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(T)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 377/89

Transfer Application No:

DATE OF DECISION: 26-4-94

Shri N. V. Dumaldar Petitioner

Shri D. V. Gangal Advocate for the Petitioners

Versus

Union of India & another Respondent

Shri S. S. Karkera Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri M. R. Kolhatkar, Member (A)

The Hon'ble Shri

1. To be referred to the Reporter or not ? X
2. Whether it needs to be circulated to other Benches of the Tribunal ? X

M R Kolhatkar
(M. R. Kolhatkar)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(18)

ORIGINAL APPLICATION No. 377/89

Shri N.V.Dumaldar

...

Applicant.

Vs.

The Telecom District Engineer, Solapur ...
and another.

Respondents.

CORAM : Hon'ble Shri M.R.Kolhatkar, Member(A)

APPEARANCES :

Shri D.V.Gangal, counsel
for the Applicant.

Shri S.S.Karkekar, counsel
for the Respondents.

Date of Hearing : 16.03.94

Date of Judgment : 26.4.94

JUDGMENT :

(Per : Hon'ble Shri M.R.Kolhatkar, Member(A))

1. The Applicant was appointed as Telephone Operator on 22.12.66 in Aurangabad Division of Telecom Department. He was transferred from Aurangabad Division to Pune Division under Rule 38 on mutual transfer with one Shri D.K.Adhov in 1972 who was junior to him. On joining at Latur he took the place of Shri D.K.Adhov as per rule 38(1) of P & T Manual Vol. IV (4th Edition 1960) the relevant portion of which reads:

"Transfer by way of mutual exchange should be allowed but in order to safeguard the rights of men borne in the gradation lists of both the offices, the official brought in should take the place in the new gradation list according to the date of his entry in to the grade or the place vacated by the official with whom he exchanges appointment which ever is lower"

2. Although Applicant joined service in 1966, as he took the place of Shri D.K.Adhov who joined service later, Applicant's date of entry in Solapur Division for purpose of gradation list became 18.01.70. The Applicant was given one Time-bound promotion on completion of 16 years of service in terms of D.G. P & T's circular No. 17.12.83 at Annexure R-1. It is notable that the time-bound promotion is given to Applicant w.e.f. 30.11.83 counting his service as per initial date of appointment vide order dated 18.03.88 at page 25 of the Application. He was thus promoted from the grade of telephone operator to the next higher grade of telephone

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supervisor viz Rs. 425 - 640 which after implementation of 4th pay Commission Report was converted into the scale of Rs. 1400 - 2300 w.e.f.

01.01.86. According to the Applicant, two officers viz M.G.Waghmare and Y.R.Gulwani got promoted to this grade from a later date viz 08.02.84 and a third officer got promoted on the same date (30.11.83) but there is disparity in the pay drawn by these officers in February 1986 as below :

Applicant - Rs. 1440 Per Month
Shri M.G.Waghmare - Rs. 1480 Per Month
Shri V.R.Gulwani - Rs. 1480 Per Month
Shri S.K.Gaikwad - Rs. 1520 Per Month.

3. The prayer of the Applicant is that as all three officers mentioned are junior to him but are drawing higher pay, his pay should be stepped up to that drawn by them with effect from February/March 1986 and he should be paid arrears along with interest.

4. Respondents have pointed out that the Applicant's seniority in Sholapur Division gradation list went down because of mutual transfer. In this connection, attention is invited to CCS(Revised Pay) Rules 1973. According to the ^{Note} 17 there under, stepping up is to be determined with reference to seniority roster maintained for purposes of confirmation and promotion and in the case of cadre of telephone operator, seniority list is maintained Division wise. So far as Division wise seniority list is concerned, where as the applicant appears at serial number 91, Shri M.G. Waghmare appears at serial number 77, his date of entry in the Division being 04.02.68 as against 18.01.70 in respect of the Applicant. The date of increment of Applicant cannot also ^{be} changed ~~be~~ to February as prayed. So far as Shri Gaikwad concerned, he is senior to him having been appointed on 02.03.65 but he ^{is} junior to Applicant in Divisional gradation list (Sr.No. 106) having been transferred from Panaji. However as applicant was getting less pay than Shri Gaikwad on 31.12.85, there is a disparity in their pay as on 01.01.86.

5. The Applicant has added the name of Shri Gulwani for comparison by way of an amendment. Respondents contend that Shri Gulwani belongs to Kolhapur Division and his case cannot be called in comparison.

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6. In his rejoinder the Applicant has stated that Divisional gradation list does not reflect the fact of his seniority with reference to the original date of appointment which should be corrected. In the Circle gradation list of Telephone Supervisor he is at serial number 1789 whereas Shri Gulwani^{is} at serial number 2026. Therefore, Shri Gulwani is junior to him although he may belong to another Division.

7. In their Sur-rejoinder, the Respondents have pointed out that Applicant's date of entry in Sholapur Division is treated as 18.01.70 by operation of rule 38(i) of P & T manual Vol. IV and there he is junior to Shri M.G. Waghmare. Since Shri Gulwani works in another Division his case is not comparable, Shri Gaikwad enjoys benefit of higher pay due to greater length of service. The Applicant had never challenged the Divisional gradation list and cannot do so at this late stage, nor can he rely on the circle gradation list.

8. At the argument stage, the counsel for the Applicant invited our attention to clauses 22(a), 22(b) (iv) and 8 of the circular dated 17.12.83 i.e. time-bound promotion scheme. Whereas 22(a) says that entire period of service will be considered for time-bound promotion, clause 22(b) (iv) says that officials who complete 16 years of service and who are promoted to next higher scale of pay will continue to perform operative duties unless they are posted to regular supervisory posts in their turn. Rule 8 says that officials on promotion to the higher scale of pay on completion of 16 years of service will maintain their interse seniority in the lower grade for purpose of promotion to the supervisory posts justified on standards. The basic contention of the Applicant is that Time-bound promotion scheme was based on an Agreement between official side and staff side of P & T Department council of JCM and an agreement cannot override the basic rule of seniority.

9. We have considered the matter carefully. In our view, the prayer of the Applicant is based on a misunderstanding that because Time-bound promotion scheme gives the benefit of original date of appointment for purposes of fixing the date of promotion, effect of Divisional seniority list should be ignored. The Applicant wants his pay to be stepped up with reference to original date of appointment although by operation of rules, he is pushed down in Divisional Seniority list. The relevant rule is Rule

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38(i) of P & T Manual Vol. IV regarding effect of mutual transfer. The Applicant having accepted mutual transfer with its Consequence of down gradation in seniority list wants to under^W the same by taking benefit of the clause in time-bound promotion scheme in this regard. The counsel of the Applicant wants as to read down clause 8 of the circular as being apposed to the basic seniority rule but also wants to get the benefit of clause 22(a). We are, however, required to read various^h clause^s and circulars harmoniously. Clause 8 of the circular keeps in view the effect of Rule 38(i) of P & T Manual Vol. IV and cannot be said to be apposed^c to basic seniority rule. We are therefore, unable to see any merit in the contentions of this O.A. which we dispose of by passing the following order.

ORDER

Application dismissed. No order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A)