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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXX~~ No.

547/1990
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DATE OF DECISION 29.7.91

G.Thankappan Applicant (s)

Mr.M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India ,represented by Respondent (s)

its Secretary to Government,
Ministry of Communication,
New Delhi and 2 others

Mr.S.V.Balakrishna Iyer,ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr.
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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

In this application dated 5.7.90 filed under Section 19 of the Administrative Tribunals Act the applicant who has been working as Phone Inspector under the Chief General Manager, Telecommunications, Trivandrum has challenged the impugned orders dated 7.9.89 at Annexure-I and 18.7.89 at Annexure-II refixing his pay as Phone Inspector with effect from 17.7.86 and on that basis refixing his revised pay with effect from 1st January 1986. He has further prayed that he should be declared to be entitled to draw pay in the Selection Grade of Telephone Inspector in the scale of Rs.425-640 till 1.3.82 when he was confirmed as Phone Inspector and is entitled to have his pay fixed as Phone Inspector in the scale of Rs.380-560 under FR 22-C . His further prayer is that on his promot-

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ion as Selection Grade Telephone Inspector with effect from 7.7.83 his pay should be fixed in the scale of Rs.425-750 under FR 22-C. The brief facts of the case are as follows.

2. The applicant commenced his service as Mechanic(Technician) in the Department of Communications on 16.11.65 in the scale of Rs.110-180 subsequently revised to Rs.260-480 with effect from 1.1.73. He was given quasi-permanent status as Technician with effect from 16.11.68. He qualified in the competitive examination for recruitment to the cadre of Telephone Inspectors and on his giving an undertaking on 12.11.74(Annexure R2A) that he "will not seek reversion to my parent cadre/post nor will I claim any benefit that might accrue to me had I continued in the present cadre" he ^p ~~was~~ sent for training on 14.11.74 and completed the same on 4.8.75. He, however, continued as Technician even after the training in the scale of Rs.260-480 until 17.7.76 when he was promoted as Telephone Inspector in the scale of Rs.380-560. At that time his pay as Technician was Rs.324/- and he was given a pay of Rs.380/- as Telephone Inspector under FR 22-C. The Department, however, on 12.4.1977(Annexure-III) when the applicant was actually working as Telephone Inspector, appointed him as Higher Grade Technician in the scale of Rs.425-640 retrospectively with effect from 16.11.75.(Annexure -III). It was mentioned in the order of promotion that posts involving specially arduous work and carrying higher responsibility should be identified and the promotees utilised for manning those posts. It was also indicated in the endorsement that it

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should be ensured that the promotees are "not either working in higher cadres or undergoing training in higher grades on the dates they are promoted to the higher grade". By a further order dated 1.7.77(Annexure-V) the applicant's pay as SG Technician consequent on his promotion as Phone Inspector in the scale of Rs.380-560 was fixed on the basis of his pay in the Selection Grade Technician grade(Rs.425-640) being Rs.425/- by giving next stage in the substantive cadre under FR 22-C at Rs.452/- with effect from 17.7.1977. On 13.3.78 a letter was issued from the Office of the D.G to the General Manager, Trivandrum giving the clarification that post of Phone Inspectors have not been declared as those of higher duties and responsibilities over the post of Higher Grade Technicians and hence the question of fixing the pay of officials like the applicant promoted from Higher Grade Technician to Phone Inspector under FR 22-C does not arise. On that basis in the communication dated 18.7.78 (Annexure-VII) the applicant's pay as Phone Inspector fixed vide Annexure-V under FR 22-C at Rs.452/- was revised but he was allowed to draw pay in the Higher Grade Technician's grade of Rs.425-640 even on his appointment as Phone Inspector in the scale of Rs.380-560/-. The over payment was to be recovered. Nine years after that, the General Manager issued another letter dated 21.9.87(Annexure-VIII) directing that the pay of the applicant as Phone Inspector should have been fixed with reference to his pay in the ordinary scale of Technician(Rs.260-480) as the Recruitment Rules for the post of Phone Inspector clearly specify that Selection

