

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

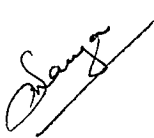
O.A. No.714/95

Date of decision: <sup>15</sup>13-NOV-2000.

1. Girdhari Singh, son of Late R.N.Singh, resident of village Gulalsarai, P.S.: Birnoaon, District Ghazipur.
2. B.B.P.Sinha, son of Late Nandjee, resident of Mohalla Pirmohani, P.S.: Kadam Juan, Town and District of Patna.
3. Mohan Prasad, son of Shri Rama Shankar Prasad, Mohan Industries Lane, East of Saristabad, P.S.: Gardanibagh, Town & District of Patna.
4. A.K.Singh, son of Late Kodai Singh, r/o Maharana Pratap Nagar, P.S. Arra Nawada, Town Arrah, District Bhojpur.
5. B. Angelo, son of Late Angelo Simon, 46 Fairfield Colony, Dighaghat, P.S.: Digha, District Patna.
6. S.P.Singh, son of Shri Raghunandan Singh, resident of village Taraura Pirbarhauna, District Patna.
7. K.C.Ram, son of Late Harischand Ram, r/o village Bhataura, P.S.: Gahmar, District Ghazipur (UP).
8. R.N.Pandit, son of Late Mahadeo Pandit, Or.No.7/III, P&T Colony, P.S.: Budha Colony, District Patna.
9. M.S.Pandit, son of Late Ram Khelawan Pandit, resident of village Masaurhi Dih, P.S.: Masaurhi, District Patna.
10. S.N.Singh, son of Late Sagamlal Singh, resident of Sheopuri Chitkohra, P.S.: Gardanibagh, Town and District Patna.
11. S.Lall, son of Shri Damodar Prasad, resident of New Jakkanpur, Near Nawan Plastic Works, P.S.: Jakkanpur, Town & District Patna.
12. C.Singh, son of Late Deobhajan Singh, resident of village Dighwara, P.S.: Dighwara, Chapra.
13. Sudarshan Prasad Singh, S/o Raghunath Singh, resident of Unnachak, P.S.: Nayagaon, Chapra.
14. Gyani Prasad, son of Shri Kamla Prasad, resident of village Gulzriabigha, P.S.: Masaurhi, District Patna.

.....APPLICANTS.

Vs.

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1. Union of India, through Secretary, Department of Telecommunications, Sanchar Bhavan, New Delhi-110 001.
  2. Chief General Manager Telecommunications, Bihar Circle, Patna-800 001.
  3. Assistant Director General (TE), Department of Telecom, Sanchar Bhavan, New Delhi-110 001.

4. Chief Superintendent, Central Telegraph Office, Patna.
5. Accounts Officer (Budget & Accounts), office of the Chief General Manager, Telecommunications, Bihar Circle, Patna-800 001.
6. Shri K.M.Prasad, Telegraphist, Central Telegraph Office, Patna.

.....RESPONDENTS.

Counsel for the applicants : Shri S.K.Singh.

Counsel for the respondents : Shri G.K.Agarwal, ASC.

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.

HON'BLE MR. L.R.K.PRASAD, MEMBER (ADMINISTRATIVE).

O R D E R

JUSTICE S.NARAYAN, V.C.:- The applicants, being 14

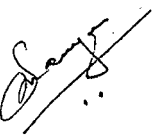
in number, have joined hands to seek following reliefs in the instant OA :

- "8(a) For a direction to the respondents to settle the grievances of the applicants with respect to removing anomaly in their pay scale vis-a-vis Shri K.M.Prasad, Telegraphist;
- (b) For a direction to the respondents authorities to revise the earlier orders with respect to removing the anomalies in the pay scale of the applicants;
- (c) For a direction to the respondents to bring the pay of the applicants at par with Shri K.M.Prasad with retrospective effect i.e. from the date on which Shri K.M.Prasad started getting higher pay than the applicants."

