

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No. 205 of 2003

Friday, this the 17th day of October, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN  
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. T. Issac,  
S/o late Thomas,  
Sub Divisional Engineer, External (South),  
P.K.V. Buildings, Market Road, Cochin-11  
Residing at Planthara, 51/2403,  
Chilavannur, Kochi-20
  2. N.P. Thomas,  
S/o late M.V. Poullose,  
Divisional Engineer, SSA, Ernakulam,  
Residing at 29/1237, A Shine Road,  
Vytila, Cochin-19
  3. P.M. Thomas,  
S/o late P.P. Mathai,  
Sub Divisional Engineer, New Services,  
Office of the Principal General Manager,  
BSNL, Ernakulam, residing at Pokkamattathil,  
Puthencruz PO, Ernakulam District.
  4. C.M. Mary,  
D/o late M.C. Mathai,  
Divisional Engineer, SSA, Ernakulam,  
residing at (Chennammeli) XXX/1616  
Narayananasan Road, Ponnurunny,  
Vytila, Kochi-19
  5. M.V. Varkey,  
S/o late Kurian Varkey,  
Sub Divisional Engineer (Retired),  
residing at Mangarathil, Vadavucode PO,  
Ernakulam.
- ....Applicants

[By Advocate Mr. O.V. Radhakrishnan]

Versus

1. Principal General Manager,  
Bharat Sanchar Nigam Limited,  
Secondary Switching Area, Ernakulam,  
Kochi-16
2. Chief General Manager,  
Bharat Sanchar Nigam Limited,  
Kerala Circle, Thiruvananthapuram.
3. Secretary,  
Department of Telecom Services,  
Sanchar Bhavan, XX Asoka Road,  
New Delhi-1

4. Union of India, represented by its  
Secretary, Ministry of Communications,  
New Delhi. ....Respondents

[By Advocate Mr. Dinesh R. Shenoy]

The application having been heard on 17-10-2003, the  
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Applicants, Sub Divisional Engineers (SDEs for short) promoted as such by Annexure A3 to Annexure A6 orders long prior to 1-1-1996, are aggrieved that their request for stepping up of pay on par with their junior T.S.Viswanathan, who was promoted as SDE on officiating basis with effect from 30-1-1996, has been rejected by Annexure A-30 order on the ground that the Hon'ble Supreme Court has in R.Swamynathan's case vide judgement dated 12-9-1997 held that stepping up of pay is not permissible if anomaly arise due to temporary officiating promotion of a junior.

2. The admitted facts of the case are that the applicants were promoted as SDEs on various dates prior to 1-1-1996 vide Annexure A3 to Annexure A6 orders on regular basis and that T.S.Viswanathan, their junior with reference to whose pay the applicants claim stepping up, was promoted as SDE on officiating basis with effect from 30-1-1996. It is also not in dispute that as on 1-1-1996 the applicants were drawing a basic pay of Rs.8250/- as SDEs and T.S.Viswanathan was drawing Rs.8250/- in the scale of pay of Rs.7500-12000 in the cadre of JTO and that Swamynathan's pay happened to be fixed by applying FR 22(1)(a)(1) with effect from 30-1-1996 on his officiating promotion with effect from that date at Rs.8750/-. Applicants have alleged in the application that as they satisfy all the four conditions mentioned in Note 9 under Rule 7 of the CCS (Revised Pay) rules, 1997, the rejection of the claim for

stepping up of pay with effect from 30-1-1996 to Rs.8750/- on par with their admitted junior, T.S.Viswanathan, is illegal and unjustified. With these allegations, the applicants seek to set aside the impugned order and pray for a declaration that applicants 1 to 5 are eligible and entitled to have their pay stepped up on par with their junior T.S.Viswanathan from the date of his promotion on 30-1-1996 in terms of Note 9 under Rule 7 of the CCS (Revised Pay) Rules, 1997 and for a direction to the respondents to refix the pay of the applicants 1 to 5 accordingly with effect from 30-1-1996 and to grant them all consequential benefits.

3. Respondents in their reply statement at paragraph 11 admit that although the conditions for stepping up of pay on par with the applicants' junior T.S.Viswanathan are satisfied, the applicants are yet not entitled to get stepping up of their pay in view of Note 22 below F.R.22.

4. Applicants in their rejoinder have stated that the Note 22 under FR 22 relied on by the respondents to reject the claim of the applicants is no more relevant because that instruction was notified in Government of India, Ministry of Finance O.M. dated 16th June, 1989 and the present FR 22 amended after that has made the situation different.

5. We have carefully gone through the entire pleadings and materials placed on record and have heard Shri O.V.Radhakrishnan, learned counsel of the applicants and Shri Dinesh R.Shenoy, learned ACGSC appearing for the respondents.

