

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O. A. No. 509/89  
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DATE OF DECISION 31.10.90

A. Rabindranathan Nair, Asstt. Applicant (s)  
Engineer, Technical and Development  
Circle, Department of Telecommunications, Ernakulam  
Mr. P. V. Mohanan Advocate for the Applicant (s)

Versus

Union of India rep. by the Respondent (s)  
Secretary, Ministry of Communications, New Delhi & Another

Mr. C. Kochunni Nair, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A. V. Haridasan - Judicial Member

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

JUDGEMENT

(Mr. A. V. Haridasan, Judicial Member)

The grievance of the applicant is that the respondents have wrongly denied him three advance increments to which he was eligible on recruitment as Engineering Supervisor after having obtained Engineering Degree, on the ground that he was appointed to that post only after 30.11.1973. He prays that the Annexure-VI clarificatory order dated 22.11.1988 may be set aside in so far as it affects his rights, that the Annexure-VII order dated 23.1.1989 proposing to consider his case in the light of order dated 27.10.1978 No.1-1/74-PAT Col.II, may be quashed, and that the respondents may be directed to fix his pay at Rs.270/- in the pre-revised scale of Rs.180-380/- by granting three additional increments on his appointment

as Engineering Supervisor, and that the same be brought back to the revised scale of pay. Shorn of details, the averments in the application can be briefly stated as follows:

2. The applicant, who entered ~~in~~ the department as Telephone Inspector in 1965 and who acquired the AMIE degree in November, 1970 was selected to the cadre of Engineering Supervisor for the vacancy which arose in the year, 1970 along with other direct recruits. While the direct recruits of the 1970, 1971 and 1972 were sent for training earlier, the applicant was sent for training only in the year 1973, and as a result after completion of the training he was posted as Engineer<sup>ing</sup>/Supervisor at Bangalore only on 10.12.1974. As per the provisions of Engineering Supervisors (Recruitment and Training) Rules, 1965 which was amended in 1972, a person/recruited as Engineer<sup>ing</sup> Super-<sup>in service if</sup> and if he possess a Degree in Engineering<sup>ing</sup> visor/would be eligible for initial fixation of pay at Rs. 240/- in the scale Rs.180-380/- or<sup>three</sup>/advance increments whichever is advantageous to him. But consequent on the withdrawal of advance increments to graduate Engineering Supervisors on the recommendation of the Third Pay Commission, the department issued an order on 24.1.1974 that the advance increments which were admissible to both outside candidates as well as departmental officials appointed to the cadre of Engineering Supervisors would no more be allowed to candidates appointed on or after 1.12.1973. Pursuant to the above order, the applicant who was appointed as Engineering Supervisor

in December, 1974 was denied the advance increments. Though he made representations and though his representations were forwarded, he did not get any favourable reply. Directly recruited Engineering graduates who were recruited ~~xxxxxx~~ ~~xxxxxxxxx~~ against the vacancies of the year. 1970, 1971 and 1972 were sent for training and appointed before 1.12.1973 and they got the benefit of advance increments, while the applicant though recruited for the vacancy of the year 1970 was denied the benefit solely on the ground that he was appointed only on 10.12.1974 because of the delay in sending him for training <sup>on</sup> obviously/account of the latches of the department. Some of the Engineering Supervisors recruited for the vacancies of the year 1972, but <sup>who</sup> completed training after 30.11.1973 filed Original Petition before the Hon'ble High Court of Madhya Pradesh, Jabalpur Bench against the denial of the advance increments to them. The OP was allowed by the Hon'ble High Court and the High Court allowed the benefit of advance increments to them also. Immediately on coming to know of the decision, the applicant submitted a representation on 6.12.1984. Seeking to refix his initial pay in the post of Engineering Supervisor. As he did not get prompt response to the representation, he repeatedly made several representations referring to the judgement of the High Court of Madhya Pradesh, Jabalpur Bench. In the mean-while <sup>on</sup> ~~an~~ application filed by the Junior Engineers, Telecommunication Association as OA 456/86, the Calcutta Bench of the Central Administrative Tribunal relying on the judgement of the Madhya Pradesh High Court, ordered that their pay should be fixed granting ~~xxxxxxxxx~~ advance increments.

Pursuant to the above said decision, the department settled the claims extending the benefit to all similarly situated persons who were recruited in the year 1972 and 1973. While the applicant was eagerly awaiting the fixation in a like manner, the Assistant Director General by order dated 22.11.1988 at Annexure-VI clarified that the benefit of advance increments would be admissible only to the graduate engineers directly recruited, and that the departmental candidates are not entitled to get the benefit. Since the applicant was recruited as Engineering Supervisor for the vacancy which arose in the year 1970 and who was entitled to get his pay fixed at Rs.240/- or for three advance increments whichever is to his advantage according to the rules then stood/cannot be deprived of the benefit just because the department delayed his training and posted him only in the year 1974 while directly recruited Engineering Supervisors were given the benefit of advance increments though they had completed the training after 30.11.1973. The applicant contends that in denying the benefit to him while extending the same to other Engineering Supervisors recruited towards the vacancies of the year 1971 and 1972 and posted after 1.12.1973 is arbitrary and violative of Article 14 of the Constitution of India. The applicant therefore prays that the respondents may be directed to re-fix his pay in the post of Engineering Supervisor on his entry in the cadre at Rs.270/- in the pre-revised scale of Rs.180-380/- granting three additional increments and to be brought back to the new scale.

