

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 497/92. 199

DATE OF DECISION 13.7.1993.

Shri T Parthasarathy, Chief
Accounts Officer, O/O the Applicant (s)
Genl Manager, Telecom Distt., Trivandrum.

Shri MR Rajendran Nair Advocate for the Applicant (s)

Versus

1. Union of India, Secy of Min. of Communications., Deptt of Telecom, New Delhi. Respondent (s)
2. The Chief Genl Manager, Telecom, Kerala Circle, Trivandrum. ~~Advocate for Respondent~~
3. The Genl Manager, Telecom Distt., Trivandrum.

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Shri Koduth Sreedharan, ACGSC, Advocate for the respondents.

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C O R A M

The Hon'ble Mr. R. Rangarajan, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

The applicant is a retired Chief Accounts Officer of the Telecom District, Trivandrum. He retired on 31.3.1992. He had become a Group 'B' officer in the scale of Rs.2375-3500 (revised) on 2.5.1979. He states that he should have been promoted to Group 'A' service on completion of seven years service in Group 'B' on 2.5.1986. He further states that he was number two among the officers waiting for promotion to Group 'A' service at the time of filing this application. There were large number of vacancies in the Junior Time Scale and Senior Time Scale of Group 'A' in the Finance and Accounts Branch at that time. He further avers that had the OPC been convened at

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regular intervals and filled the available vacancies in time, he would have been promoted to JTS from 1.4.90 and further to STS. The applicant was promoted to the cadre of JTS on an offciciating basis with effect from 7.11.1989 and his pay was fixed at Rs.3600 in the scale of Rs.2200-4000/-. His next increment was due on 1.4.90 in the Group 'B' service. He was further promoted to Senior Time Scale on an officiating capacity with effect from 23.4.90 and his pay was fixed at Rs.3750 in the scale Rs.3000-4500. While fixing his pay on 23.4.90 in the STS, he contends, his pay should have been fixed at Rs.3875 and not Rs.3750 as per Annexure II order. In the meanwhile, the applicant was reverted and then re-promoted to STS and his pay was fixed at Rs.3750 instead of at Rs.3875 vide Annexure III. The applicant was finally promoted to regular JTS on adhoc basis with effect from 30.11.91 by order at Annexure IV. There-upon his pay was fixed at Rs.3875 in the Senior Time Scale with effect from 30.1.91 as per Annexure V and V-A respectively. The applicant was granted next increment raising his pay to Rs.4000 on 1.1.92 vide Annexure VI.

2. By Annexure VII order his pay was fixed at Rs.3625/- in the STS considering his pay in the Group 'B' service as the basis. Applicant submitted his representation against Annexure VII order pointing out that he was officiating as ACAO while he was promoted as CAO and his pay as CAO must be fixed taking the pay of ACAO as the basis (Annexure VIII). He further states that this representation was referred to the Directorate by Annexure IX asking for clarification in regard to the correctness of the fixation of his pay. But no reply has been received so far. Consequent to Annexure VII order, Annexure X order dated 29.10.91 was issued to recover

the excess payment made to the applicant. He avers that he is entitled to proper fixation of pay both in the JTS and in the STS in accordance with rules and the rules should be interpreted liberally in favour of the employee facilitating drawal of pay at the appropriate stages in the scale of pay for the duties actually performed by him. He further submits that his non-promotion to JTS on regular basis was due to the failure on the part of the authorities and he should not be denied the benefits of such regular promotion. He further states that the principle of equal pay for equal work should apply to him and that his pay should have been fixed on the basis of FR 22(I)(a)(1). As per FR 22(I)(a)(1), where a Govt servant holding a post other than a tenure post in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, his initial pay in the time scale of the higher post shall be fixed at the stage next above the national pay arrived at by increasing his pay in respect of the lower post held by him regularising an increment at the stage at which such pay has been accrued or Rs.25/- whichever is more. His contention is that when an incumbent is promoted to a post in an officiating capacity, he is holding that post regularly for the purpose of fixation of pay. Any other interpretation, would defeat the objective of the rule providing for fixation of pay. He has produced the clarification given by the Department of Personnel dated 28.11.90 which deemed to have come into force on 30.8.1989 to bring home the fact that even officiating promotion will entail him the pay fixation as if he has been promoted to that post on a regular basis. The relevant portion of Annexure XI is reproduced below:-

"In rule 22 of the Fundamental Rules, in paragraph (I), in clause (a), in sub-clause (3), in paragraph (21) of the

proviso, for the words "has previously held on a regular basis", the words "has previously held substantively or officiated in" shall be deemed to have been substituted with effect from 30th day of August, 1989."

