

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 120/2000

TUESDAY, THIS THE 2nd DAY OF APRIL, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Bindu Rajan W/o K.K. Rajan
TOA(G), Office of the Director
Telecom Transmission Installation, Ernakulam
Residing at Puthenpurakkal House
Eroor West, Tripunithura.

Applicant

By Advocate Mr. M. R. Rajendran Nair

Vs.

1. Union of India represented by Secretary
to Government of India
Ministry of Communications
New Delhi.
2. Accounts Officer Works (C)
Mahanagar Telephone Nigam Ltd.
Mumbai.
3. Chief General Manager
Telecom Kerala Circle
Trivandrum.

Respondents

By Advocate MR. K. R. Rajkumar

The Application having been heard on 14.2.2002 the Tribunal
delivered the following on 2.4.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This Application has been filed by the applicant
aggrieved by the denial of pay protection consequent on her
request transfer after reversion from the post of Senior TOA
to TOA under Rule 38 of the P & T Manual Vol. IV to the
Kerala Telecom Circle. She sought the following reliefs
through this O.A.

(i) To direct the respondents to protect the pay of
the applicant in accordance with Annexure A-5 on
fixing her pay on reversion from the post of Senior
TOA to TOA.

(ii) Grant such other relief as may be prayed for and
the Tribunal may deem fit to grant, and

(iii) Grant the costs of this Original Application.

2. According to the averments of the applicant in the O.A. she was appointed as TOA(G) at MTNL, Bombay on 14.12.92 on regular basis. She was promoted as Senior TOA(G) w.e.f. 6.3.95. She requested for a transfer to Kerala Circle under Rule 38 of the P&T Manual Vol.IV. By A1 order dated 12.2.98 her transfer request was approved. She was transferred to Electrical Sub Division, Thodupuzha as per A-2 order of the Assistant General Manager MTN Ltd., Mumbai. The applicant was reverted to the cadre of TOA(G) w.e.f. 15.5.98 A.N. and the same was entered in her service book. Consequently her pay was refixed at Rs. 3455/- w.e.f. 15.5.98. The applicant continued to draw her basic pay at Rs. 3455/in Kerala Circle. The applicant claimed that Telecom Directorate issued A-4 order dated 14.10.98 according to which on reversion from higher post say UDC to the post of LDC the pay would be fixed at the stage at which he would have drawn had he not been promoted to the post of UDC and subsequently on his transfer to the same post of LDC anywhere in India, the pay would be fixed under FR 22(1)(a)(2). The applicant referring to A-5 letter dated 30.11.98 submitted that Govt. clarified that under the provisions of FR 22(1)(a)(3) when an individual was transferred from a higher post which he had been holding on a regular basis to a lower post on his own request his basic pay on the higher post was to be protected and his pay in the lower post should be fixed at the same stage or the next higher stage subject to the condition that if the pay drawn in the higher post was more than the maximum of the pay in the lower post, his pay should be restricted to the maximum of the pay in the lower post. The applicant submitted A-6 representation dated 28.12.98 to the Accounts officer Works, MTNL requesting for refixing the pay of the applicant by granting pay protection and to



release the pay commission arrears. On receiving no reply the applicant submitted A-7 representation dated 18.5.99 to the 3rd respondent requesting for re-fixation of her pay by granting protection. As per A-8 letter dated 14.6.99 the Accounts Officer Trivandrum informed the applicant that her representation was duly considered and rejected. According to the applicant she had a right to have her pay protected on reversion to the post of TOA from the post of Sr. TOA. She also alleged A-8 was arbitrary, unreasonable and unjust and A-4 order was issued contrary to the provisions of the statute and the said A-4 was not valid law. According to her A-5 was in tune with the statutory provisions and supported the applicant's case. Hence she filed this Original Application seeking the above reliefs.

3. The third respondent filed reply statement resisting the claim of the applicant. It was submitted that in A-1, the rule under which the pay fixation was to be done was erroneously shown as FR 22(1)(a)(1) which was applicable for promotion only. It was also submitted that as per rules a declaration to the effect that pay would be fixed under FR 22 or any specific rules fixed in this regard had to be obtained from the official before approving the case of transfer under Rule 38. It was further submitted that for giving effect to Rule 38 transfer she was reverted from the promotional cadre of Sr. TOA to the basic cadre of TOA(G) w.e.f. 15.5.1998 and her pay was fixed in the lower grade at Rs. 3455/- as against Rs. 4400/- as Sr. TOA at MTN Ltd., Bombay. The applicant was thereafter relieved to Kerala Telecom Circle. In Kerala Circle her pay was fixed from 15.5.98 to 30.11.98 at Rs. 3455/-; from 1.12.98 to 30.11.99 at Rs. 3540/- and from 1.12.99 onwards at Rs. 3625/-. It was submitted that Annexure A-5 was only a memo issued by Ministry of Finance



and the endorsement and the acceptance of the same by the Department Telecommunications was not clearly shown by the applicant in the O.A. It was submitted that the Rule 38 transfers would be allowed only in basic cadres and the pay in the promoted cadre could not be protected as there was no provision. The representation of the applicant was rejected on the basis of the order circulated from Telecom Directorate.

