
(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

16 MAY 95

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. No. 541 OF 1994

Cuttack the 16th day of May, 1995.

CO:R:AM:

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

1. Lakshmidhar Mehapatra,
56 years, Accounts Officer,
Department of Telecommunication,
Qr. No. 84, Type-II, P&T Colony, BBSR.
2. Nityananda Das, 54 years,
Accounts Officer, Deptt. of Telecommunication
Qr. No. 6 Type-III,
Microwave Colony,
Unit-8, Bhubaneswar.
3. L. Maheswar Rao, 43 years,
Accounts Officer,
Department of Telecommunication,
Qr. No. 3, Type III,
Telecom Colony,
Pujhariput, Keraput.
4. Ghanashyam Sahoo, 46 years,
Accounts Officer, Department of
Telecommunications, Gopal Gaon,
Balasore.
5. Kamesh Chandra Das, 43 years,
Accounts Officer, Department of
Telecommunication, Sambhu Gopal Math,
Near Town Planning Office,
Dhenkanal.
6. Gourishankar Dash, 42 years,
Accounts Officer, department of
Telecommunication, Angar Gadia,
Balasore.
7. M. Rajendra Prasad Patnaik, 45 years,
Accounts Officer, Department of
Telecommunications, Qr. No. 148,
Type-II, Old A.G. Colony, Bhubaneswar.
8. Gebinda Prasad Rath, 44 years,
Accounts Officer, Department of
Telecommunications, Plot No. 6,
Chahata Nagar Cuttack-8.

9. Bishnucharan Sahu, 48 years,
Accounts Officer, Department of
Telecommunications, Type-II,
CTO Compound, Cuttack. ... Applicants

By the Advocate ... Mr. A.K. Sahoo, Miss. S.B. Das,
Advocates.

Versus

1) Union of India represented by
its Secretary, Department of Tele-
communications, Sanchar Bhawan,
New Delhi-110 001.

2) Director General,
Telecommunications, Sanchar Bhawan,
New Delhi-110 001.

3) Chief General Manager,
Telecommunications,
Orissa Circle, Bhubaneswar. ... Respondents

By the Advocate ... Mr. U.B. Mehapatra, Additional
Standing Counsel (Central).

O R D E R

H. RAJENDRA PRASAD, MEMBER (ADMN.) The nine petitioners
in this Original Application are Accounts Officers of
Orissa Circle in the Department of Telecommunications,
having been promoted to the said posts between 3rd
July, 1989 and 25th March, 1991. The applicants were
shown senior to one Sri Sankaranarayaan of Tamilnadu
Telecommunications Circle in the All India Seniority
List - generally known as the Blue List/Book - corrected
upto 30.4. 1993. The relevant entries relating to them
are as under :

— 131 —

<u>Applicant No.</u>	<u>Name</u>	<u>Senierty No.</u>
	S/Shri	
1.	Lakshmidhar Mohapatra	645
2.	Nityananda Das	665
3.	L. Malleswara Rao	836
4.	Ghamshyam Sahoo	865
5.	Ramesh Chandra Dash	883
6.	Geuri Shankar Dash	908
7.	M. Rajendra Prasad Patnaik	967
8.	Gebinda Prasad Rath	1028
9.	Bishnu Charan Sahu	1029

As against the above, the seniority no. of Shri Sankaramarayanan was shown as 1035. He was regularly promoted to Accounts Officer on 25.3.1991 like applicants 6 - 9, but was placed below in merit to all these applicants.

2. Notwithstanding their admitted seniority, the pay of the applicants was fixed at Rs. 2,375/- and Rs. 2,450/- as against the higher pay fixed for Shri Sankaranarayana at Rs. 2,750/-. The applicants thereupon submitted representations to the higher authorities to refix their pay on par with that of Shri Sankaranarayana on the ground of the acknowledged seniority of themselves vis-a-vis the latter official. The representations did not evoke any response except in the case of Mr. Rajendra Prasad Patnaik (Applicant No.7) whose request was turned down in June, 1994.

No. 7) whose request was turned down in June, 1994

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by Respondent No.3.

4. It is the grievance of applicants 1 to 6, 8 and 9 that the Respondents, by their continued inaction in the matter have failed to meet the just request for stepping-up of their pay. Applicant No.7 complains of incorrect action on the part of the respondents in rejecting his request for refixation of pay on par with that of Shri Sankaranarayanan. They base their claim on the strength of some judgments delivered in identical cases by various Benches of the Tribunal whereby the claims of many similarly-circumstances applicants had been duly allowed on exactly the same facts.

5. The applicants pray for a declaration that they are entitled to have their pay stepped-up from the date on which the pay of the said Sankaranarayanan, their junior, was fixed at Rs. 2,750/-, and also seek payment of arrears resulting from such refixation, together with 18% interest thereon.

6. The Respondents in their counter-affidavit, state that -

(i) Shri Sankaranarayanan, a necessary party with whom the applicants are seeking pay-parity, has not been impleaded as a respondent in this case.

