

CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR

Date of order: 29.8.96

O.A. No. 96/1996

OM PRAKASH VERMA

..... APPLICANT

Vs.

UNION OF INDIA AND ORS.

..... RESPONDENTS

CORAM :

THE HON'BLE MR. S. P. BISWAS, ADMINISTRATIVE MEMBER

PRESENT :

Mr. J. K. Kaushik, counsel for the applicant.

Mr. Vineet Mathur, counsel for the respondents.

BY THE COURT :

Applicant presently a Phone Inspector (P.I. for short), under the Telecom District Engineer ('TDE', for short), is highly aggrieved by A/1, A/2 and A/3 orders by which his representations/appeal regarding fixation of pay have been rejected by respondents No. 2 and 3.

2. Earlier, the counsel for the applicant, on receipt of the reply statement from the respondents, sought permission to file rejoinder as per rule. Subsequently, the counsel felt that the case could be finally heard as there was no requirement of filing a rejoinder in this case. Before the arguments on the substantive issues, learned counsel for the respondents Shri Vineet Mathur strongly opposed

admission of the OA on grounds of limitation. The counsel would submit that after R/I communication dated 1.4.1986 and judgment of this Tribunal on 29.10.1992 in OA No. 668/88, the issue dies a natural death. Subsequent representations, made on the same issue/points, can not help the case to breath into life. The OA, therefore, is barred by limitation. In reply, the learned counsel for the applicant Shri J.K.Kaushik contended that as per Section 117 of the Postal Manual, Vol. II, there are specific rules permitting representations to higher authorities on such matters. The counsel further argued that the issues raised in this OA relate to pay fixation and it is a continuing wrong. This should not be hit by limitation in the light of law laid down by the Hon'ble Supreme Court in the case of M.R.Gupta Vs. Union of India, 1995 SCC(L&S) 1273. In view of the above, the respondents plea of limitation can not be supported. With the consent of both the parties, this case was finally heard at the stage of admission.

3. The facts of the case lie in a narrow compass. The applicant joined the department as a Technician on 26.2.1967 in scale Rs. 110-240. He was promoted to Higher Grade Technician (H.G.T. for short), w.e.f. 5.11.1981 in scale Rs. 425-660. While working in the capacity of a Technician he applied for the post of Phone Inspector in the grade of Rs. 380-560. As per rules, one who is in the scale of Technician can apply for Phone Inspector. But those who are promoted and fixed in the H.G.T. can not go

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in for the post of P.I. However, the applicant appeared in the examination for the post of P.I. and after having passed the test, was appointed as a P.I. w.e.f. 6.5.1983. Before joining the post of P.I. he was drawing basic pay of Rs. 440/- in the scale of Rs. 425-640 meant for H.G.T. and after he joined as P.I. his pay was fixed at Rs. 380/- in the scale of Rs. 380-560 meant for the category of P.I.

4. The applicant continued protesting against the aforesaid fixation. The counsel for the applicant argued that the applicant's pay is required to be protected in accordance with FR 22 Government of India's decision No. FR & SR 26 Part I. The relevant portion of the same is reproduced below :-

"(26) Pay on appointment/promotion to a post not involving higher responsibilities

Revised procedure-Fundamental Rule 22(a) (ii) provides that when a Government servant is appointed to a post which does not involve assumption of duties and responsibilities of greater importance than those attached to the post already held by him, then he will draw as his initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage, the stage next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time scale of the old post or for the period after which an increment is earned in the time scale of the new post, whichever is less. The rule also provides that if the minimum pay of the time scale of the new post is higher than his substantive pay in respect of the old post, he would draw the minimum as initial pay. Again, in the Department of Personnel and Training OM No. 19/1/86-PP, dated the 26th November, 1987 (order 25 above), it has been provided that fixation of pay of officers of Organised Group 'A' services appointed to the selection grade of the service should be governed by the provisions of FR 22(a) (ii)."

The applicant's case is that since he was holding the post of H.G.T. in the scale of Rs. 425-640 on substantive basis, the respondents should have protected his pay while appointing as P.I. The applicant submits that a similar case of protection of pay was allowed to one Shri B.H.Qureshi, who joined the post of Auto Exchange Assistant from the post of H.G.T. The action of the respondents, therefore, is discriminatory. Based on the grounds advanced ^{above} _A aforementioned, the applicant has sought for quashing A/1, A/2 and A/3 orders and issuance of a direction to the respondents to fix his pay at Rs. 440/- in the grade meant for the post of H.G.T.

5. The counsel for the respondents opposed the contentions of the applicant. It was argued that at the time of applying for the post of P.I., the applicant was working in the capacity of Technician. He was at that stage eligible for consideration of promotion for the post of P.I. Before assuming the charge of P.I. which is in the lower grade, the applicant got his promotion as H.G.T. in the scale of Rs. 425-640. The respondents appeared to have cautioned the applicant in respect of this issue but the applicant decided to turn a Nelson's eye to the warning given. The counsel for the respondents drew my attention to Annex.R/1 dated 1.4.1986. The said communication mentions the following :-

"As per recruitment rules only class III Officials whose scale of pay is less than that of Phone Inspector are eligible to become P.I. The official may take reversion as technician before he can be promoted as Phone Inspector."

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The respondents followed the above caution by yet another communication (Annex.R/2) dated 15.1.1987. The applicant failed to respond to both the communications duly addressed to him.

6. The counsel for the respondents submit that the protection of pay as per Government of India's decision No. 26 FR 22(1) (A) (ii) as aforequoted by the applicant is applicable only when an employee is in receipt of a substantive pay. The respondents have denied that the applicant was holding the post of H.G.T. in substantive capacity. Since the applicant was holding the post of Technician in a substantive capacity, he could not be fixed in the grade of Rs.440/- as is being claimed when he has chosen to work in the lower grade of Rs. 380-560 meant for P.I. The respondents have further contended that the example cited by the applicant does not provide him any assistance as the recruitment rules for the post of Auto Exchange Assistants are altogether different from that of P.I.s.

7. I find that the applicant was promoted as P.I. in May 1983 and he was formally cautioned ~~of the~~ consequences in April 1986. He was offered the opportunities of going back to the higher grade of H.G.T. in January 1987, but he failed to take any action in the matter.

8. In the light of the reasons aforementioned, the application fails on merits and is accordingly dismissed.

S. P. Biswas
(S.P.Biswas)
Administrative Member

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