

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

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Original Application No. 458 of 1991
this the 14th day of February, 1997.

HON'BLE MR D.C. VERMA, JUDICIAL MEMBER

Chandra Shekhar Yadav, aged about 38 years, S/o Sri Ram
Bhahal Yadav, R/o C-1211, Rajajipuram, Lucknow.

Applicant

By Advocate : Sri S. Bhatnagar

Versus

Union of India through Secretary Telecom, Department of
Telecom, New Delhi.

2. Chief General Manager, Telecom, U.P., Lucknow
3. Telecom, Divisional Engineer, Moradabad.

Respondents

By Advocate : Sri A.K. Chaturvedi

O R D E R

D.C. VERMA, MEMBER(J)

The applicant Chandra Shekhar Yadav, Junior Telecom. Officer, has filed this O.A. with the prayer that the respondents be directed to pay the applicant difference of pay and allowances from the date when his juniors were promoted because training as well as appointment was delayed for lapse on the part of the department. This relief was, however not pressed at the time of arguments on 18.11.1996.

2. Another relief claimed by the applicant was that the respondents be directed to step-up the pay of the applicant of his juniors and arrears due thereof be drawn and disbursed to the applicant.

3. The brief facts of the case is that the

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applicant appeared in the departmental quota of the examination for promotion to the cadre of Junior Engineer. However, when the result was declared on 27.8.1982, the applicant did not find his place in the result. The applicant, therefore, made a representation and requested for communication of marks obtained in the said examination. On receiving the marks obtained in the said examination, the applicant found that he had obtained very high marks and, therefore, made a representation. The General Manager, Telephone (now General Manager, Telecom.) considered the representation and when the result was declared on 24.3.1984, the applicant was declared successful alongwith other ~~Marked~~ candidates. A merit list was circulated on 25.7.1984 and name of the applicant was at Sl. No. 3. The applicant, therefore, deputed for training and on successful training, he was appointed as Junior Engineer on 13.12.1987.

4. The claim of the applicant is that due to the administrative lapse, the applicant suffered loss in pay and allowance for the period from 11.3.1985 to 12.12.1987 as the applicant was sent for training as late as in December, 1985 instead of 1983. On this basis, juniors cannot draw higher pay and if such situation arises the pay of senior should be stepped-up. The applicant filed this O.A. in November, 1991.

5. The respondents' case is that ~~the~~ the applicant had not filled-up the date of his initial appointment in the application form in Junior Engineer Examination. The applicant was provision-

ally allowed to appear in the said examination and the delay in declaration of the result of the applicant was due to lapse on the part of the applicant in not filling-up the details.

6. Heard the learned counsel for the parties. The only short point involved in this case is whether the applicant had filled-up the date of his initial appointment in the form of examination to the post of Junior Engineer. For this, on application of the applicant for summoning of the records, the respondents made objection wherein it is interalia mentioned " it is stated that the records including the applicant's application form was available on 16.8.1993 and on the basis of the same parawise comments were prepared and thereafter accordingly the Counter reply was drafted and filed before this Hon'ble Tribunal. The record was traced after the receipt of the application for summoning of record but the same was not traceable /located. The Hon'ble Tribunal through order dated 1st December, 1994 granted further time to make efforts to trace out the file. Necessary effort was accordingly made but the said file including the applicant's application are not traceable/locatable ----". In absence of the record, it is not possible to verify whether the contention of the applicant that he had actually filled-up the date of his initial appointment or the submission of the respondents that the same was left blank. In such circumstances, where the respondents have failed to produce the record, there is no alternative to draw adverse inference against the respondents on the footing that had the record been produced, the same would have proved unfavourable to them (Gangalram Vs. State of Harayana , (1996) 1

S.C.C. 716). In absence of the record, the presumption is that the applicant had filled-up the form and there was no fault on his part. On the other hand the administrative lapse on the part of the respondents in not declaring the ~~status~~ of the applicant alongwith other candidates on 27.8.1982.

7. The learned counsel for the respondents has placed reliance on the Government of India, Department of Personnel & Training O.M. No. 4/7/92-Est.(Pay.I) dated 4.11.1993 which is on the subject of stepping-up of pay. Sub-para c of para 2 of this O.M. is as below :

" 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 senior cannot claim stepping-up of pay at par with the junior."

In sub-para A & B of para 2 instances have been given where the juniors draw more pay than the senior will not constitute an anomaly. This has been made clear in para 3 of the O.M. However, in para 1 conditions have been mentioned under which stepping-up of pay is admissible. The sub-case of the applicant would not be covered in para C of para 2 of the O.M. as lapse has been found on the part of the respondents and not on the part of the applicant. The lapse on the part of the respondents cannot and should not affect the right of the applicant to which he was entitled.

8. The learned counsel for the respondents has referred to the decision of C.A.T. Madras Bench given in O.A. No. 1745/93 and another decision of the said Bench in O.A. No. 1824/93 R.Swaminathan

Vs. Union of India & others. Both these decisions are not on the point required for the decision in this case. Both are on the point, where the juniors were given promotion on adhoc basis and senior working in other region, have claimed stepped-up.

9. The learned counsel for the respondents has submitted that the O.A. is time barred as the claim of 1982-83 has been raised in the O.A. filed in 1991. The learned counsel for the applicant has relied on the decision of Hon'ble Supreme Court in the case of M.R. Gupta Vs. Union of India & others (AIR 1996 SC 669). This decision help the applicant in respect of fixation of his pay but not in respect of consequential relief as promotion etc. ~~xx~~ The applicant himself had not pressed the first relief, only second relief which is for fixation of pay and arrears thereof remains to be considered. The Hon'ble Supreme Court has laid down that "---- if the appellant's claim is found correct on merits, he would be entitled to be paid accordingly to the ~~properly~~ fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable ----". In the present case, therefore, as the cause of action arose to the applicant in December, 1987 when he was given promotion as Junior Engineer subsequent to the date his juniors were promoted, the applicant should have filed this O.A. thereafter within the prescribed time. As the applicant had not done so, he ~~was~~ not entitled to arrears thereof. However, as the applicant's present

and future's pay would also be affected, he is entitled for fixation of his pay equal to the pay of the junior who appeared and whose results were declared on 27.8.82, if junior is receiving pay higher than the applicant. The respondents shall re-examine the position of the applicant viz-a-viz his juniors as mentioned above, and shall fix the pay accordingly. Incase the applicant is found entitled and his pay is fixed at a higher stage, no arrears shall be paid to him except from the date one year prior to filing of this, which is 22.11.1991.

10. In view of the discussions made above, the O.A. is decided as per the directions given above, which should be complied within a period of three months from the date of communication of this order. No costs.

MEMBER (J)

LUCKNOW: DATED: 14.2.87
GIRISH/-