

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 151 of 2000

Friday, this the 8th day of February, 2002

CORAM

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

1. K. Haridas, S/o K. Velu,
Sub Divisional Engineer (Officiating),
Telecom, Kongad, Palakkad-678 631
residing at 21/149 'Supriya', Venkara,
Palghat - 678 004Applicant

[By Advocate Mr. M.R. Rajendran Nair]

Versus

1. The Chief General Manager,
Telecom, Kerala Circle,
Trivandrum.
2. Union of India, represented by the
Secretary to Government of India,
Ministry of Communications,
New Delhi.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 8-2-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This Original Application has been filed by the
applicant aggrieved by A3 letter dated 12-10-1999 rejecting his
request for stepping up of his pay with that of his junior Shri
K.Vijayan. He sought the following reliefs through this
Original Application:-

- "i. To quash Annexure A3.
- ii. To declare that the applicant is entitled to
have his pay stepped up to that of his junior
Shri Vijayan and to direct the respondent to
step up the pay of the applicant accordingly.
- iii. Grant such other reliefs as may be prayed for
and the Court may deem fit to grant, and

..2.

iv. Grant the cost of this Original Application."

2. According to the averments of the applicant in the Original Application, he joined the service as a Telephone Operator on 16-8-1966. He was promoted as a Phone Inspector in July, 1977. When the One Time Bound Promotion scheme was introduced in the Telecom Department, he was given promotion in the basic cadre with effect from November, 1983. He was successful in the Departmental Exam for promotion as JTO in the year 1989. He was promoted as JTO in December, 1991. On promotion his pay was fixed at Rs.1680/- as on December, 1991. In December, 1994 he was drawing a basic pay of Rs.2000/-. He has been officiating as Sub Divisional Engineer with effect from 15-10-1999 and at the time of filing of this Original Application he was drawing a basic pay of Rs.7500/-. Shri K.Vijayan commenced service as a Telephone Operator on 9-3-1970. He was promoted as Phone Inspector in July, 1977. He was promoted under the One Time Bound Promotion scheme in March, 1986. He was successful in the Departmental Exam for promotion as JTO held in the year 1993 and was promoted as JTO in December, 1994. On promotion his pay was fixed at Rs.2060/and at the time of filing of this Original Application his basic pay was Rs.7700/-. On the basis of the above facts, the applicant claimed that the junior- Shri Vijayan -was drawing more pay than the applicant- his senior -and submitted that the same was an anomaly as a direct result of the application of FR-22(I)(a)(1). Claiming that he was entitled to get his pay stepped up to that of his junior Shri Vijayan, he submitted A1 and A2 representations to the 1st respondent. The applicant received A3 reply dated 12-10-1999 from the Senior Accounts Officer in the Office of the 1st respondent. The applicant filed A4 representation dated 1-3-1999. Receiving no reply, he filed this Original Application. The

applicant claimed that in the lower category Shri Vijayan had never drawn higher pay than the applicant when both were in the same category and according to him, the anomaly of Shri Vijayan drawing more pay than the applicant arose directly as a result of the application of FR-22(I)(a)(1) and as such, he was entitled for stepping up of pay.

3. Respondents filed reply statement resisting the claim of the applicant. According to them, Shri Vijayan- the junior in JTO cadre to the applicant- the senior -was drawing more pay, but the same was not due to the direct application of FR-22(I)(a)(1), but due to the fact that Shri Vijayan was drawing higher pay of Rs.1950/- in OTBP scale of Phone Inspector viz. Rs.1600-2660 when he got promotion as JTO with effect from December, 1994, whereas the applicant was drawing less pay of Rs.1720/- in the OTBP TO cadre in the scale of Rs.1400-2300 when he got promotion as JTO with effect from 31-12-1991. Referring to RI(A) orders of the Government of India, Department of Personnel & Training O.M. dated 4-11-1993 it was submitted that the applicant did not satisfy the conditions laid down there for stepping up of pay. According to them, the scale of pay of the lower and higher posts in which the junior and senior officers were entitled to draw pay should be identical and the anomaly should be directly as a result of the application of FR-22(I)(a)(1).

4. Heard the learned counsel for the applicant.

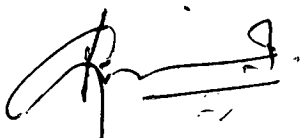
5. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record. On the basis of the materials produced before us, we are of the view that the applicant is not entitled for the

reliefs sought for. It is an admitted fact that the junior Shri Vijayan got promoted to a grade different from the one the applicant was holding when he got promotion as JTO. When such is the case and on the basis of RI(A) O.M., the anomaly in the pay scale of the junior and the senior is not directly as a result of FR-22(I)(a)(1). The condition to be satisfied for stepping up of pay of the senior with that of the junior is that the junior drawing higher pay should be directly as a result of FR-22(I)(a)(1) and the junior and the senior should be drawing identical scales of pay in the lower grade. In this case, this condition is not satisfied. A similar issue was considered by the Hon'ble Supreme Court in Union of India & Another vs. R. Swaminathan & Others reported in (1997) 7 SCC 690. The Hon'ble Supreme Court referring to the O.M. dated 4-11-1993 has held as follows:-

"The Office Memorandum dated 4-11-1993, Government of India, Department of Personnel and Training, has set out various instances where stepping up of pay cannot be done. It gives, inter alia, the following instances which have come to the notice of the Department with a request for stepping up of pay. These are:

- "(a) Where a senior proceeds on Extraordinary Leave which results in postponement of date of next increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade:
- (b) If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, the junior draws higher pay than the senior. The senior may be on deputation while the junior avails of the adhoc promotion in the cadre. The increased pay drawn by a junior either due to adhoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term.
- (c) If a senior joins the higher post later than the junior for whatsoever reasons, whereby he draws less pay than the junior, in such cases the senior cannot claim stepping up of pay on a par with the junior.

(d) * * *



There are also other instances cited in the Memorandum. The Memorandum makes it clear that in such instances a junior drawing more pay than his senior will not constitute an anomaly and, therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of adhoc officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay."

6. This case is also covered by the O.M. referred to in the case above in that the junior by efflux of time had gone into a scale higher than that of the applicant before his promotion to the grade of JTO and the anomaly of the junior drawing higher pay than that of the senior is because of the fact that the junior's pay in the post of JTO got fixed with reference to the pay he was drawing at the time of his promotion. The scales of pay of the junior and senior were not identical at the time of promotion. Thus it cannot be held that the anomaly has arisen directly as a result of the application of FR-22(I)(a)(1).

7. In the light of the above, this Original Application fails and accordingly we dismiss this Original Application with no order as to costs.

Friday, this the 8th day of February, 2002



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

ak.

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the representation dated 4.7.1996 submitted by the applicant to the 1st respondent.
2. A-2: True copy of the representation dated 10.7.1997 submitted by the applicant to the 1st respondent.
3. A-3: True copy of the letter No.AP/90-613/96 (Pt.) dated 12.10.1999 issued by the Sr. Accounts Officer, O/o the 1st respondent.
4. A-4: True copy of the representation dated 1.3.1999 submitted by the applicant to the 1st respondent.

Respondents' Annexure:

1. R-1A: Photo copy of the Office Memorandum No.4/7/92-Estt.(Pay-I) New Delhi, dated 4-11-1993.

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