4. In the additional reply statement filed it was submitted that once the applicant had agreed to her reversion she had no claim for protection of the pay drawn in the higher scale of Sr. TOA with which she had severed all connections on her reversion. Further A-5 circular dated 30.11.98 was not applicable to the DOT as it had been issued by the Central Board of Direct Taxes (CBDT). This circular which was erroneously issued by CBDT had since been withdrawn vide R2 circular dated 10.6.99. A-4 circular dated 14.10.98 issued in consultation with the Department of Personnel & Training was final. The Protection of her pay in the Sr. TOA cadre at Rs. 4400/- as requested by her was not admissible in view of DOT's orders.

5. The applicant filed rejoinder where she admitted that she was reverted to the cadre of TOA(G) as a prelude to Rule 38 transfer. According to her R-2 was an executive instruction and the said instruction could not take away what accrued to her by way of statutory provisions. She cited the Supreme Court Judgment in 1989 Supp (1)SCC 393.

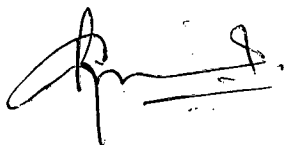
6. Heard learned counsel for the parties.

A handwritten signature in black ink, appearing to be 'R. S.', is written over a horizontal line.

7. Learned counsel for the applicant submitted that when as per A1 the pay of the applicant was to be fixed under FR 22(1)(a)(1) and on that condition she had accepted the inter-Circle transfer under Rule 38 of the P&T Manual Vol. IV, not protecting her pay and reducing it was without notice and on this ground alone the O.A. may be allowed directing the respondents to consider her case for refixation of pay. Reliance was placed on the order of this Tribunal in O.A. No. 1187/99. The learned counsel for the respondents took us through the reply statement and resisted the claim. He cited the judgment of the Hon'ble Supreme Court in Comptroller and Auditor General of India and Others Vs. Farid Sattar (AIR 2000 SC 1557) in support of his submission.

8. We have given careful consideration to the submissions made by the learned counsel for the parties, the rival pleadings and have perused the documents brought on record.

9. We find that it is not disputed by the applicant that she had accepted the conditions stipulated in A1 for the inter Circle transfer to Kerala Circle. The first condition in A-1 is that the concerned employees would be reverted to their parent cadre as TAO(G) before relief. The applicant herself averred that she was reverted to the cadre of TOA(G) w.e.f. 15.5.98 (AN) and her pay was fixed at Rs. 3455/-. We find that the applicant without referring to any rule submitted that she had a right to have her pay protected on reversion to the post of TOA from the post of Sr. TOA. She further stated "According to this rule when an update (?) to a new post does not involve such assumption of duties of responsibilities of greater importance, one shall draw as intial pay the stage of the time scale which is equal to his



pay in respect of his old post held by him on regular basis." It would appear that she is relying on FR 22(I)(a)(2) read with FR 22(I)(a)(3) as given in A-5 letter dated 30.11.98 for the protection of her pay. According to the respondents A-5 letter is not applicable to the employees of Telecom as A-5 letter had been issued by the CBDT. It was also submitted by the respondents that CBDT had cancelled their letter by R-2 circular letter dated 10.6.99. In the rejoinder, applicant submitted that R-2 - an executive instruction could not supersede the statutory provision. We do not find any merit in the applicant's contention that she was entitled for protection under FR 22(I)(a)(2) and FR 22(I)(a)(3). Further, the circular relied on by her was issued by the CBDT in the Ministry of Finance on 30.11.98 whereas her pay was fixed on 15.5.98. Even the letter dated 30.11.98 had been withdrawn by the authority who had issued it. In any case, she a DOT employee cannot claim that a circular issued by CBDT- another Department- would be applicable to her.