(ii) The increase in the pay of Shri Sankaranarayanan was 'fortuitous', since he had been officiating against a higher promotional

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Post before he was regularly promoted as
Account Officer.

(iii) The difference in the pays drawn by the applicants and Shri Sankaranarayanan are not "anomalies" in terms of FR 22(C) and as such no stepping-up of the applicant's pay is called for or permissible.

(iv) The benefits of the judgments of the Tribunal are confined only to the petitioners in those cases and not to others like the present applicants.

(v) The Department of Telecommunication has ruled in May, 1993, that cases wherein some junior officials draw a higher pay due to fortuitous factors than their seniors, the seniors do not qualify for the stepping-up of the pay on par with the juniors.

Based on these arguments, the Respondents assert that the applicants' claim lacks in merit and the Original Application deserves to be dismissed.

7. The arguments of the Respondents are analysed below.

(i) Sankaranarayanan cannot be regarded a necessary party in this case since the applicants do not question the pay drawn by him, do not claim any relief against him, nor would he be in any way affected

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115

if their claim is conceded. This ground advanced by the Respondents is unacceptable.

(ii) The pay-increase of the said Sankaranarayanan cannot be said to be fortuitous. It did not happen by chance, but was the result evidently of a conscious decision of the concerned authority at the relevant time to allow him to officiate against a higher post, and then to permit the adhoc promotion to continue long enough to enable the incumbent to draw annual increments in the higher scale. The plea of fortuitousness is not accepted.

(iii) To qualify for stepping-up of ^{the} pay : the junior and senior officials should belong to the same cadre and the promotional posts should be identical; the pay-scales of the junior and senior officials in both lower and higher posts should be identical; a junior official should not draw higher rate of pay in ^{other like 'advance increments'} the lower post due to any reason. A senior official shall not be entitled to stepping-up of his pay if: he was on EOL resulting in the postponement of his increment; refuses promotion resulting in the earlier promotion of his junior, or was on deputation elsewhere when the junior was ^{so} promoted; joins the higher post later than the junior. To case of the applicants does not attract any of these prohibitions while they satisfy all the basic criteria for the stepping up of their pay.

— T. S. J. —

8. The basic disparity in Pay in this case has arisen apparently because Shri Sankaranarayanan was allowed by a circle to officiate as Accounts Officer on local seniority on an adhoc basis for in excess of the maximum period of 180 days permitted by rules. No Circle is permitted to continue such imordinately long adhoc local arrangements. This appears to be at the root of the present problem -the adhoc arrangement of Sri Sankaranarayanan continued long enough to result in accrual of even annual increments in the scale of Accounts Officers. Resultantly, he had to be necessarily given the benefit of a higher stage of pay taking into consideration the pay and increments drawn by him during his officiation in higher scale. Stepping up of the pay in respect of his seniors cannot, however, be denied by simply terming his pay-increase as fortuitous because the increase was the direct result of a conscious administrative decision to allow Sri Sankaranarayanan to officiate against a higher post over a period of time, or of an unwitting administrative inaction of not reverting him from the higher post to his original appointment by timely termination of adhoc promotion as envisaged by the Department's own instructions. The reasons advanced by the Respondents on this score too are, therefore, found unacceptable.

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9. The facts and arguments advanced by the contending parties in this case have earlier come up for scrutiny before other benches of the Tribunal. In all these cases, the case of Sri Sankaranarayanan's increased pay was the subject matter of grievances. The pleas advanced by the Respondents in these cases was the same as adopted by them in the present case. The entire position was examined in detail in Original Application 1156/93 filed before Ernakulam Bench and Original Application 1426/93 before Calcutta Bench and the applications were allowed. The facts in all these cases are totally identical. The findings in these cases therefore adequately cover and apply in full force to this case as well. In expressing my complete and respectful agreement with the Division Benches of Ernakulam and Calcutta Tribunal, I hold that the applicants in the present case are fully entitled to have their pay stepped-up to, and be brought on par with, the pay fixed in respect of Sri K. Sankaranarayanan, ^{regular} from the date of his promotion as Accounts Officer.

10. It is directed, therefore, that the pay of the nine applicants herein be stepped-up to Rs. 2,750/- from the date on which Sri K. Sankaranayanan's ^{regular} promotion as Accounts Officer came into effect. Necessary orders in this regard shall be issued within sixty (60) days from the date of receipt of this order by Respondent No.2. The arrears to which the applicants become entitled owing to such stepping-up of their pay shall be calculated,

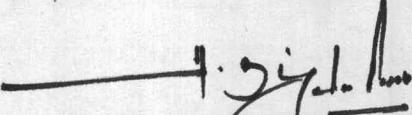
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18

sanctioned and disbursed to them within thirty (30) days thereafter. Since the applicants have been deprived of their just entitlements due to no fault or deficiency on their part and without adequate justification, they shall also be paid interest on the arrears at the rate of 9% from the date the stepping-up of their pay becomes effective upto the date and the same shall be paid to them alongwith the arrears of pay, within the time-limit indicated above.

Thus, the Original application is disposed of.

No costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

16 MAY 95

KNMehanty, CM.