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3. In the reply statement filed on behalf of the respondents the averments in the application that the applicant was recruited as Engineering Supervisor towards the vacancy of the 1970 while he was working in the department as Telephone Inspector, that he had acquired AMIE degree at the time of recruitment, that as per the rules then stood, the departmental candidates recruited as Engineering Supervisors and possessing a degree in Engineering were entitled to be fixed at Rs.240/- in the scale Rs.180-380/- or for three advance increments whichever is more advantageous to them, and that graduate engineers recruited in the year 1971 towards the vacancies which arose in the year 1971 and 1972 were sent for training before the applicant, are admitted. The respondents contended that, since the applicant was appointed as Engineering Supervisor only on 10.12.1974, after completion of training, in view of the DGP&T's letter No.41-37/73-NCG dated 24.1.1974, Annexure RV, the applicant is not entitled to get any advance increment. Referring to the order dated 13.11.1987 of the Department of Telecommunication, Annexure-V, it is contended that since the above order was issued pursuant to the verdict of the Hon'ble High Court of Madhya Pradesh, the benefits mentioned therein would be available only to the directly recruited graduate engineers.

4. We have heard the arguments of the learned counsel on either side and have also carefully perused the records produced.

5. The applicant was admittedly recruited as an Engineering Supervisor towards the vacancy which arose in the year 1970. It is a further admitted fact that as per the Recruitment Rules as on the date when the applicant was selected to the post of Engineering Supervisor, a departmental candidate possessing the Engineering Degree was entitled to have his pay fixed at Rs.240/- or for three advance increments whichever is more advantageous to him. The applicant's contention is that while fixing his pay on his actual posting as Engineering Supervisor, his pay was fixed at Rs.455/- in the revised scale without giving him the benefit of three advance increments. The denial of the advance increments is justified on the ground that the benefit of advance increments was withdrawn by Annexure-R5 order dated 21.4.1974 of the DG P&T on the basis of the Government decision after acceptance of the Third Pay Commission report. In Annexure-RV order it is stated as follows:

"Accordingly the advance increments which were admissible to both outside candidates as well as departmental officials appointed to the cadre of E. Supervisors would no more be allowed to the candidates appointed on or after 1.12.1973. Similarly departmental officials who become Engg. Graduates on or after the said date will not also be eligible for advance increments or higher pay."

But in Miscellaneous Petition No.826/80, the Madhya Pradesh High Court, Jabalpur Bench held that it is unfair to deny the benefit of advance increments to Engineering Supervisors solely on the ground that they completed <sup>the</sup> training subsequent

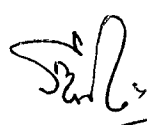
to 30.11.1973. The same view was expressed by the Calcutta Bench of the Central Administrative Tribunal in DA 456/86. The learned counsel for the respondents submitted that the applicants before the Madhya Pradesh High Court and before the Central Administrative Tribunal, Calcutta Bench were all directly recruited Engineering Graduates, and that the applicant who was already in service of the department cannot claim the same benefit as directly recruited Engineering Graduates to the post of Engineering Supervisors. But both the Madhya Pradesh High Court and the Calcutta Bench of the Tribunal found that despite the order at Annexure-RU, Engineering Graduates recruited prior to 30.11.1973 could not be deprived of the benefit of advance increments only for the reason that they were appointed after 30.11.1973. The same principle is applicable in the case of the applicant also. The applicant also was recruited as Engineering Supervisor in accordance with the very same Recruitment Rules under which the directly recruited Graduate Engineers were recruited. It is admitted that the Engineering Graduates recruited for the vacancies <sup>which</sup> arose in the year 1971 and 1972, but posted after 1.12.1973 were given the benefit of advance increments pursuant to the decision of the Madhya Pradesh High Court and the Calcutta Bench of the Central Administrative Tribunal. The training of the applicant and subsequent appointment to the post of Engineering Supervisors was delayed beyond 30.11.1973 for no fault of the applicant, but on account of the failure of

the department to send him for training earlier. There is no justification for not sending the applicant earlier while persons recruited for the vacancies which arose in the subsequent years were sent for training. Therefore, to deny the applicant the benefit of advance increments just because the department delayed his training and appointment is in <sup>most</sup> the/modest words, arbitrary and unsustainable. Therefore, we are of the view that in spite of the order at Annexure-RW the applicant should be allowed the benefit of the advance increments which was available to both direct recruits and promotees prior to 30.11.1973.

6. In the conspectus of facts and circumstances, we allow the application and direct the respondents to refix the pay of the applicant in the post of Engineering Supervisor with effect from the date of his entry into that cadre, giving him the benefit of three advance increments fixing his pay at Rs. 270/- in the pre-revised scale and bringing <sup>back</sup> to the revised scale of pay and to pay him the arrears of salary and allowances calculated at that rate within a period of 2 months from the date of communication of this order. In the circumstances of the case we direct the parties to bear their own costs.

  
(A.V. HARIDASAN)  
JUDICIAL MEMBER

31.10.90

  
(S.P. MUKERJI)  
VICE CHAIRMAN

31.10.90

31.10.90