

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 151/96 /199

Date of Décision: 19-12-96

Arvind Vithal Sahasrabudhe

Petitioner/s

A.I.Bhatkar

Advocate for the
Petitioner/s

V/s.

U.C.I. & anr.

Respondent/s

R.C.Kotiankar

Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar

(M.R.KOLHATKAR)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.151/96

pronounced, this the 19th day of Dec 1996

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Arvind Vithal Sahasrabudhe,
7-Amol Housing Co-op.Society,
Vikram Nagar, Kalwa,
Thane. 400 605.

By Advocate Shri A.I.Bhatkar .. Applicant

-versus-

1. The Director General(Sea-Section)
Department of Telecom,
Sanchar Bhavan,
New Delhi - 110 001.

2. Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House, Prabhadevi,
Dadar, Mumbai - 400 028.

By Advocate Shri R.C.Kotiankar .. Respondents

-E ORDER :-

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

The applicant who belongs to May 1974 batch of Junior Accountants was promoted on regular basis w.e.f. 12-4-90. His pay was fixed at Rs.2,525/- with DNI as on 1-12-1991. He began to draw Rs.2600/- w.e.f. 1-12-1990. However, his junior K.Shankarnarayanan, Accounts Officer of Tamil Nadu Tele-communication circle who belonged to September'79 batch of Junior Accountants on promotion as regular Accounts Officer came to have his pay fixed at Rs.2750/- w.e.f.25-4-91 with DNI on 1-12-91. Thus the anomaly occurred on 25-4-91 when K.Shankarnarayanan began to draw Rs.2750/- whereas the applicant was drawing Rs.2600/-

In the meanwhile on 19-7-1994 in terms of O.A. 926/93 filed by K.Ramachandran & Ors. some other Accounts Officers got their pay stepped up. The applicant thereafter represented on 10-1-1995 for fixation of his pay on par with his junior K.Shankarnarayanan but there was no reply. There was also no reply to the legal notice dt. 22-6-95. Hence this O.A. in which the applicant has sought the relief of stepping up of the pay on par with applicant's junior K.Shankarnarayanan w.e.f. 25-4-91 when the anomaly occurred. The counsel for the applicant relied on the case of R.Parthasarathi, O.A. No.101/95 decided by this Tribunal on 28-12-1995. In that case the Tribunal considered the covered case in O.A.816/89 and the Tribunal had granted the relief similar to e. g. G.Natarajan with reference to whom the applicant viz. R.Parthasarathi was claiming the relief. According to the counsel, in the bunch of cases decided by the Tribunal on 19-7-94, in O.A. 101/95 the relief was granted to the applicant who had compared his case with K.Shankarnarayanan with whom the applicant in the present O.A. is also comparing his case. According to him, therefore, his case being a covered case, on the analogy of O.A. of R.Parthasarathi he should also be granted relief.

2. Respondents however have opposed the O.A. According to the respondents K.Shankarnarayanan with whom the applicant ^{compares} his case while working as JAO in Gujarat Telecom Circle was granted local adhoc promotion as Accounts Officer against short term vacancy as a result of which he drew higher pay as permissible under the rules.

Under FR 26 adhoc service in a higher post also counts for increment. Hence the pay of K. Shankarnarayanan on his promotion as Accounts Officer on regular basis was fixed at Rs.2750/- in the scale of pay of Rs.2375-3500 w.e.f. 25-4-1991 with DNI on 1-12-1991 by virtue of the benefit of adhoc promotion. Secondly the cause of action is not the junior getting more pay than the applicant but the cause of action arose when the junior was promoted. Lastly it is contended that the Bombay Bench of this Tribunal in the order dt. 16-12-1988 passed in the case of Iqbal Mohammad Khan vs. U.O.I. (O.A. 788/88), in the case of M.P. Kulkarni & Ors. vs. U.O.I. (SLJ 1989(4)425) and Madras Bench in the order dt. 22-11-1995 in the case of S. Ramaswamy vs. U.O.I. (O.A. 1823/93) and other OAs have held that when a junior gets ~~more~~ more pay because of his adhoc appointment to a higher post that will not entitle his senior for stepping up of his pay under FR 22 C.