2. Admittedly, the respondent no.6, K.M. Prasad, Telegraphist, working along with the applicants in the Central Telegraph Office, Patna, ranked junior to the applicants. Be it recorded here that respondent, Shri K.M.Prasad, earlier belonged to the cadre of Telegraphist of Gujarat Telecom Circle and he was

transferred to Bihar Circle at Patna on his own request under Rule 38 of the Posts & Telegraph Manual, Vol. IV, and was posted at Central Telegraph Office, Patna, w.e.f. 25th July, 1994, having been given bottom seniority on the post. Not only because he was given bottom seniority under Rule 38 of the Posts & Telegraph Manual Vol. IV, he ranked junior to all the applicants, even otherwise, with reference to the date of joining, as also with regard to the slab of the pay-scale. Shri K.M. Prasad having joined as Telegraphist on 1st October, 1966, about six months later, as compared to the date of joining of the applicants, was also drawing salary at a lower slab in the same pay-scale on eve of his transfer.

3. Eventually, the respondent-Shri K.M. Prasad, qualified in the Hindi Morse Examination and also in the Hindi Teleprinter Examination w.e.f. 1st March, 1975, with the result that he was granted advance increment @ Rs.12/- per examination, the total being Rs.24/- from the said date (i.e. 01.03.1975). This made the respondent, Shri K.M. Prasad, to draw monthly salary of Rs.384/- in the then scale, whereas, the applicants were getting only Rs.372/- each. The anomaly giving rise to difference of Rs.12/- was, however, compensated by stepping-up the salary of the applicants to a figure equal to the pay fixed for the junior official i.e., Shri K.M. Prasad, by an



order dated, 29th June, 1976, of the General Manager, Telecom, Bihar Circle, and the stepping-up was given effect from 1st March, 1975.

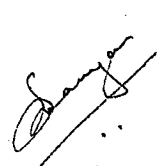
4. After a lapse of about ten years, on the basis of the audit report, the General Manager (Telecom), Bihar Circle, issued a letter dated, 16th January, 1986, taking stand that the stepping-up, as earlier granted, was not admissible to the applicants for the reason that such benefit can not be given comparing with the pay of Respondent, Shri K.M.Prasad, who had been transferred from Gujarat Circle under Rule 38 in the year 1974, vide Annexure-R/3.

5. Hence, the questions which arise for consideration are as follows :-

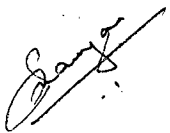
(i) Whether the applicants were entitled to the benefits of stepping-up of their pay to remove the anomaly in their pay scale vis-a-vis respondent K.M.Prasad ?

(ii) Whether any objection raised by the official respondents against the claim of stepping up was valid or not ?

6. The applicants' claim of stepping-up arises out of the hard fact that the respondent-K.M. Prasad, being junior to them, happened to pass Hindi Morse Examination and Hindi Teleprinter Examination with entitlement of advance increments for each of the examination @ Rs.12/- w.e.f. 1st March, 1975. It was




only because of this event that the stepping up had been granted to the applicants and they derived the benefit over ten years. It was significant to note here that the applicant had cleared those examinations with benefits of two advance increments much early i.e., sometime in the year 1970-72 i.e., during the period of pre-revised scale with two advance increments of Rs.4/ & Rs.5/- respectively. Respondent, K.M.Prasad, passed those examinations in the year 1975, when, as per the revised scale, the increment was to the tune of Rs.12/- per examination, the total benefit being Rs.24/-. Hence, at a point of time when respondent-K.M.Prasad, was drawing salary of Rs.360/- and the applicants Rs.372/-, the additional advantage of two advance increments in favour of respondent-K.M.Prasad was extended to him w.e.f. 1st March, 1975, with the result that he (K.M.Prasad) started drawing his salary @ Rs. 384/-, whereas, the applicants, being senior to him, continued to draw salary @ Rs.372/- per month each. The anomaly as such gave rise for stepping-up to the extent of Rs.12/- p.m. each. The aforesaid mode of benefit of stepping-up had been confirmed in the letter no.12-8/74-PAT, dated, 24th December, 1975, of the DG (P&T) issued to all Heads of Posts & Telegraph Circles. The letter speaks that in order to remove the anomaly, arising out of the above situation, it has been decided



that in such cases the pay of the senior officials should be stepped-up to a figure equal to the pay fixed for the junior official in the revised scale of Rs. 260-480/- after the grant of advance increments on or after 1st January, 1973. The stepping-up, as permitted, was to be done from the date on which the junior draws higher pay.

