

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 366/92 199X.

DATE OF DECISION 15.3.1993.

Ms. Mercy George Applicant (s)

Shri CN Balakrishnan Nair & Advocates for the Applicant (s)
Shri P.R. Padmanabhan Nair.

Versus

The Chief General Manager, Respondent (s)
Telecommunications, Kerala Circle,
Thiruvananthapuram & 3 others.

Shri P Sankaran Kutty Nair Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. AV Haridasan, Judicial Member.

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

JUDGEMENT

The applicant, Smt Mercy George, who commenced her service as Telephone Operator in the erstwhile P & T Department on 2.11.1964, was confirmed in service on 1.3.1967. On implementation of the recommendations of the 4th Pay Commission, the pay of the applicant was fixed at Rs.1400/- with date of next increment as 1st November. She was working as Telephone Supervisor (Operative), TS(0) for short, in the Department of Telecom in Kottayam Telecom District since 1983. In the Circle gradation list of TS(0)s as on 1.1.1986, the applicant was placed at Sl No.324 and Smt. N.G. Devaki Amma, TS(0), Changanacherry, was placed at Sl No.859. Finding that

Smt. Devaki Amma was drawing pay higher than the applicant, she made a representation for stepping up her pay and accepting her contention, the applicant's pay was stepped up and fixed at Rs.1520/- with date of next increment as 1.3.1986 by order dated 12.12.1986 (Annexure A1) issued by the Accounts Officer, Telecom District, Kottayam. But noticing that Smt. P.V. Aleyamma, TS(0), Kaithamukku Telephone Exchange in Thiruvananthapuram, who was at Sl No.1096 of the Circle gradation list was drawing a higher pay than the applicant, she made a further representation claiming stepping up of pay on a par with that of Smt. Aleyamma in accordance with the provisions of Rule 8 of CCS (Revised Pay) Rules, 1986. This claim of the applicant was also accepted and the 3rd respondent by order dated 27.7.1987, stepped up the pay of the applicant giving her date of next increment as 1.2.1986 instead of 1.3.1986. Another TS(0) working in Thrissur by name Smt. P.M. Parvathy also got her pay stepped up similarly by order at Annexure A3. While so, without giving any notice to the applicant, by the impugned order dated 6.3.1991 issued by the office of the Telecom District Manager, Kottayam, the orders stepping up the pay of the applicant at Annexure A1 and A2 and similar orders in respect of other persons were cancelled without stating any reason for cancellation. The order simply indicated that the date of next increment would be as shown against the names of the officials mentioned therein. The applicant's date of next increment was pushed back to 1st November. Consequent on the impugned order, the respondents have taken action for recovery of alleged overpayment and from December, 1991 onwards the respondents started recovery of an amount of Rs.100/- per month from the salary of the applicant. On her second promotion on completion of 26 years of service

the applicant's pay was fixed in the scale of Rs.1600-2660/- at Rs.1750/- instead of Rs.1800/- on the basis of the impugned order. Though the applicant made representations to the Telecom District Manager and to the Chief General Manager, Telecom, Kerala Circle, she did not get any reply. The applicant's representation to the Chief General Manager made on 25.5.1991 was forwarded by the Telecom District Manager with an endorsement dated 4.7.1991 making it clear that the stepping ups were given to her on the basis of her Circle gradation list as on 1.1.1986. Aggrieved by the impugned order and finding no response to her representations, the applicant has filed this application praying that the impugned order may be quashed and that the respondents may be directed to restore the date of next increment as in the memo dated 12.12.1986 and 27.7.1987 treating that the Circle gradation list is the sole basis for fixation of pay, increments etc.

2. The respondents have in their reply statement justified the impugned order on the grounds that the stepping up given to her by Annexure A1 and A2 orders were given under an erroneous interpretation of the instructions, that in the clarificatory order issued by the Department of Telecommunications, New Delhi, vide their letter No.3-11/88-PAT dated 12.11.1990 (Annexure R1), it was made clear that stepping up of pay/increment date of officials promoted under OTBP scheme must be done only with reference to their seniors working in the same Division, that the stepping up of pay and alteration of date of increment given to the applicant with reference to the pay of Smt. Devaki Amma was not in order since Smt. Devaki Amma was working in another Division (Telegraph Division, Kottayam) on 1.1.86 while the applicant was working in Telecom Division, Kottayam, that similarly,

stepping up of increment with reference to Smt Aleyamma of Trivandrum SSA was also irregular for the same reason that Trivandrum was a separate Division, that the fixation of pay of the applicant on the second promotion after 26 years of service was rightly done, that the averment in the application that her representation did not evince any response is not correct as a reply was given on 10.6.1991 (Annexure R2), that as the respondents have only rectified the mistake, the contention of the applicant that the impugned order issued without any notice is arbitrary and against the principles of natural justice, has no merit and that the application is liable to be dismissed.