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Grade Technician are not eligible for posting as P.I. In the meantime the applicant had been confirmed as Phone Inspector on 1.3.82 and had been promoted in the Selection Grade Phone Inspector ~~grade~~ in the scale of Rs.425-750(Revised Rs.1400-2600) on 17.7.83. His pay was fixed at Rs.1500/- as on 1.1.86. On 9.12.87 the Accounts Officer informed him (Annexure-IX) with reference to the General Manager's communication dated 21.9.87 (Annexure-VIII) that his pay as Phone Inspector has been refixed with reference to his pay as Technician and the over payments will be recovered. On that basis his pay as Phone Inspector was fixed at Rs.380/- with effect from 17.7.76 instead of Rs.452/- as fixed by the order dated 1.7.77 at Annexure-V under FR 22-C and later reduced to Rs.425/- on 18.7.78(Annexure-VII) in the scale of Selection Grade Technician. His pay in the Selection Grade of Phone Inspector as on 17.7.83 and in the revised scale of Phone Inspector were also accordingly refixed at ~~the~~ reduced levels. The applicant challenged the reduction of his pay as Phone Inspector by Annexures-VIII and IX in O.A 333/87 which was disposed of on 21.6.88 on the ground of violation of the principles of natural justice and the order dated 9.12.87 was set aside. The Tribunal, however, did not allow fixation of his pay as Phone Inspector by applying FR 22-C on the ground that the pay fixation had already been finalised vide the order dated 18.7.78 at Annexure-VII. After the Tribunal by its order set the matter at rest upholding the order dated 18.7.78(Annexure-VII) by which the applicant had been allowed to retain the pay scale

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of Higher Grade Technician (Rs.425-640) even while working as Phone Inspector, the respondents reopened the matter and issued a notice on 16.8.88 at Annexure-XI to show-cause why his pay on promotion as Phone Inspector should not be refixed on the basis of his pay in the ordinary scale of Technicians, i.e., Rs.380-560 stating that the order dated 1.7.77 (Annexure-V) fixing his pay at Rs.452/- with effect from 17.7.1976 under FR 22-C on the basis of his pay in the Selection Grade of Technician was erroneous. The applicant represented on the show-cause notice on 1.9.88 whereafter the impugned orders were passed on 18.7.89 and 7.9.89 refixing his pay in the scale of Phone Inspector ^(Rs.380-560) on the basis of his pay of Rs.425/- in the Selection Grade of Technician under FR 22(a)(ii) by treating his appointment as Phone Inspector from the grade of Selection Grade Technician as not a promotion with higher duties and responsibilities. According to the applicant by the impugned order he has suffered doubly. In the first place he lost the benefit of FR 22-C on his promotion as Phone Inspector as was given to him by the order dated 1.7.77 at Annexure-V and secondly he has lost even the reduced pay of Rs.425/- ^{and} ~~in~~ the Selection Grade scale of Rs.425-640 which was allowed to be retained by him as Phone Inspector ^(Rs.380-560) in accordance with the order at Annexure-VII. His plea is that promotion as Phone Inspector from the category of Technician/SG Technician involved higher responsibility because ^{and} ~~there~~ there is no difference in the nature of duties between the Technicians in the ordinary scale of Rs.380-560 and the Technicians in the Selection Grade of Rs.425-640. He has also argued that until he is

confirmed as a Phone Inspector he is entitled to draw his pay in the old scale of SG Technician under FR 22-B. He has also claimed fixation of pay under FR 22-C on his promotion on 17.7.83 from ordinary to Selection Grade of Phone Inspector. His further argument is that by taking away the benefit given to him by the order dated 18.7.1978 at Annexure-VII without giving him a show-cause notice, the impugned order is null and void. He has also referred to FR-15 to say that his pay scale as Selection Grade Technician which he drew upto 16.7.76, could not be reduced to the lower scale of Rs.380-560 as Telephone Inspector without his consent or until he is confirmed as Telephone Inspector.

3. In the counter affidavit the respondents have referred to the undertaking given by the applicant on 12.11.74 (Annexure R2(A)) before being sent for training as a prelude to his promotion as Phone Inspector declaring that he will not claim any benefit in his parent cadre. Thus, on his promotion as Telephone Inspector he cannot carry over the pay scale of the Selection Grade Technician. They have conceded that his pay in the Selection Grade Technician's scale of Rs.425-640 was fixed at Rs.425/- on 16.11.75 and accordingly on the date of his promotion as Telephone Inspector on 17.7.76, it was wrongly fixed at Rs.482/-. According to them before his appointment as Telephone Inspector, on his retrospective promotion to the Higher Grade Technician's grade "he would stand reverted to the cadre of Technician, carrying a pay scale of Rs.260-480". He would thus be entitled to only Rs.380/-

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i.e., the minimum of the pay scale of ordinary scale Telephone Inspector on 17.7.76. They have also referred to the endorsement note in the order dated 12.4.77 promoting him to Selection Grade Technician's post with retrospective effect from 16.11.75 to the effect that it should be ensured that he was not working in a higher cadre on the date he was promoted to the higher grade of Technician. If a correct report had been received by them that he was working as Telephone Inspector with effect from 17.7.76, the respondents would have made necessary modifications of Annexure-III. They have also argued that he was wrongly allowed to draw pay in the scale of Higher Grade Technician while working as Telephone Inspector vide the order dated 18.7.78 at Annexure-VII. They have also argued that on the basis of the judgment given by the Madras Bench of the Tribunal in O.A 333/87 the applicant cannot ^{challenge} ~~convince~~ the correctness of Annexure VI A and Annexure VIII proceedings because these proceedings are valid in law. He was given due notice and after considering his representations were the impugned orders passed. The post of Telephone Inspector is not a promotional post for Higher Grade Technicians and the duties and responsibilities of these two posts cannot be compared. According to them even to ask a question about which of the two posts is higher in duties and responsibilities, will be wrong and the "issues can be answered only wrongly". According to them the existing rules framed by the department

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do not permit promotion to Higher Grade Technician to the cadre of Telephone Inspector.

