

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. . . : 50 of 1996.

Dated this Wednesday, the 26th day of July, 2000.

B. Mohandas, Applicant.

None present. Advocate for the applicant.

VERSUS

Union of India & Another, Respondents.

Shri S. S. Karkera for Advocate for
Shri P. M. Pradhan, the respondents.

CORAM : Hon'ble Shri B. S. Jai Parameshwar, Member (J).

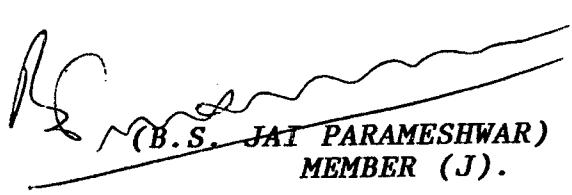
Hon'ble Shri Govindan S. Tampi, Member (A).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other Benches
of the Tribunal ?

(iii) Library.

| No.


(B. S. JAI PARAMESHWAR)
MEMBER (J).

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Dated this Wednesday, the 26th day of July, 2000.

CORAM : *Hon'ble Shri B.S. Jai Parameshwar, Member (J).*
Hon'ble Shri Govindan S. Tampi, Member (A).

B. Mohandas,
Sr. Accounts Officer,
O/o. Chief Superintendent,
Central Telegraph Office,
Bombay - 400 001. ... *Applicant.*

(None for the applicant)

VERSUS

1. *Union of India through
The Secretary,
Ministry of Communication,
Sanchar Bhavan,
New Delhi.* ... *Respondents.*
2. *The Chief General Manager,
Maharashtra Telecom Circle,
G.P.O. Building,
Bombay - 400 001.* ... *Respondents.*

*(By Advocate Shri S. S. Karkera
for Shri P. M. Pradhan).*

OPEN COURT ORDER

PER : Shri B.S. Jai Parameshwar, Member (J).

None for the applicant. Heard Shri S. S. Karkera for Shri P. M. Pradhan, the Learned Standing Counsel for the respondents.

2. The applicant was promoted as Accounts Officer on a regular basis with effect from 14.02.1986. He submits his Blue Book No. is 80808. On promotion as Accounts Officer, his pay was fixed at Rs. 2,450/- with the next date of increment falling on 01.05.1986.

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3. The applicant compares his case with that of one Shri J. N. Mishra, whose Blue Book Number is 81099, who was also promoted as Accounts Officer on regular basis w.e.f. 12.06.1989. His pay on promotion was fixed at Rs. 2,900/- with the date of next increment on 01.02.1990. On the basis of the fixation of pay of Shri J. N. Mishra at Rs. 2,900/-, the applicant submits that his junior is getting more pay and hence, his pay must also be stepped up on par with Shri J. N. Mishra.

4. The applicant submitted a representation for which the respondents informed the applicant that the decision given by the Hyderabad Bench of this Tribunal on 15.11.1991 in O.A. No. 816/89 cannot be allowed under the existing orders and hence, his request for stepping up of pay cannot be considered. The reply dated 08.11.1995 is at exhibit-1.

5. The applicant has filed this O.A. for the following reliefs :

"To call for the records pertaining to the issuance of the impugned order dated 08.11.1995 and after going through the legality of the same quash and set aside the same, and to call for the records pertaining to the fixation of pay of the applicant and his junior Mr. J. N. Mishra on promotion to the post of Accounts Officer and after going through the said records, this Hon'ble Tribunal will be pleased to direct the respondents to step up the pay of the applicant so as to bring the same at par with his junior."

6. The respondents have filed a reply stating that J. N. Mishra, Accounts Officer, was working in Gujarat Telecom Circle whereas the applicant was working in Maharashtra Telecom Circle. The respondent No. 1 issued a circular for making ad-hoc/officiating promotion by the respective circle heads

strictly according to the seniority existing in the Circle/Unit till the regular arrangements were made. In accordance with that instructions, Shri J. N. Mishra got an officiating ^{promotion as A.O.} at Gujarat Telecom Circle strictly according to the seniority maintained by the Gujarat Telecom Circle. They submit that the applicant was not promoted in the officiating arrangement or on ad-hoc basis to the post of Accounts Officer earlier to his promotion as Accounts Officer. As J. N. Mishra had officiated on ad-hoc basis in the ^{regular} post of Accounts Officer, on ^{promotion as} Accounts Officer on regular basis his pay was fixed at Rs. 2,900/- taking into account his officiating service as ad-hoc Accounts Officer. Thus, the respondents differentiate the case between the applicant and Shri J. N. Mishra and contend that the applicant is not entitled to stepping up of pay on par with Shri J. N. Mishra.

