

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH**

ORIGINAL APPLICATION NO.329/96

Cuttack, this the 28th day of November, 2002

Suresh Chandra Bal and others

.....

Applicants

Vrs.

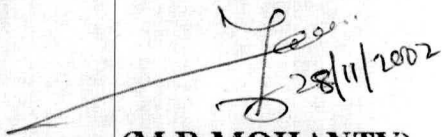
Union of India and others

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Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Ys
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? B


(M.R. MOHANTY)
MEMBER(JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.**

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CORAM:

**HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)**

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1. Suresh Chandra Bal, aged about 47 years, Senior Accounts Officer, Office of the General Manager, Telecom, Bhubaneswar, Telecom Administrative Building, Unit IX, Bhubaneswar.
2. S.K.Mohiuddin, aged about 45 years, Senior Accounts Officer, Office of the Executive Engineer, Telecom, Electrical Division, Administrative Building, Unit IX, Bhubaneswar.
3. M.Shyamal Rao, aged about 42 years, Senior Accounts Officer, Office of the Telecom District Manager, Berhampur.
4. Balaram Panda, aged about 45 years, Senior Accounts Officer, Office of the Telecom District Manager, Berhampur.
5. Maheswar Biswal, aged about 49 years, Senior Accounts Officer, Office of the C.G.M.T., Orissa Circle, Bhubaneswar.
6. Balaram Ojha, aged about 47 years, Senior Accounts Officer, Office of the General Manager, Telecom, Administrative Building, Bhubaneswar.
7. Bhimsen Sahoo, aged about 46 years, Senior Accounts Officer, Office of the Executive Engineer, Telecom, Civil Division, Sambalpur.
8. Nimai Charan Mohanty, aged about 45 years, Senior Accounts Officer, Office of the CGMT, Bhubaneswar.
9. Narendra Kumar Sahoo, aged about 43 years, Senior Accounts Officer, Office of the G.M., Telecom, Administrative Building, Unit IX, Bhubaneswar.
10. Basudev Biswal, aged about 44 years, Senior Accounts Officer, Office of the C.G.M.T., Bhubaneswar.
11. Bibhu Prasad Mishra, aged about 43 years, Senior Accounts Officer, Office of the G.M. Telecom, Administrative Building, Unit IX, Bhubaneswar.
12. Pravat Kumar Kar, aged about 45 years, Accounts Officer, office of the T.D.M, Sambalpur

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Applicants.

Advocates for the applicants

- M/s S.K.Patnaik & U.C.Mohanty

Vrs.

1. **Union of India, represented through its Secretary, Department of Telecom, Sanchar Bhawan, New Delhi 110001**
 2. **Director General, Telecommunications, Sanchar Bhawan, New Delhi 110001.**
 3. **Chief General Manager, Telecommunications, Orissa Circle, Bhubaneswar.**
- Respondents.**

Advocate for the respondents -

Mr.J.K.Nayak, ACGSC

ORDER

SHRI B.N.SOM, VICE-CHAIRMAN

This Original Application has been preferred by a group of twelve Senior Accounts Officers of the office of Chief General Manager, Telecommunications, Orissa Circle, Bhubaneswar, for stepping up their pay at par with that of their junior, namely, Shri Ratan Chandra Chakraborty (Staff No. 82209), belonging to the office of Chief General Manager, Telecommunications, West Bengal Circle, Department of Telecommunications. The applicants have joined together to file this case against the common grievance and cause of action.

2. The facts of the case are as follows. The applicants were appointed in various subordinate cadres under the Postal & Telecommunication Department in their Finance and Accounts Wing, after passing through an All India Examination, called, "P&T Junior Accounts Officer's Examination". It is a merit based examination and those who pass this examination are appointed, on promotion, as Junior Accounts Officers in the pay scale of Rs.1640-2900/- (Pre-revised), the next higher grade being that of Assistant Accounts Officer in the pay scale of Rs.2000—3200/- (Pre-revised) and thereafter the grade of Accounts Officer in the pay scale of Rs.2375-3500/-. This is, in short, the promotional hierarchy of this group of officers.

3. All promotions from the grade of Junior Accounts Officer to the higher levels are made on the basis of a common All India seniority list of Junior Accounts Officers, prepared on the basis of their position in the merit list published as a result of the said P&T Junior Accounts Officer's Examination. The applicants have attached with the O.A. an extract of the Seniority List of the officers in the grade of Junior Accounts Officer, vide Annexure A, where all the twelve applicants are placed senior to Shri Ratan Chandra Chakraborty. The applicants have also submitted a statement of pay, at Annexure B, where it is shown that Shri Ratan Chandra Chakraborty is junior-most in the list, which includes 13 names, the first twelve names being those of the applicants. The pay of applicant nos. 1 to 11, on promotion to the grade of Accounts Officer, was fixed at the minimum of the scale, i.e., Rs.2375/- and that of applicant no.12 at Rs.2600/- whereas in respect of Shri Ratan Chandra Chakraborty his pay was fixed at Rs.2750/-. The applicants have, therefore, submitted that fixing pay of Shri Ratan Chandra Chakraborty at the stage of Rs.2750/- was discriminatory, by making the junior drawing more pay than the seniors, i.e., the applicants. They have also pointed out that the authorities had failed to apply the provisions of FR 22 in fixing their pay and also the instructions as contained in the Ministry of Finance's O.M.No.F2(10)-E.III(a)/62, dated 20.6.1965 and O.M.No.F.2(1B)-E.III(A)/68, dated 4.2.1968 (copies not annexed). It has been further submitted by the applicants that they had ventilated their grievance, through proper channel, to the respondents, who did not accept their plea and by C.G.M.T., Orissa Circle's letter No.ST/54-202/95, dated 10.10.1995, and another letter, dated 23.2.1996, rejected the prayer for stepping up their pay at par with the pay of Shri Ratan Chandra Chakraborty, categorizing their representations being devoid of merit. Being aggrieved by the rejection of their prayer, the applicants have approached this Tribunal for redressal of their grievance. They have also, in submitting this Application, relied

on the decision of the Tribunal, dated 16.5.1995, in OA No.541 of 1994 (Lakshmidhar Mohapatra v. Union of India).