7. Therefore, in the light of the clear direction of the DG (P&T) in the letter, as referred to above, we are confident that the earlier order of stepping up issued by the General Manager (Telecom), Bihar Circle, was in conformity <sup>with</sup> (Z) the guideline and practice prevailing and there was no necessity to revise the same in the light of the audit objection. The earlier order, as issued in the year 1976, has thus, got to be revived.

8. Now, coming to the next question, it has been seen above that the audit objection raised was to the effect that the benefit of stepping-up can not be given comparing with the pay of respondent-K.M. Prasad because he had been transferred from Gujrat Circle under Rule 38 of the Posts & Telegraph Manual, Vol.IV, as per which he had been given bottom seniority, meaning thereby, that he was ranked junior to all the applicants. The rationale behind the audit objection was, of course, quite perfect. This objection was, however, meant for only such a situation where a senior official



drawing higher pay is transferred under Rule 38 and happens to draw higher salary as compared to those incumbents already posted on the station as per the length of their respective service. In such an event, if the incumbents already available at a particular station would claim stepping-up simply because the transferee incumbent draws salary at a higher slab even though put to dis-advantage of bottom seniority in terms of provision under Rule 38, ~~and~~ if the stepping-up is allowed, it would unnecessary cause heavy expenditure to State Exchequer only for the reason that a person drawing higher salary on his voluntary submission has opted for bottom seniority. That being as such, the objection was valid only for a situation confined to the above fact. The case in hand was, however, quite different from this situation and, therefore, the objection raised by the audit and accepted by the official respondents, was not applicable in the present case. Respondent-K.M.Prasad, happened to be junior to all the applicants not only because of his transfer under provision of Rule 38 rather, he also ranked junior by the length of service he has put-in and <sup>was</sup> also ~~drawing~~ <sup>lower</sup> salary ~~in the same scale~~ in the same scale. The need for stepping-up of the applicants' pay did not arise at the point of time of his transfer from Gujarat Circle to Patna Circle under Rule 38, rather, it was at a subsequent point of time, sometime in the month of

*Sharma*  
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March, 1975, when he cleared two examinations called, Hindi Morse and Hindi Teleprinter Examination, which made him entitled to advance increments of Rs.12/- each w.e.f. 1st March, 1975. This being the position, the audit objection, for the reason of which the benefit of stepping-up was withdrawn by the official respondents, was not sustainable in law in the special facts and circumstance of the instant case.

9. Apart from the merits of the case, there was yet valid consideration in favour of the applicants. This was for the reason that while issuing direction for recovery against the pay of the applicants, there was no opportunity afforded to the applicants to show cause as to why the stepping-up should not be withdrawn. It has been amply demonstrated on the record that the order of stepping-up of the pay was granted to the applicants not on account of any fault or due to any deliberate act or commission of the applicants rather, the stepping-up appears to have been duly granted by the order of the General Manager (Telecom), Bihar Circle, and it continued to be enjoyed by the applicants for a pretty long period of ten years. Abruptly, after a lapse of ten years while withdrawing the advantage it was required by the official respondents to have at least given an opportunity to explain against the action sought to be taken. This view is strengthened by the verdict of the Supreme Court in the case of



Bhagwan Shukla Vrs. Union of India & Ors., reported in 1994 SCC (L&S) 1320, as also this Tribunal from Cuttack Bench in the case of Padmalochan Behra Vrs. Union of India & Ors., (OA 648/93), reported in Swamy's Publication June, 1996, Page 516.

10. For the reasons, aforesaid, this OA must succeed and, accordingly, it is allowed. The officials respondents are directed to pass an appropriate order reviving the benefit of stepping-up earlier granted to the applicants and not to implement the order of recovery and in case, any recovery has already been made, the same has to be refunded to the applicants. There shall be no order as to costs.

(S. K. PRASAD)  
MEMBER (A)

13/11/2000

(S. NARAYAN)  
VICE-CHAIRMAN

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