

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA 451/98

Wednesday the 22nd day of July 1998.

CORAM

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR P.V.VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

CORAM

(By advocate Mr Shafik MA)

Versus . . .

1. The Chairman/Director General
Department of Telecom
New Delhi.
2. Chief General Manager Telecom
Kerala Circle
Trivandrum.
3. Sub Divisional Engineer(Admn)
Central Telegraph Office
Kochi.
4. Assistant Chief Accounts Officer (TA)
O/o the Principal General Manager
Telecom, Ernakulam
Kochi - 31.

... Respondents

(By advocate Mr Sunil Jose)

Application having been heard on 22nd July 1998, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant while working as Superintendent during 1993 got his pay fixed on par with his junior on the basis of an order of the Tribunal in OA 1134/93. The respondents filed an SLP against this decision of the Tribunal but the SLP was dismissed by order dated 8.5.95 (Annexure A-5). When the SLP was pending, the applicant was given stepping up of pay subject to the outcome of the SLP. Years after when the applicant was due for retirement on 31.3.98, an attempt was made for re-opening the issue in regard to stepping up of pay of the applicant and to re-fix the same on the basis of a later order of the Hon'ble Supreme Court in Civil

Appeal No. 8658/96. The Assistant Chief Accounts Officer (TA) in the office of the Principal General Manager Telecom, Ernakulam addressed a letter to the SDE (Admn), C.T.O., Kochi directing him to re-fix the pay of the applicant. This was on the basis of A-2 order dated 13.2.98 issued by the D.G., Telecom, directing re-fixation of pay in all cases where stepping up of pay on par with juniors who had obtained higher pay on account of ad-hoc promotion was given, inspite of the fact that in some such cases, the SLP filed had been dismissed. The applicant has filed this application seeking to have the impugned orders A-1 & A-2 set aside to the extent it amounts to re-opening of a concluded issue and for a declaration that the action contemplated in A-1 & A-2 to the extent it relates to the applicant is illegal, arbitrary and violative of all principles of law. Adverting to the fact that the respondents are likely to delay grant of retiral benefits of the applicant, the applicant has prayed for a direction to the respondents to grant salary and pension etc. on the basis of the re-fixation granted as per A-3 & A-5.

2. Respondents in their reply statement contend that as the Hon'ble Supreme Court has held that in situations as in this case, a senior employee is not entitled to have his pay stepped up on par with his junior who happened to be drawing higher pay on account of ad-hoc promotion. The applicant was also wrongly given the benefit of fixation and what is being done is only setting right the anomaly.

3. We have heard the learned counsel. The facts that the pay of the applicant was stepped up in terms of the order of the Tribunal in OA 1134/93 which had become final as the SLP filed against the order was dismissed by the Hon'ble Supreme Court are not in

dispute. The order of the Hon'ble Supreme Court in Civil Appeal No.8658/96 was communicated to all the circles by the D.G. Telecom alongwith a covering letter dated 7.11.97 with a direction to the authorities concerned to recover the amount already paid to the applicants subject to the outcome of the SLPs alongwith a list of those matters. The list of cases appended to this letter does not contain OA 1134/93. The impugned orders A-1 & A-2 do not appear to have been issued in conformity with the general direction because the direction contained in the letter dated 7.11.97 of the D.G. Telecom was only to recover the payment already made subject to the outcome of the SLPs and particulars of the cases were appended. Further, it is well settled that a principle laid down in a later decision of the Hon'ble Supreme Court though is the law of the land will not affect the rights accrued to the litigants whose cases have become final by not being subject to appeal or the appeals having been dismissed by the Supreme Court.

4. Therefore, we are of the considered view that the action taken in this case by the issuance of A-1 & A-2 orders to the extent it affects the applicant is illegal and without justification.

5. In the result, application is allowed. Impugned orders A-1 & A-2 are set aside to the extent it affects the applicant and the application is disposed of with a direction to the respondents to disburse the pay and pensionary benefits to the applicant without any further delay as if the impugned orders A-1 & A-2 have no

application. The above directions shall be complied with as expeditiously as possible and at any rate within two months from the date of receipt of a copy of this order. No order as to costs.

Dated 22nd July 1998.

P. Venkatakrishnan
(P.V. VENKATAKRISHNAN)
ADMINISTRATIVE MEMBER

A. Haridasan
(A.V. HARIDASAN)
VICE CHAIRMAN

aa.

LIST OF ANNEXURES

1. Annexure A1 : True copy of the Letter No.TCA/Pen/C-KKJ/4 dated 16.3.1998 issued by the third respondent.
2. Annexure A2 : True copy of the Letter No.50-66/94-PAT dated 13.2.1998 issued by the Assistant Director General(PAT).
3. Annexure A3 : True copy of the order dated 29.10.1993 passed by the Central Administrative Tribunal, Ernakulam Bench in DA.342/93, DA.337/93 and DA.1134/93.
4. Annexure A5 : True copy of the order dated 8.5.1995 passed by the Hon'ble Supreme Court CC No.2293/95.

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