3. The applicant further states that his pay was fixed at the stage of Rs.3625 as per order at Annexure VII in the STS, when there was no provision at that time to promote a Group 'B' officer to the STS without having been promoted to JTS. When the provision was so, his pay as on 1.4.90 should have been fixed in the JTS and he would have drawn Rs.3700 instead of Rs.3625 as at Annexure VII. He further submits that Annexure VII order and the order of recovery of excess payment at Annexure X were issued without giving him an opportunity to show-cause. The applicant's representation at Annexure VIII was also not considered. Therefore, the applicant alleges that the whole action of the respondents is violative of the principles of natural justice. Having aggrieved by the above action of the respondents, the applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 with the following prayers:-

- "i) to quash Annexure I, II, III, VII and X to the extent those orders adversely affect the applicant;
- ii) declare that applicant is entitled to have his pay fixed in the Junior Time Scale of Rs.2400-4000 at every stage of his officiating promotions on the basis of his pay in the Group 'B' scale and to declare that applicant is entitled to get his pay fixed in the STS on every occasion of his promotion on officiating basis to STS by taking the pay drawn by him in the JTS as the basis and to direct the respondents to draw and disburse the arrears to applicant and to fix his pensionary benefits accordingly;

iii) grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant; and

iv) grant the cost of this Original Application."

3. The respondents have filed a detailed reply statement wherein they have denied all the averments and allegations made by the applicant. They have enclosed a copy of the Recruitment Rules marked as Annexure R1 which gives the details for promotion of officers of the Group 'B' for promotion to Group 'A' of Indian Posts and Telegraphs Accounts and Finance Service. The main contentions of the respondents are that the applicant's promotion as ACAO and CAO earlier to his adhoc promotion to JTS in terms of the memo dated 11.2.91 at Annexure IV is only in an officiating capacity and during the period he officiated prior to elevation to the JTS as per the above said order, his pay is regulated with regard to his pay in the regular post of Group 'B'. Hence, the fixation of pay as per Annexure VII is in order. They further state that as per FR 22(I)(a)(1), when a Government servant is promoted purely on local officiating arrangement from one post to another and again from the second to a third post, the pay in the second or third post is to be fixed with reference to the pay of the post held by the Government servant on regular basis only. His earlier promotion as ACAO and CAO was purely on an officiating capacity as a local arrangement and had his pay been fixed as per his contention, it would have created an anomaly wherein his seniors elsewhere would be drawing less pay than him when promoted regularly even on an adhoc basis to Group 'A' service. This will give unintended benefit to the applicant and would adversely affect such of his seniors who could not be given local officiating



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promotion where the scope for local officiation was little. The respondents further state that the applicant's case for promotion was not delayed as the process involved consultation with UPSC. Holding of DPC and promotion of officers is a continuous recurring process and there was no inordinate delay in this respect. They have annexed the pay fixation statement with effect from 1.4.86 to 31.3.92 at Annexure R4. At every stage, as can be seen from this Annexure, his pay is fixed as per FR 22(I)(a)(1) taking his pay in the substantive Group 'B' post only. The respondents are of the opinion that the substitution as indicated in the Department of Personnel order at Annexure XI dated 28.11.1990 does not mean removal of the words "on regular basis" appearing in paragraph (2) of the said proviso. Because of this above interpretation by the respondents, the applicant was entitled to get his pay fixed at Rs.4000 in CAO from 1.1.92 only whereas as per the applicant, he is entitled for this above fixation from 6.4.91. Thus, there will be a difference in the pension due to him as calculated by the respondents compared to the calculation as given by the applicant.