3. I have considered the matter. In my view the right to claim stepping up is required to be read in the context of three conditions under the old FR 22-C and the new FR 22(1)(a)(i). These conditions are as below:

- "(a) Both the junior and senior officers 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 scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;

(c) The anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer 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 be invoked to step up the pay of the senior officer."

Without referring to any case law it has to be established in the first instance as to whether all the three conditions in the FR relating to stepping up are satisfied. It appears to me that in this particular case the condition No.(c) viz. anomaly should be directly as a result of application of FR 22(c) is not satisfied, ~~inasmuch as in~~ ^{the} lower post Shri K. Shankarnarayanan was drawing more pay than the applicant because of ~~adhoc~~ promotion while in Gujarat Circle. I am therefore of the view that the claim is not based on the rules and therefore is liable to be rejected. I am fortified in this view by the Full Bench ^{decision} ~~in~~ B.L. Somayajulu's case in O.A. No.1412/93 decided on 20-11-1996 where the Full Bench replied to the reference in following term:

"(a) Stepping up can be granted only where there is a provision in law in that behalf, and only in accordance with that; and

(b) a claim for stepping up can be made only on the basis of a legal right and not on pervasive notions of equity or equality, unrelated to the context of statutory law."

4. The O.A. therefore has no merit and is therefore dismissed with no order as to costs.

M.R.Kolhatkar

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(M.R. KOLHATKAR)
Member(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO. 09 OF 1997
IN

ORIGINAL APPLICATION NO. 151 OF 1996.

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

Arvind Vithal Sahasrabudhe.

... Petitioner

(Original Applicant)

V/s.

Director General,
Department of Telecom & Anr.

... Respondents.

(Original Respondents)

ORDER ON REVIEW PETITION BY CIRCULATION Dt. 18.2.97.

In this Review Petition the applicant has sought review of my Judgment dt. 19.12.1996 by which the prayer of the applicant for stepping up of the pay with reference to his junior K.Shankaranarayanan was rejected on the ground that condition No.(c) relating to old FR 22(c) that the anomaly should be directly as a result of application of FR 22(c) has not been fulfilled. The Tribunal had also relied on the Full Bench decision in B.E.Somayajulu's case.

2. The first ground for review is that the Full Bench decision in B.B.Somayajulu's case was not cited before the Tribunal and the Tribunal was wrong to have relied on it. On a perusal of the Judgment it is seen that the same referred to Somayajulu's case only in passing and merely in ^{support of} the view independently arrived at by the Tribunal. This ground for review therefore is not valid. So far as the main ground is concerned, it is contended in the R.P. that the condition No.(c) has also been fulfilled because when

K.Shankaranarayanan began to draw higher pay because of having officiated in a higher post he did so only by virtue of FR 22(c) and therefore it cannot be said that the anomaly did not arise as a direct application of condition (c) in regard to FR 22(c). In my view, this ground is not tenable, because when the fixation is entailed consequent on officiating promotion, FR 22(c) is necessarily to be invoked. But that does not mean that the anomaly is directly as a result of application of F.R. 22(c). The anomaly must arise in relation to comparison between two officials when it can be said to have arisen directly. If the anomaly arises because of higher pay fixation of the competitor when the case of the applicant is not in question, it cannot be said to have arisen directly as a result of application of FR 22(c). I am of the view, therefore that there is no substance in the contention of the applicant raised as a ground for review. Review Petition is therefore without merit. R.P. ~~discrepancy~~ also does not fulfill other ^{any} conditions relatable to Rules under Order 47 of CPC. The R.P. is dismissed by circulation as is permissible.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A).

B.

dd-18/2/97
order/Judgement despatched
to Applicant/Respondent(s)
on 26/2/97

27/2/97