4. I have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The principal question involved in this case is whether the appointment of the applicant from the post of Higher Grade Technician to that of Telephone Inspector involved assumption of higher duties and responsibilities so as to attract the benefits of FR 22-C. It may be noted that the respondents themselves have referred to the post of Higher Grade Technician as Selection Grade Technician. In para 6 of the counter affidavit, they have observed as follows:-

" The selection grade Technicians were entitled to a pay scale of Rs.425-15-560-EB-20-640, and accordingly the applicant's pay on promotion as Higher Grade Technician was fixed at the minimum of the scale i.e., Rs.425/- on 16.11.1975".

It is thus clear that the Higher Grade Technician is nothing but a Technician in the Selection Grade. There is a Selection Grade for the post of Telephone Inspector also to which the applicant was promoted on 17.7.83. The confusion about the Higher Grade Technician being of higher and equal responsibility than that of a Telephone Inspector has arisen because of the fact that the pay scale of the Higher Grade Technician (Rs.425-640) is higher than that of ordinary scale Telephone Inspector (Rs.380-560). But if we compare the ordinary scale of Technician with the ordinary scale of Telephone Inspector and the pay scale of Higher Grade Technician with the pay scale of the Higher Grade Telephone

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Inspector the confusion is cleared and it becomes evident that the duties and responsibilities of the post of Telephone Inspector are higher than those of a Technician. The following comparative table will be useful:-

	<u>Technician</u>	<u>Telephone Inspector</u>
Ordinary Grade	Rs.260-480	Rs.380-560
Selection Grade/ Higher Grade	Rs.425-640	Rs.425-750

5. The respondents have not been able to produce any rules for appointment to the post of Selection Grade Technicians. This shows that no posts as such were created in the Selection Grade but the Technicians in the ordinary grade were given Selection Grade or Higher Grade without any change of duties and responsibilities. This is clearly evident in the applicant's case who was promoted retrospectively to the Higher Grade with effect from 16.11.75 by the order dated 12.4.1977 while he had been holding the post of an ordinary grade Technician right from 16.11.65 to 16.7.76. To us it appears that the Higher Grade Technicians was a non-functional Selection Grade of Technicians without any change of duties and responsibilities and the appointment of a Technician whether in the ordinary or Selection Grade as Telephone Inspector would involve promotion and assumption of higher responsibilities. The preamble of the memo dated 1.7.77 at Annexure-V reads as follows:-

"Memo showing fixation of pay of Shri G.Thankappan, S.G. Technician, consequent on his promotion as P.I. in the scale of pay of Rs.380-12-500-EB-15-560." (emphasis added)

The above shows that the respondents themselves considered the appointment of the applicant as Telephone Inspector (PI) from that of S.G. Technician as promotion.

5. The argument of the respondents that Higher Grade Technicians being not eligible under the Recruitment Rules for appointment as Telephone Inspector and therefore, the applicant is not entitled to the benefits of FR 22-C on his appointment as Telephone Inspector is not convincing. The fact remains that the respondents themselves promoted the applicant as Telephone Inspector with effect from 17.7.76 and thereafter promoted him to the Higher Grade Technician's grade with retrospective effect from 16.11.75 without withdrawing the order of appointment as Telephone Inspector. The preamble of the order at Annexure-V, quoted above, also maintains the applicant's promotion as Telephone Inspector from the grade of Selection Grade Technician with effect from 17.7.76. So long as these orders of promotion are not modified or cancelled and so long as the applicant is allowed to draw pay in the grade of HG Technician (Rs.425-640) right upto 16.7.76 and allowed to discharge the duties of Telephone Inspector with effect from 17.7.76, he cannot be denied the benefit of FR 22-C on his appointment as Telephone Inspector. Further under FR 15 a Government servant cannot be transferred to a post carrying less pay than the pay of the permanent post to which he holds a lien. Since the ordinary pay scale of Technician (Rs.380-560) was lower than the HG Technician scale of Rs.425-640 it would in any case be unfair to give the applicant a lower pay

scale of Technician without his willingness or without giving him an opportunity to claim the higher pay scale.