4. The respondents, in their counter, have refuted the claim of the applicants for stepping up their pay at par with their junior, namely, Shri Ratan Chandra Chakraborty. The main argument of the respondents is that Shri Ratan Chandra Chakraborty was working in the West Bengal Circle and his case was exceptional inasmuch as he was awarded with five increments for officiating in higher grade with breaks on the basis of local seniority. They further argued that the matter regarding stepping up of pay of the seniors, when a junior is given officiating local appointment to higher post, is a well settled principle in the Department since 16.1.1968, when Director General, P&T, vide his letter No.4/57/67-P&T, referring to the instructions contained in the Ministry of Finance's O.M.No.F.2(10)-E.III(A)/62, dated 20.6.1965 had issued instruction that in cases where the seniority list for the lower cadre is maintained locally and for the higher post, it is maintained on All India basis, the stepping up of pay of a senior, if all the other conditions are fulfilled, can be made only with reference to a junior of the same Circle to which the senior belongs, such as in the case of TES Group B officers where the seniority list is maintained on All India basis for Group 'B' post holders and for the lower post, viz., Junior Engineers, it is on Circle basis. As such their cases are to be considered only with reference to juniors of the same Circle. In the instant case, the respondents have submitted that Shri Ratan Chandra Chakraborty belongs to West Bengal Circle and the applicants belong to Orissa Circle and therefore, the claim of the applicants for stepping up their pay at a level equal to that of Shri Ratan Chandra Chakraborty cannot be considered as Shri Chakraborty was not junior to them in the same Circle. Shri Chakraborty was given officiating promotion as Accounts Officer on availability of a vacancy in West Bengal cadre, on the basis of local seniority between 1987 and 1993, for which he was entitled to have his pay fixed at higher stage on regular promotion as Accounts Officer, by taking into account the increments that he had earned earlier by virtue of

his officiation in higher post under local arrangement. The respondents have also referred to the Department of Personnel & Training's O.M.No.417/92-Estt.(Pay-I), which stipulated that if a senior joins a higher post later than the junior for whatsoever reason whereby he (the senior) draws less pay than the junior, in such a case the senior cannot claim stepping up of his pay at par with the junior. On this point, they relied on the decision of the Madras Bench of the Tribunal in a batch of 12 O.As. of 1993 (OA Nos.1823/93 & other O.As. – Decided on 22.11.1993 (S.Ramaswamy v. Union of India). In those O.As., one of the prayers was for stepping up of the pay of the seniors, when the juniors got the advantage of higher pay on account of officiating promotion under local arrangement. Those Applications were disposed of by the Tribunal, being devoid of merit. The Madras Bench of the Tribunal also relied on the Hon'ble Supreme Court's judgment, dated 13.1.1989 in C.A.Nos. 307 and 316 of 19988 (State of A.P. and others v. G.Srinivasa Rao) to the following effect:

“Ordinarily, grant of higher pay to a junior would ex facie be arbitrary but if there are justifiable grounds in doing so, the seniors cannot invoke the equality doctrine. To illustrate, when pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection, when promotee from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at efficiency bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or as incentive for efficiency are some of the eventualities when a junior may be drawing higher pay than his seniors.”

5. Learned counsel for the applicants, during hearing, took us through the Hon'ble Supreme Court's judgment in the case of Union of India and others v. V. Jagdish and others, AIR 1997 SC 1783, regarding fixation of pay following the principles of stepping up and its applicability to buttress the argument of the applicants that being senior, they were entitled to higher pay fixation under FR 22. We have perused the said judgment and we are unable to agree that the ratio of that judgment has direct application in the present case. On the other hand, the learned Additional Standing Counsel, appearing for the respondents, has drawn our notice to the

judgment of the Hon'ble Supreme Court in Civil Appeal No. 8658 of 1996 and other batch of cases, decided on 12.9.1997, Union of India and another v. R.Swaminathan, by virtue of which the executive instruction, i.e, Director General, P&T's order, dated 16.1.1968, has been upheld. To put the matter at rest, we would like to quote from the aforesaid judgment of the Apex Court as follows:

".....The question is basically of administrative exigency and the difficulty that the administration may face if even short term vacancies have to be filled on the basis of All India seniority by calling a person who may be stationed in a different circle in a region remote from the region where the vacancy arises, and that too for a short duration. This is essentially a matter of administrative policy. xxxx xxxx One thing, however, is clear. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangement. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the Proviso to Fundamental Rule 22."

6. With the above, we feel that the principle has been well settled and the whole controversy should come to a rest. In the instant case, because of local officiating promotion of Shri Ratan Chandra Chakraborty in the West Bengal Circle, the seniority of the applicants was not disturbed in any way and they remained senior to Shri Chakraborty by virtue of their performance in the All India P&T Junior Accounts Officer's Examination, nor was their turn for regular promotion to the grade of Accounts Officer on All India basis affected. On the other hand, not having worked in higher grade, they could not have considered themselves entitled to higher pay fixation.

7. In the circumstances of the facts of the case, we find no merit in the Original Application and dismiss the same, with no order as to costs.

(M.R. MOHANTY)
MEMBER (JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

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