

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 312 of 199 ².

DATE OF DECISION: 09-11-1992

N.Saraswathi Devi and others Applicant (s)

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

Versus

The Senior Supdt. of Telegraphs Respondent (s)
Trivandrum and 2 others

Mr. Mathews J.Nedumpara, ACGSC Advocate for the Respondent (s)
through proxy counsel

CORAM :

The Hon'ble Mr. **S.P.Mukerji, Vice Chairman**

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1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 18.2.92 filed under Section 19 of the Administrative Tribunals Act the applicants who have been working as Higher Grade Telegraph Assistants under the Senior Superintendent of Telegraphs, Trivandrum Division have challenged the impugned orders at Annexure-I dated 2.11.91, Annexure-V dated 10.2.90 and Annexure-VII dated 5.5.90 by which the pay of the applicants which had been earlier stepped-up on the basis of the pay of their juniors with effect from 1.1.86 as per Annexure-IV, Annexure-IVA and Annexure.IVB have been revised and brought down without any notice to them. The impugned orders have been stayed by the interim order passed by the Tribunal.

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2. The brief facts of the case are as follows. The first four applicants had been promoted as Higher Grade Telegraph Assistant in the scale of Rs.425-640 on various dates between 11.1.82 and 30.11.83. The 5th applicant had been ^{appointed to} the ordinary grade of Telegraph Assistant in the scale of Rs.260-480 on ^{and has been working as such till 1990.} 16.8.74. On the revision of the pay scales with effect from 1.1.86 the first four applicants' pay was to be fixed in the revised scale of Rs.1400-2300 as Higher Grade Telegraph Assistant and that of the 5th applicant in the revised scale of Telegraph Assistant of Rs.975-1660. Since their juniors in the respective revised pay scales in the grade of High^{er} Grade Telegraph Assistant in respect of the first four applicants and in the regular grade of Telegraph Assistant in case of the 5th applicant were getting higher pay, the revised pay of the five applicants were stepped up in accordance with the second proviso to Rule 8 of the CCS (Revised Pay) Rules, 1986. Orders to that effect were issued on various dates in 1987 and 1988. It appears that on the basis of audit objection the impugned orders were issued in 1990 and 1991 proposing to re-fix their pay with effect from 1.1.86 to ~~a~~ lower amounts and to recover the overpayment.

3. The respondents have justified the re-fixation of their pay principally on the ground that the cadre of Telegraph Assistant is a Divisional Cadre and the applicants cannot claim stepping-up of their pay with reference to the pay of those who might be junior to them in the Circle Cadre but being in another Division, cannot be held to be junior in the Divisional Cadre.

4. I have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the first four applicants are concerned it is clear that all of them immediately before 1.1.86 have been working as Higher Grade Telegraph Assistant in the scale of Rs.425-640 revised to Rs.1400-2300. It is admitted that Higher Grade Telegraph Assistant is in Circle Cadre as is also evident from the extracts of Seniority List at Annexure-II. Since all the four applicants were officiating in a Circle Cadre immediately before 1.1.86 of Higher Grade Telegraph Assistants and were admittedly senior to Shri Ramachandran and Shri Chandran and were also admittedly drawing higher pay than theirs in the unrevised scale of Rs.425-640, the first four applicants are entitled to the stepping up of the pay not only under second proviso to Rule 8 but also Note-4 of Rule 7 of the Revised Pay Rules which reads as follows:

"Note:4. Where in the fixation of pay under sub-rule (1) pay of a Government servant, who, in the existing scale was drawing immediately before the 1st day of January, 1986, more pay than another Government servant junior to him in the same cadre, gets fixed in the revised scale at a stage lower than that of such junior, his pay shall be stepped up to the same stage in the revised scale as that of the junior."

The second proviso to Rule 8 more or less gives same benefit. This reads as follows:

"Provided further that in cases other than those covered by the preceding proviso, the next increment of a Government servant, whose pay is fixed on the 1st day of January, 1986 at the same stage as the one fixed for another Government servant junior to him in the same cadre and drawing pay at a lower stage than his in the existing scale, shall be granted on the same date as admissible to his junior, if the date of increment of the junior happens to be earlier."

5. As regards the 5th applicant since admittedly he was working as Telegraph Assistant on 1.1.86 which is a Divisional Cadre he cannot claim stepping up of pay because of the higher pay given to Smt. Padmavathi Narayanan who was admittedly in another Division and cannot^{be} held to be junior to the 5th applicant as Telegraph Assistant on 1.1.86. However, since the impugned order re-fixing his pay was issued without giving him a notice, the 5th applicant is entitled to a show cause notice before his pay is fixed on a lower level with retrospective effect.

6. In the facts and circumstances, I allow the application to the extent and on the lines indicated below:-

(a) The impugned orders at Annexures, I, V and VII and similar orders if any in respect of the five applicants are set aside.

(b) Respondents are directed to restore the pay of the first four applicants in the revised scale of Rs.1400-2300 as Higher Grade Telegraph Assistant as had been granted to them by Annexures IV and IV-A.

(c) A show cause notice be given to the 5th applicant why his pay should not be re-fixed as proposed by the respondents and the respondents are directed to pass final orders regarding re-fixation of the pay of the 5th applicant with effect from 1.1.86 in accordance with law and after taking into account the reply given without being^{by} the 5th applicant to the show cause notice. The show cause notice be issued within a period of one

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influenced in any manner whatsoever by the observations made in this judgment.
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month from the date of communication of a copy of this judgment and the fifth applicant is directed to file reply within one month from the date of receipt of the show cause notice. If he does not file reply within that period he cannot claim any benefit from this judgment.

(d) Action on the above lines ^{at (a) and (b) above} in respect of the first four applicants should be completed within a period of two months from the date of receipt of a copy of this judgment.

(e) There is no order as to costs.

 9.11.92
(S.P. MUKERJI)
VICE CHAIRMAN
9th Nov. 1992.

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