7. During the course of argument, the Learned Counsel for the respondents relied upon a decision of the Hon'ble Supreme Court in the case of Union of India & Anr. V/s. R. Swaminathan, etc. etc. reported in 1997 (2) SC (SLJ) 383. The Hon'ble Supreme Court considered regarding stepping up of pay and has been pleased to observe as under :

"10. We are, however, in the present case, concerned basically with Fundamental Rule 22 (1)(a)(1) and the proviso to Fundamental Rule 22 because, in all these appeals, the junior employees who have got higher pay on promotion than their seniors, had officiated in the promotional post for different periods on account of local ad hoc promotions granted to them. This is because the Department of Telecommunication is divided into a number of Circles within the country. The regular promotions from the junior posts in question to the higher posts are on the basis of all India seniority. The Heads of Circles have, however, been delegated powers for making local officiating arrangements based on Circle seniority to the higher posts in question against short term vacancies upto 120 days in the event of the regular panelled officers not being available in the Circle. This period of 120 days was subsequently revised to 180 days. Under this provision for local officiation, the senior-most

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official in the Circle is allowed to hold the charge of the higher post for a limited duration. This is purely out of administrative considerations and is resorted to in order to tide over the exigencies of work. This practice, we are informed, has been followed in all Circles in the Department of Telecommunications since 1970. This is because, at times it is not possible to fill up all the vacancies in a particular circle for various reasons such as non-joining by a particular persons, chain promotions or short-term vacancies arising on account of leave, etc. It is submitted before us by the Department that it is not always possible to convene the meetings of the departmental promotion committee for filling up all the posts which are only available for short periods on an All India basis because of administrative problems. To fill up this gap, Government has issued instructions from time to time to allow local officiating arrangements in the interest of work. The department has also pointed out that all the aggrieved employees in these appeals have availed of such occasion arose in their Circle and they were eligible. The Juniors, therefore, in each of these cases who have received a higher pay on their regular promotion than the seniors have received this higher pay on account of the application of the proviso of Fundamental Rule 22.

11. According to the aggrieved employees, this has resulted in an anomaly. Government Order bearing No. F.2(78)-E.III(A)/66 dated 4th of February, 1966, has been issued for removal of anomaly by stepping up of pay of a senior on promotion drawing less pay than his junior. It provides as follows :

"(10) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior -

(a) As a result of application of F.R. 22-C-In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1.4.1961 drawing lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical posts, it has been decided that in such cases the pay of the senior officer in the higher posts should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely :-

(a) Both the junior and senior officer should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre :

(b) The scale of pay of the lower and higher posts in which they are entitled to draw pay should be identical.

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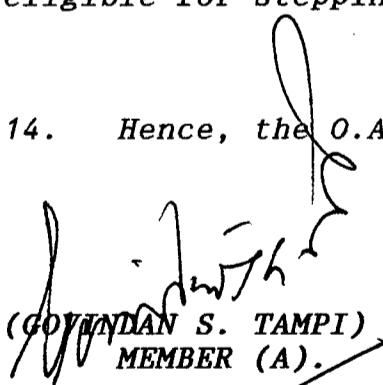
(c) The anomaly should be directly as a result of the application of F.R. 22-C. for example : if even in the lower post the junior officers draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments, the above provisions will not invoked to step up the pay of the senior officer.

The offers refixing the pay of the senior officers in accordance with the above provisions shall be issued under F.R. 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay."

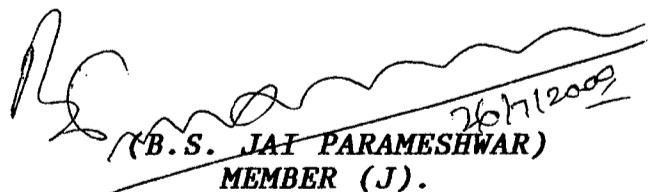
12. Further, the principles laid down by the Supreme Court in the said case has been again reiterated in the case of Union of India & Others V/s. M. Suryanarayana Rao reported in 1992 SC (SLJ) 79.

13. The facts and circumstances available in this case are similar to the facts and circumstances of the case decided by the Hon'ble Supreme Court. The respondents have clearly stated that Shri J. N. Mishra had officiated on ad-hoc basis as Accounts Officer earlier to his regular promotion as Accounts Officer. The applicant had not at all officiated as Accounts Officer prior to his regular promotion. Therefore, the applicant is not eligible for stepping up of pay on par with Shri J. N. Mishra.

14. Hence, the O.A. is dismissed. No order as to costs.


(GOVINDAN S. TAMPI)
MEMBER (A).

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(B.S. JAI PARAMESHWAR)
MEMBER (J).
26/1/2009