6. The moot question in this case is whether Note 22 under FR 22 relied on by the respondents is still in force and relevant after the amendment of FR 22. FR 22, as it stood prior

to the amendment notified by the Government of India, Department of Personnel & Training, Notification No.1/10/89-Estt.(Pay-I) dated the 30th August, 1989 published in the Gazette of India as GSR 679 dated the 16th September, 1989, reads as follows:-

"FR.22 The initial substantive pay of a Government servant who is appointed substantively to a post on a time-scale of pay is regulated as follows:-

- (a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended--
  - (i) when appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of Rule 30) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;
  - (ii) Not printed--- ....
  - (iii) when appointment to the new post is made on his own request under Rule 15(a) and the maximum pay in the time-scale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay.

Exception.--- Not Printed.

- (b) If the conditions prescribed in clause (a) are not fulfilled he will draw as initial pay the minimum of the time-scale.

Provided, both in cases covered by clause (a) and in cases, other than cases of re-employment after resignation or removal or dismissal from the public service, covered by clause (b), that if he either--

- (1) has previously held substantively or officiated in--
  - (i) the same post, or
  - (ii) a permanent or temporary post on the same time-scale, or
  - (iii) a permanent post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale; or

- (2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated;

then the initial pay shall not, except in cases of reversion to parent cadre, governed by proviso (1)(iii) be less than the pay, other than special pay, personal pay or emoluments classed as pay by the President under Rule 9(21)(a)(iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay. If, however, the pay last drawn by the Government servant in a temporary post has been inflated by the grant of premature increments the pay which he would have drawn but for the grant of those increments shall, unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post. The service rendered in a post referred to in proviso (1)(iii) shall, on reversion to the parent cadre, count towards initial fixation of pay, to the extent and subject to the conditions indicated below--

- (a) The Government servant should have been approved for appointment to the particular grade/post in which the previous service is to be counted;
- (b) all his seniors, except those regarded as unfit for such appointment, were serving in posts carrying the scale of pay in which benefit is to be allowed or in higher posts, whether in the Department itself or elsewhere, and at least one junior was holding a post in the Department carrying the scale of pay in which the benefit is to be allowed; and
- (c) the service will count from the date his junior is promoted and the benefit will be limited to the period the Government servant would have held the post in his parent cadre had he not been appointed to the ex cadre post.

NOTE.-- In respect of a Government servant serving in an ex cadre post on identical time-scale of pay as the time-scale of the parent cadre, service rendered in the ex cadre post up to the 29th November, 1965, shall count for purposes of fixation of pay and increment to the extent admissible under proviso 1(iii) as it existed immediately before the 30th November, 1965, if the same is more advantageous to him."

7. The relevant instructions contained in Note 22 relied on by the respondents was published on 16th June, 1989 as is seen from Annexure A-31, which inter alia stipulates that:

"... The anomaly can be said to exist only if a senior employee, drawing equal or more pay than his junior in the lower post and promoted earlier, starts drawing less pay than such junior promoted later on regular basis.  
.."


8. The substituted FR 22 with effect from 16-9-1989 reads as follows:-

"FR.22 (1) 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 fulfilment 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 ad hoc 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 refixed 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 ad hoc 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.

- (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.

- (3) When appointment to the new post is made on his own request under sub-rule (a) of Rule 15 of the said rules, and the maximum pay in the time-scale of that post is lower than his pay in respect of the old post held regularly, he shall draw that maximum as his initial pay.

(b) If the conditions prescribed in Clause (a) are not fulfilled, he shall draw as initial pay on the minimum of the time-scale:

Provided that, both in cases covered by Clause (a) and in cases, other than the cases of re-employment after resignation or removal or dismissal from the public service, covered by Clause (b), if he--

- (1) has previously held substantively or officiated in--
- (i) the same post, or
  - (ii) a permanent or temporary post on the same time-scale, or
- 

- (iii) a permanent post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale; or

- (2) is appointed subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules to a tenure post on a time-scale identical with that of another tenure post which he has previously held on regular basis;

then the initial pay shall not, except in cases of reversion to parent cadre governed by proviso (1)(iii), be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the President under Rule 9(21)(a)(iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on a regular basis on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay. If, however, the pay last drawn by the Government servant in a temporary post had been inflated by the grant of premature increments, the pay which he would have drawn but for the grant of these increments shall unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post which he had held on a regular basis. The service rendered in a post referred to in proviso (1)(iii) shall, on reversion to the parent cadre count towards initial fixation of pay, to the extent and subject to the conditions indicated below--

- (a) the Government servant should have been approved for appointment to the particular grade or post in which the previous service is to be counted;
- (b) all his seniors, except those regarded as unfit for such appointment, were serving in posts carrying the scale of pay in which benefit is to be allowed or in higher posts, whether in the Department itself or elsewhere and at least one junior was holding a post in that Department carrying the scale of pay in which the benefit is to be allowed; and
- (c) the service will count from the date his junior is promoted on a regular basis and the benefit will be limited to the period the Government servant would have held the post in his parent cadre had he not been appointed to the ex cadre post.