10. In her representation dated 18.5.99 to which A-8 reply had been given to her and which is impugned in this O.A., she had requested that her pay maybe fixed in the cadre of TAO(G) with pay protection under FR 22(I)(a)1 and without considering the A-4 order dated 14.10.98. She had requested that her pay should be fixed as per rules prevalent on the date of her reversion viz. 15.5.98. Respondents say that in A1 the rule under which the pay fixation would be done was erroneously shown as FR 22(I)(a)(1). According to them FR 22(1)(a)(1) applies only in cases of promotion. FR 22 (1)(a)(1) reads as under:

FR 22(I) The initial pay of a Government servant who is appointed to a post on a time scale of pay is regulated as follows:



(a)(1) 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 fulfillment 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.

Save in cases of appointment on deputation to an ex-cadre post, or to a post on adhoc basis, the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be fixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an adhoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment:

Provided that where a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time scale of the lower post or rupees twenty-five whichever is more.

11. After going through the above rule we have no hesitation in holding that FR 22(I)(a)(1) is applicable only when a Government servant is promoted/appointed to a post carrying duties and responsibilities of greater importance than those attached to the post held by him. Thus for application of FR 22(1)(a)(1) the post the government servant held at the time of his promotion/appointment should be in a grade lower than the grade of post to which he/she was promoted/appointed. If the former and latter are in the same grade or if the former is higher than the latter FR



22(1)(a)(1) would not be applicable. We also find support for this proposition in the judgment of the Hon'ble Supreme Court in Union of India Vs. Ashoke Kumar Banerjee (1998 SCC (L&S) 1277) where the Hon'ble Supreme Court held:

"...For the applicability of the FR 22(1)(a)(i) it is not merely sufficient that the officer gets a promotion from one posts to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post...."

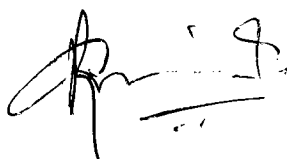
12. The next limb of the argument of the applicant was that when the appointment to the new post did not involve such assumption of duties of greater importance, one drew as initial pay, the stage of initial pay held by her on regular basis relying on FR 22(I)(a)(2). FR 22(I)(a)(2) reads as under:

(2) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or, if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:

Provided that where the minimum pay of the time-scale of the new post is higher than his pay in respect of the post held by him regularly, he shall draw the minimum as the initial pay:

Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time scale of the old post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time scale of the new post.

On appointment on regular basis to such a new post, other than to an ex-cadre post on deputation, the Government servant shall have the option, to be exercised within one month from the date of such appointment, for fixation of his pay in the new post with effect from the date of appointment to the new post or with effect from the date of increment in the old post.



13. In the case of the applicant she had requested for inter-circle transfer under Rule 38. She was specifically advised the conditions under which the said transfer could be granted. The first condition was that she would be reverted to the basic cadre of TOA(G). By the applicant's own admission, her pay on reversion was fixed at Rs. 3455 at Bombay on 15.5.98. We find that nothing had been brought to our notice as to how this pay fixed on reversion at Bombay is not correct. FR 22(1)(a)(2) does not deal with pay fixation on reversion.

14. In A-4 letter the method of pay fixation on reversion had been given as follows:

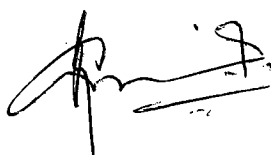
".....(a) On reversion from a higher post say UDC to the post of LDC, his/her pay would be fixed at the stage at which he/she would have drawn had he/shenot been promoted to the post of UDC."

We do not find any infirmity in the method of pay fixation on reversion given as above as it takes into account the service put in by her in the higher grade also upto the date of reversion. Further, we also do not find any merit in the plea of the applicant that A-4 was applicable only for the cadre of UDC and LDC and not for Sr. TOA and TOA (G). In our view UDC and LDC had been stated in A-4 only as an illustration and the principle laid down was applicable to all similar categories.

15. As already seen A-5 circular dated 30.11.98 relied on by the applicant had been withdrawn by the Govt. of India Ministry of Finance (CBDT). The said A-5 reads as under:

G.I. M.F.(CBDT) Cir.No.A-26017/14/98-Ad IX dated 30.11.1998.

Pay drawn in higher post on regular basis is to be protected, even on transfer to a lower post at one's own request.



I am directed to say that references have been received from various charges seeking clarification as to how the pay is to be fixed when an individual is transferred from a higher post to a lower post on his own request and whether the pay drawn in the higher post can be protected on such transfer.

2. The matter has been considered. It is hereby clarified that under the provisions of FR 22(I)(a)(2) read together with FR 22(I)(a)(3) when an individual is transferred from a higher post which he had been holding on regular basis, to a lower post, on his own request his basic pay in the higher post is to be protected and his pay in the lower post should be fixed at the same stage or the next higher stage, subject to the condition that, if the pay drawn in the higher post is more than the maximum of the pay in the lower post, his pay shall be restricted to the maximum of pay in the lower post. The pay of all such individuals may, therefore, be fixed in accordance with the above.