4. I have heard the learned counsel on both sides and have also perused the records. At the time of hearing, both the counsel submitted that the solution to this issue revolves around the interpretation of the word "regular" in FR 22(I)(a)(1). Rule 22(I)(a)(1) reads as follows:-

"Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more."

5. Part IV of the Recruitment Rules to the Indian Posts and Telegraphs Accounts and Finance Service Group 'A' (Annexure R-1) indicates the method of recruitment to Group 'A' service. As per this rule, employees can be elevated to this service only if their names are recommended by a duly constituted DPC in which UPSC is also associated with and approved by the competent authority. It is an admitted fact that the applicant prior to his adhoc promotion to the Junior Time Scale of the above service ordered on 30.1.91 was a Group 'B' officer borne on the cadre of Accounts Department of the Kerala Circle. He was promoted to the JTS Group 'A' service on and from 30.1.91. While he was a Group 'B' officer he was on and off promoted to the posts in the cadre of JTS and STS categories purely on local officiating arrangement due to non-availability of regularly approved officers belonging to Group 'A' service.

6. As per FR 22(I)(a)(1), when a Government servant is promoted to a higher post involving assumption of higher duties and responsibilities than those attached to the post held by him at the time of such promotion, his initial pay in the time scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment. As per clause (2) to the proviso under Rule 22(I) (b) when a Government servant is reappointed to the same post on subsequent occasions subject to fulfilment of eligibility conditions as prescribed in the recruitment rules, his initial pay in the higher post shall not be less than the pay which he drew on the last occasion in that post. The principal condition to be fulfilled to comply with the above rules is that he should have held or officiated in that post on earlier occasions on regular basis. Proper interpretation of the

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word 'regular' in the above said rules will thus ensure proper fixation of pay when a person in a Group 'B' service is allowed to officiate in a Group 'A' cadre post.

7. The effect of fixation of pay on officiating promotion before being promoted even on adhoc basis to JTS cadre has to be judged from the repercussions it would cause if the promotee is given the JTS as though he has been promoted after fulfilling the due formalities as prescribed in Part IV of the above said recruitment rules on officiating promotions. If the pay of a locally promoted employee is fixed without following the procedures mentioned above it may be possible that a senior elsewhere in the Group 'B' cadre who had been left out without promotion on an officiating capacity will draw less pay when regularly elevated to JTS cadre following the procedures laid down in the recruitment rules. Thus, this fixation will lead to lot of representations for stepping up of pay of seniors vis-a-vis his juniors. In the present case if the pay of the applicant when promoted as Chief Accounts Officer in STS cadre on officiating capacity is fixed with respect to his pay in the JTS cadre instead of taking his pay in the substantive capacity in Group 'B', there may be many seniors elsewhere in the Accounts Department of the Telecom Service, who are not given such officiating promotion will come up with a request for higher fixation of pay when the applicant is promoted to Group 'A' service along with his seniors after due consideration by DPC. This will lead to a situation wherein the Government will be left with no other option except to step up the pay of the seniors also who have not officiated earlier in the higher post like the applicant. The applicant states that he is number two among the persons to be promoted to Group 'A' service and hence fixation of his pay in the senior scale with notional fixation of his pay in junior scale whenever

he had officiated in that capacity locally, will not lead to any wholesale representation. However, while interpreting the word 'regular' it should be in a general term and not with respect to any particular case. The fixing of pay of the applicant in JTS and thereafter fixation of pay in senior scale whenever he officiated locally in that scale when he is actually a substantive Group 'B' officer, will lead to anomalous situation and will also give unintended benefit to the applicant. The learned counsel for the applicant submitted that in a situation wherein a senior is drawing less pay than the junior, rules permit stepping up of pay of the seniors also upto the level of his junior. If this argument is taken to a logical conclusion the unintended benefit accrued to the junior will also have to be extended to the seniors. When one deals with Government money, it has to be spent carefully as if he is spending his own money. Rules and regulations governing the fixation of pay have to be followed scrupulously. Unintended benefits if extended as indicated above would mean throwing away the 'cannons of financial propriety' to the wind.