(II) The President may specify posts outside the ordinary line of service the holder of which may, notwithstanding the provisions of this rule and subject to such conditions as the President may prescribe, be given officiating promotion in the cadre of the service which the authority competent to order promotion may decide, and may thereupon be granted the same pay whether with or without any special pay attached to such posts as they would have received if still in the ordinary line.

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(III) For the purpose of this rule, the appointment shall not be deemed to involve the assumption of duties and responsibilities of greater importance, if the post to which it is made is on the same scale of pay as the post, other than a tenure post, which the Government servant holds on a regular basis at the time of his promotion or appointment or on a scale of pay identical therewith.

(IV) Notwithstanding anything contained in this rule, where a Government servant holding an ex-cadre post is promoted or appointed regularly to a post in his cadre, his pay in the cadre post will be fixed only with reference to his presumptive pay in the cadre post which he would have held but for his holding any ex-cadre post outside the ordinary line of service by virtue of which he becomes eligible for such promotion or appointment.

AUTHORS' NOTE.--This new version of FR 22 was notified by the Government in substitution of the old FRs 22, 22-C, 30 and 31. This was only an exercise in the rationalization and simplification of the old rules dealing with regulation of pay on appointment/promotion from one post to another. There was no intention of deliberalizing the existing provisions. All the four rules have been merged into the newly substituted FR 22. A table of concordance is given below for reference--

Old Rule		Substituted Rule 22
FRs 22-C & 31	...	Clause I(a)(1)
FR 22(a)(ii)	...	Clause I(a)(2)
FR 22(a)(iii)	...	Clause I(a)(3)
FR 30	...	Clauses II & III

For orders regarding treatment of special pay for fixation of pay on promotion see Appendix-8 in this compilation."

9. A comparison of the substituted FR 22 and the old FR 22 would show that while the old FR 22 dealt with regulating the pay of an officer on appointment to a substantive post, the substituted FR 22 directs regulation of pay on appointment either substantively, temporary or officiating basis. Since the old FR 22 related to regulation of pay only on substantive appointment, the Government of India instructions mentioned in Note 22 dated 16-6-1989 clearly stipulated that stepping up of pay should be made only in the event of a regular promotion of the junior. In view of the substantial change in the scope and content of FR 22 after the substitution made with effect from 16-6-1989, the instructions issued by the Government of India on

16-6-1989 which is mentioned in Note 22 has lost its significance and relevance with regard to the mode of appointment, whether substantive, temporary or officiating. Because the applicants were all seniors to T.S.Viswanathan and before 1-1-1986 they were drawing the same pay as T.S.Viswanathan and T.S.Viswanathan started drawing higher pay than the applicants with effect from 30-1-1996 on account of his officiating promotion and application of FR 22(1)(a)(1), we find no justification in denying the applicants the benefit of stepping up of pay. The case of Union of India & Another vs. R.Swaminathan & Others, reported in (1997) 7 SCC 690 is not applicable to the facts of the case on hand. In that case the Apex Court was considering a case where seniors were claiming parity in pay with their junior who had on account of local officiating promotion acquired increments which made him to get a higher pay than the seniors. Here the situation is totally different. Applicants had been regularly promoted before their junior was promoted on officiating basis and were drawing the same pay as their junior was drawing on 1-1-1996 and the anomaly of their drawing less pay arose on 30-1-1996 on account of the officiating promotion of their junior and application of FR 22(1)(a)(1) in his case.

10. In the light of what is stated above, we find no merit in the contentions of the respondents.

11. In the result, the Original Application is allowed. The impugned order Annexure A-30 is set aside. Respondents are directed to fix the pay of the applicants with effect from 30-1-1996 at Rs.8750/- on par with the pay of their junior T.S.Viswanathan and to make available to them all the

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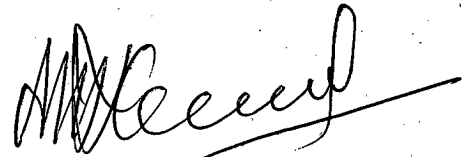
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consequential monetary benefits flowing from such refixation within a period of two months from the date of receipt of a copy of this order. No order as to costs.

Friday, this the 17th day of October, 2003



T.N.T. NAYAR  
ADMINISTRATIVE MEMBER



A.V. HARIDASAN  
VICE CHAIRMAN

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