

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.55/95

Wednesday, this the 22nd day of January, 1997.

C O R A M

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

....

1. R Ranga, Sub Divisional Engineer,
Regional Telecom Training Centre,
Thiruvananthapuram--695 040.
2. PS Francis, Sub Divisional Engineer,
Transmission Project,
Thiruvananthapuram.
3. PD Devassy, Sub Divisional Engineer,
Office of the Divisional Engineer,
Transmission Project, Thottakkatte Road,
Near Ground, Ernakulam.
4. TV Viswanathan Nair,
Sub Divisional Officer,
Telegraphs, Karunagappally.

....Applicants

By Advocate Shri Sasidharan Chempazhathiyl.

vs

1. Chief General Manager,
Telecommunications, Kerala Circle,
Thiruvananthapuram--33.
2. Chief General Manager,
Telecommunications, Telecom Projects,
Madras--600 105.
3. Chief General Manager,
Telecommunications,
Maha Nagar Telephone Nigam,
Mumbai.
4. Director General, Telecom Department,
New Delhi.
5. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi.
6. Secretary, Ministry of Personnel,
Training and Public Grievances,
Department of Personnel and Training,
New Delhi.

....Respondents

By Shri PR Ramachandra Menon, Addl Central Govt Standing Counsel.

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The application having been heard on 17th January, 1997, the Tribunal delivered the following on 22nd January, 1997:

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants are Sub Divisional Officers in the Telecom Department, promoted to the Telecom Engineering Service Group B (TES Group B) during 1986-88 from the post of Junior Telecom Officers (JTO). They contend that the seniority list of JTO is maintained on an All India Basis for the purpose of promotion to TES Group B in which one Shri AGN Pai is junior to the applicants. Shri Pai was continuously officiating in TES Group B from June 1982 before the applicants as a result of which his pay on regular promotion to the TES Group B was fixed taking into account his officiating pay at a point higher than that of the applicants. Applicants are aggrieved by the junior drawing higher pay and pray for stepping up of their pay on par with that of the junior. They approached the Tribunal in OA 379/94 and the Tribunal directed consideration of their representations. This was done and the orders A3 and A4 were passed rejecting their representation. Applicants pray that A3 and A4 be quashed and that A5 orders to the extent it lays down that increased pay drawn by a junior due to ad hoc/officiating/regular service rendered in the higher posts for periods earlier than the senior is not an anomaly to be corrected by stepping up the pay of the senior.

2. Respondents contend that the junior Shri Pai was working in a different Circle with a separate gradation list, and so applicants cannot compare themselves to him. According to

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respondents, JTO is a Circle cadre post with separate gradation list for each Circle. Group B posts are in the All India Cadre and the gradation list for Group B officers is maintained on an All India basis. For purposes of stepping up of pay, the gradation list in the lower post alone is relevant and, therefore, applicants can claim stepping up of pay only with reference to the Circle gradation list in which Shri Pai will not figure in the gradation list applicable to the applicants as Shri Pai was in a different Circle. Officiating promotions are ordered only at the Circle level. The pay of Shri Pai was fixed at a higher level only to protect the pay drawn by him in the officiating post.

3. The issues regarding stepping up of pay were considered by a Full Bench of the Tribunal in OA 1412/93 and connected cases of the Hyderabad Bench of the Tribunal, in view of conflicting views taken by the Tribunal in several decisions including the ones relied on by the applicants. The Tribunal held:

"...every claim must be based on an enforceable legal right. A right arises by conferment, not by comparison. Broad notions of equity cannot be equated or assimilated to legal rights...a jurisdiction in equity does not inhere in the Tribunal.

...If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a junior. He cannot acquiesce in a wrong, and make a gain from that wrong by a comparison.

...(a) Stepping up can be granted only where there is a provision in law in that behalf, and only in accordance with that; and

(b) a claim for stepping up can be made only on the basis of a legal right and not on pervasive notions of equity or equality, unrelated to the context of statutory law."

4. There is no provision in law for stepping up of pay. There are only administrative instructions governing the issue. The removal of an anomaly by stepping up of pay of senior on promotion drawing less pay than his junior as a result of application of FR 22-C is laid down in Government of India, Ministry of Finance OM No.F.2(78)-E.III(A)/66 dated 4.2.1966.

It reads:

"In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1.4.1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example, if

even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay."

[Emphasis added]

It may be seen that the anomaly has to be with reference to another government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post. Here, the applicants cannot be said to be senior to Shri Pai in the lower grade as applicants and Shri Pai belong to different Circles. This has been clearly set out in R1(a). R1(a) has not been challenged.

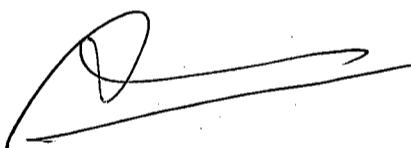
5. The anomaly should be directly as a result of the application of FR 22-C, as stated in the OM dated 4.2.66. At the time the OM dated 4.2.66 was issued, FR 22-C which is referred to in the OM, did not contain the second proviso which was inserted only on 18.7.67. Therefore, FR 22-C referred to in the OM should be read as only FR 22 (I) (a) (1) in the revised version introduced on 16.9.89 and not including the second proviso to FR 22-C which is found in FR 22 (I) (b). The pay of Shri Pai has been fixed under FR 22 (I) (b) and, therefore, the anomaly cannot be said to be directly as a result of the application of FR 22-C or FR 22 (I)(a)(1), and the OM dated 4.2.66 is not attracted. Therefore, the instructions issued in A5 para 2(b) cannot be said to be illegal, arbitrary or unjust.

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6. Applicants did not challenge the ad hoc promotion of Shri Pai and having acquiesced in it they cannot now make a gain by a comparison, seeking to draw higher emoluments without discharging the higher responsibilities which Shri Pai has discharged and as a result of which he is drawing higher emoluments. Applicants did not challenge the ad hoc promotion of Shri Pai and claim ad hoc promotion on the basis of All India seniority in the Group B post nor did they challenge the rules regarding ad hoc promotion. Having acquiesced in the rules regarding ad hoc promotion, they cannot claim entitlement to have the resultant anomaly in pay corrected.

7. Therefore, the application is without merit and is dismissed. No costs.

Dated the 22nd January, 1997.



AM SIVADAS
JUDICIAL MEMBER



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

ps21

List of Annexures

1. Annexure A3:- True copy of order No.AP/10-134/94 dated 22.8.1994 issued on behalf of 1st respondent.
2. Annexure A4:- True copy of order No.AP/10-134/94 dated 3.11.1994 issued on behalf of 1st respondent
3. Annexure A5:- True copy of Office Memorandum No. 4/7/92-Estt (Pay-I) dated 4.11.93 issued by 5th respondent.
4. Annexure-R1(a):- True copy of the letter dtd: 16.1.1968 of the Department regarding stepping up of pay.