3. In a rejoinder, the applicant has reiterated that the cadre of TS(0) was a Circle cadre and not a Divisional cadre and contended that the clarificatory order at Annexure R1 cannot be allowed to over-ride the statutory provisions contained in FR 22-C and the CCS (Revised Pay) Rules.

4. I have heard the arguments of the learned counsel on either side and have also carefully perused the pleadings and documents on record. The respondents have not disputed the fact that Smt. N.G. Devaki Amma and Smt P.V. Aleyamma with reference to whose pay and date of increment, the stepping up was ordered under Annexure A1 and A2 were junior to the applicant in the Circle gradation list of TS(0) as on 1.1.1986. The applicant has a case that the post of TS(0) is in a Circle cadre. There is no specific denial of this averment by the respondents. They seek to justify the impugned order at Annexure A3 cancelling the stepping up given to the applicant under Annexure A1 and A2 orders on the basis of a clarificatory order at Annexure R1 issued from the Department of Telecommunications, New Delhi on 12.11.1990. This

clarificatory letter written by Assistant Director General in the Department of Telecommunications, New Delhi on the subject of stepping up of pay of senior Lower Selection Grade officials promoted to general line and those who are promoted under time bound one promotion scheme with reference to pay of their juniors promoted in either of the above scheme under CCS (RP) Rules, 1986 reads as follows:-

"A reference is drawn towards this Department's orders of even number dated 27.10.88 on the subject noted above. Some Circles have raised the doubt whether the stepping up of pay under the orders dated 27.10.88 is to be allowed on the basis of Divisional gradation list or Circle gradation list.

2. The matter has been examined and it is clarified that the stepping up of pay of a senior in such cases, if all other conditions are satisfied, can be made only with reference to junior promoted under OTBP Scheme of the same division to which the senior belongs.

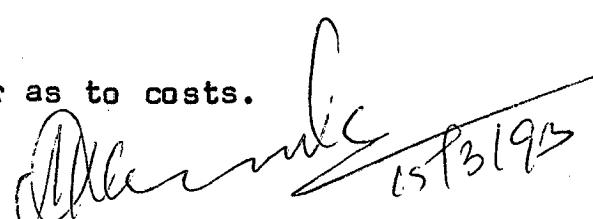
3. This issues with the concurrence of Telecom. Finance vide their U.O.No.3101-FA.I/90 dated 25.10.90.
....."

Stepping up of pay was granted to the applicant by order dated 12.12.1986 at Annexure A1 and by order dated 27.7.87 at Annexure A2. Therefore, it is clear that the stepping up of pay under Annexure A1 or A2 was not given under the orders dated 27.10.1988 mentioned in Annexure R1. Obviously, therefore, the clarification contained in Annexure R1 would relate only to stepping up of pay given under the order dated 27.10.1988. Further, in accordance with note 4 of Rule 7 and 2nd proviso to Rule 8 of the CCS (Revised Pay) Rules, 1986 A Government servant who in the existing scale of pay was drawing immediately prior to 1st 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 the junior, his pay has to be stepped up to the same stage in the revised scale as that of his junior and the date of next increment also has to be varied accordingly. Since the fact that the applicant was senior to Smt Devaki Amma and

Smt Aleyamma in the cadre of TS(0) which is a Circle cadre since all of these figure in the same gradation list, I am of the view that the stepping up was properly done as per Annexure A1 and A2 orders. The clarification contained in Annexure R1 cannot be used contrary to the statutory provisions contained in the CCS (RP) Rules. The respondents have gone wrong in cancelling the Annexure A1 and A2 orders stepping up the pay of the applicant even without giving her a notice of that intention. I am convinced that the impugned order is unsustainable and is liable to be quashed to the extent it affects the applicant.

5. In the result, the application is allowed, the impugned order dated 6.3.1991 at Annexure-A is set aside to the extent it affects the applicant and the respondents are directed to restore the date of next increment in the case of the applicant as in the memo dated 12.12.1986 at Annexure A1 and 27.7.1987 at Annexure A2 and to grant the applicant all consequential benefits. The above direction should be complied within a period of two months from the date of receipt of a copy of this order.

6. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER
15.3.1993.