8. The learned counsel for the applicant also brought to my notice the amendment notification dated 28.11.90 (Annexure XI). He had stated that the word regular should be interpreted in the FR 22(I)(a)(1) in the same way as interpreted in the amendment namely that even officiating promotion should be treated as regular promotions. Irregular promotion means those promotions which are ordered in violation of rules and other instructions by ineligible offices submits the counsel for the applicant. The learned counsel for the respondent states that regular promotion means those promotions which are given after following the Recruitment Rules and not local officiating promotions

ordered in exigencies of service. In my opinion the word 'regular' has to be interpreted taking due note of the effect it will have if seniors who had no chance to be promoted locally. From the above elucidation, it will stand to reason that none will be put to disadvantage if regular promotion means promotions ordered by the competent authority after fully following the due formalities as laid down in the relevant Recruitment Rules. No officiating local promotion can be called as regular. By the amendment notification as mentioned above regular promotion will not include officiating promotion also.

9. A reading of the FR 22(C) of the old rules of FR & SR and the present rule RR 22(I)(a)(1) will reveal that there is a qualitative change in the wording of these rules and this also strengthens my conviction that regular promotion means promotion after fully following the relevant recruitment rules.

10. The learned counsel for the applicant submits that there was undue delay in preparation of the list for absorption in Group 'A' service and this put the applicant in the disadvantageous position and hence the applicant should not be allowed to suffer. ~~on that account.~~ The respondents have stated that the delay was beyond their control and as UPSC has to be associated with in finalising the list they cannot be held responsible for this delay. No doubt, the delay has caused loss to the applicant, but such delays do happen in other departments also. Because of delay the applicant will get the right for higher fixation does not stand to reason.

11. The case referred to in Smt. N. Lalitha & others, (1992) 19 ATC 569 has no applicability to this case. It deals with only stepping up of pay of seniors vis-a-vis



their juniors and does not interpret the word regular.

12. From what is stated above, I conclude that the word 'regular' promotion in FR 22(I)(a)(1) means only those promotions which are ordered after fully following the Recruitment Rules i.e. convening a DPC to short list the eligible candidates for promotion to Group 'A' service and getting the same list approved by the competent authority. Then only the pay of the selected candidates can be fixed in Group 'A' Junior Time Scale cadre. Officiating promotion given in exigencies of service purely as a local arrangement will not confer the right of a regular promotion for fixation of pay in Junior Time Scale cadre and higher fixation thereafter. In this view of the matter, Annexure VII pay fixation order is unassailable. The certificate and reports (Annexure I) which indicate the pensionary benefits granted to the applicant has been calculated as per extant rules. Hence, this Annexure also cannot be questioned. Annexure II, III & X are also issued duly following the extant rules and hence in order.

13. In the result, the application is not sustainable and hence the same is rejected.

14. There will be no order as to costs.


(R. RANGARAJAN)
ADMINISTRATIVE MEMBER

13.7.1993.

LIST OF ANNEXURES.

ANNEXURE I : Copy of the fixation of pay order dated 10.3.92.

ANNEXURE II : Copy of the fixation of pay order dated 22.6.90.

ANNEXURE III : Copy of the fixation of pay order dated 25.7.90.

ANNEXURE IV : Copy of the Memo dated 11.2.91 of the 2nd respondent.

ANNEXURE V : Copy of the fixation of pay order dated 13.5.91.

ANNEXURE V-A : Copy of the fixation of pay order dated 13.5.91.

ANNEXURE VI : Copy of the fixation of pay order dated 2.3.1992.

ANNEXURE VII : Copy of the Memo dated 29.11.90.

ANNEXURE VIII : Copy of the representation dated 30.12.90 of the applicant.

ANNEXURE IX : Copy of the order dated 8.3.91.

ANNEXURE X : Copy of the order dated 29.10.91 of the Chief Accounts Officer.

ANNEXURE XI : Copy of the notification dated 28.11.90 of the 1st respondent.

ANNEXURE R1 : Copy of the recruitment rules.

ANNEXURE R4 : Copy of statement showing fixation of pay of the Govt servant from 1.4.86 to 31.3.92.

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