6. The respondents have relied upon the declaration dated 12.11.74 (Annexure R2(A)) which the applicant had given at the time of his being sent on training for promotion as Telephone Inspector saying that "I will not seek reversion to my parent cadre/post nor will I claim any benefit that might accrue to me had I continued in the present cadre". The declaration if at all would disqualify him from claiming the benefits of Higher Grade Technician on his appointment as Telephone Inspector, but it does not debar him from accepting promotion to Higher Grade Technician which was given to him suo motu by the respondents themselves. Having given him the Selection Grade and not withdrawing the same till now, the respondents cannot derecognise that grade in which he had actually drawn pay for the purposes of fixing his pay as Telephone Inspector.

7. The respondents have also relied upon the endorsement on the order dated 12.4.77(Annexure-III) by which he was given retrospective promotion as Higher Grade Technician. The endorsement reads as follows.

"It may be ensured with reference to entries in Service Books of the officials that they are not either working in Higher cadres or undergoing training in Higher cadres on the dates they are promoted to the H.G." (emphasis added)

The respondents have argued that if it had been known to them that the applicant has been officiating as Telephone Inspector on the date of his promotion to Higher Grade Technician, they would have modified

this order on the basis of the endorsement, quoted above. This is also not a very convincing argument. The endorsement merely enjoins that it should be ensured that on the date the applicant was promoted to Higher Grade he was not working in a higher cadre. Now it is not disputed that on 16.11.75 when the applicant was promoted as Higher Grade Technician he was not working as Telephone Inspector. He started working as Telephone Inspector only on 17.7.76 and on 16.11.75 he was admittedly working as an ordinary grade Technician. Accordingly, there is nothing wrong in the order of the applicant's promotion as Higher Grade Technician with retrospective effect from 16.11.75.

8. The respondents are also to some extent bound by the order of the Madras Bench of the Tribunal dated 21.6.1988 in OA 333/87. While allowing the application, the Tribunal in the concluding portion of their judgment, observed as follows:-

" In the result, the application is allowed. The order dated 9.12.87 is hereby vacated. The relief claimed by the applicant that the fixation of pay has to be done applying FR 22-C is not being allowed as it is concluded by the earlier order dated 18.7.78."
(emphasis added)

From the above it appears that the Tribunal has endorsed the order dated 18.7.78 as final . This order is available at Annexure-VII in our case, the operative portion of which reads as follows:-

"Hence your pay fixed at Rs.452/- under FR 22(C) vide this office No.Q.1283/27 dated 1.7.1987 requires revision. You are allowed to draw pay in the scale of H.G.Technician only, on your appointment as P.I., until you are confirmed in the cadre of P.I. The amount of over payment made to you on this account, which will be communicated to you separately, will be recovered from your future pay."

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From the above it is clear that the applicant was allowed to retain his pay in the scale of Higher Grade Technician (Rs.425-640) even after his appointment as Telephone Inspector in the scale of Rs.380-560. By the impugned order though his pay Rs.425/- which the applicant drew in the Higher Grade Technician grade of Rs.425-640, was protected after his promotion as Telephone Inspector on 17.7.76, his further pay as Telephone Inspector was determined in the scale of Rs.380-560 and not in the scale of Rs.425-640.

9. As regards application of FR 22-C while fixing the pay of the applicant in the Selection Grade of Telephone Inspector, since we have found that the Selection Grade is a non-functional one and there is nothing to show that on promotion to the Selection Grade either as a Technician or as a Telephone Inspector there was assumption of higher duties and responsibilities, the applicant cannot be held to be entitled to the benefit of FR 22-C on his promotion as Higher Grade Technician or Selection Grade Telephone Inspector.

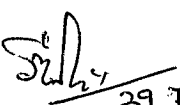
10. In the facts and circumstances I allow the application in part as indicated below:-

- a) The applicant is not entitled to the benefit of FR 22-C on his promotion as Higher Grade Technician and Selection Grade Telephone Inspector.
- b) The applicant is entitled to the benefit of FR 22-C for getting his pay fixed as Telephone Inspector in the scale of Rs.380-560 on the basis of his pay of Rs.425/- in the

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scale of Higher Grade Technician ,i.e., Rs.425-640. However, in view of the observations of the Madras Bench of the Tribunal in the judgment dated 21.6.1988 in OA 333/87, the applicant's pay as Telephone Inspector should be allowed to be governed by the order dated 18.7.78 at Annexure-VII.

- c) Any excess amount recovered, over and above the amount to which he is entitled in accordance with the directions given above, should be refunded to the applicant within a period of three months from the date of communication of this order.
- d) There will be no order as to costs.


29.7.91
(S.P.MUKERJI)
VICE CHAIRMAN

n.j.j