3. This disposes of all the pending references on the issue.

16. From a plain reading of the above letter we find that even if it is taken that the above letter is applicable to the employees of DOT, the same will not cover the case of the applicant and other similar employees because she and others had not been transferred on request straightaway from Sr. TOA(G) in Mumbai to Kerala Circle as TOA(G). It was specifically provided in A-1 that they would be reverted as TOA(G) before relief. Therefore in their case it was not a transfer from a higher grade post to a lower grade post on request straightaway. It was a transfer in the same grade on request under Rule 38 because all the employees were to be reverted before relief.

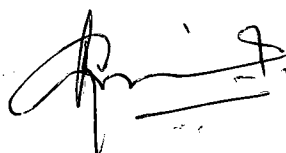
17. When the applicant has specifically accepted the condition of reversion the question that comes up is how the pay of a Government servant thus reverted would be fixed in the lower grade. Respondents are relying on Annexure R-1 letter dated 14.10.98 and claim that her pay fixation has been done correctly. No doubt R-1 was issued on 14.10.98.



But it was not laying down a new rule. It was only clarifying the matter which was already there. Though the applicant is claiming that she should be governed by the rules existing at the time of her transfer she had not produced any rule. FR 22(I)(a)(2) and FR 22(1)(a)(3) would have been applicable had the condition of reversion not been mentioned before accepting her request under Rule 38 transfer. Moreover condition 5 in A-1 " that they cannot claim their past services in the parent circle for considering their seniority/confirmation etc. After joining new unit they cannot claim their past services in the parent circle for appearing any departmental examination unless they complete the stipulated service after joining the new circle" would indicate that they were being treated in the new circle as direct recruits TOA(G). In that view of the matter we hold that in this case the ratio of the judgment of the Hon'ble Supreme Court in Comptroller and Auditor General of India and Others Vs. Farid Sattar (AIR 2000 SC 1557) would apply wherein the Hon'ble Supreme Court held:

".....Fundamental Rule 22(I)(a)(2) provides that, when an employee is transferred to a new post, which does not involve assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time scale which is equal to his pay in respect of the old post held by him on regular basis. Thus FR 22(I)(a)(2) would be applicable where there is an ordinary transfer which is not by way of reversion to the lower post and in such a case, the pay of an employee on transfer to a new post has to be protected. Fundamental Rule 22(I)(a)(3) is applicable where an employee is transferred to a new post on his own request under Sub rule (a) of Rule 15, and further in such a transfer no reversion is involved....."

18. We have also perused the order of this Tribunal in O.A. 1187/99 dated 26.11.2000 relied on by the learned counsel for the applicant. In our view the facts and circumstances as obtaining in that O.A. is not similar to the one obtaining in this O.A. Accordingly, we hold that the



said order is not applicable in the facts of this Original Application. Moreover, the ground of no notice does not arise in this case, as the applicant's pay was never fixed in Kerala Circle at a higher stage at all.

19. For all the above reasons we hold that the pay fixation done in the case of the applicant on her transfer from MTN Ltd. to Kerala Circle after reversion as TOA(G) cannot be faulted and no interference in A-8 is called for.

20. In the light of the detailed analysis given above we hold that the applicant is not entitled for the reliefs sought through this Original Application. Accordingly, we dismiss this Original Application with no order as to costs.

Dated the 2nd April, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

kmn

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the order No.STB/43-11/96, dated 12.2.1998 issued by the Asst. General Manager (Admn.) for CGMT, Trivandrum.
2. A-2: True copy of the order No.ST/15-67/R.38 TFR(583/584/484), dated 22.4.1998 issued by the Asst. General (A-IV), O/o the 2nd respondent.
3. A-3: True copy of the applicant's pay slip drawn for July 1998.
4. A-4: True copy of the order No.19-20/89-SEA, dated 14.10.1998 issued by the Assistant Director General office of the 1st respondent.
5. A-5: True copy of the GIMF (CBDT) Circular A 26017/14/98, dated 30.11.1998.
6. A-6: True ;copy of the representation dated 28.12.1998 submitted by the applicant to the 3rd respondent.
7. A-7: True copy of the representation dated 18.5.1999 submitted by the applicant to the 3rd respondent.
8. A-8: True copy of the letter No.STB/43-11/99 dated 14.6.1999 issued by the Assistant Director, Office of the 3rd respondent.

Respondents' Annexures:

1. R-1: True copy of the correction memo dated 14.10.98.
2. R-2: True copy of the circulat No.G.I.MF (CBDT) No.26017/14/98-AD IX dated 10.6.99.

npp
5.4.02