

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 113/2001

Date of Decision: 05.03.2003

Shri R.M. Joshi..

Applicant(s)

Shri S.P. Saxeena..

Advocate for Applicants

Versus

Union of India & anr..

Respondents

Shri V.S. Masurkar..

Advocate for Respondents

CORAM: HON'BLE SHRI GOVINDAN S. TAMPI MEMBER (A)
HON'BLE SHRI K.N. SACHIDANANDAN MEMBER (J)

1. To be referred to the reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.

(SHRI GOVINDAN S. TAMPI)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO. 113/2001

THIS THE 05th DAY OF MARCH, 2003

CORAM: HON'BLE SHRI GOVINDAN S. TAMPAI. MEMBER (A)
HON'BLE SHRI K.V. SACHIDANANDN. MEMBER (J)

R.M. Joshi,
Executive Engineer (C)
Postal Civil Division,
Residing at Shanta Sadan,
S.B. Road, Pune-16. ... Applicant

By Advocate Shri S.P. Saxena

Versus

1. The Union of India
through the Secretary,
Department of Telecommunication,
New Delhi-110 001.
2. The Chief General Manager,
(Telecommunication),
Maharashtra Circle,
G.P.O. Building,
Bombay-400 001. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R (ORAL)
Hon'ble Shri Govindan S. Tampli. Member (A)

Reliefs sought by the applicant in this OA are
as follows:

- (A) To allow the application
- (B) To declare that the applicant is entitled to
get his pay stepped up in the grade of Asstt.
Engineer from 28.1.1977 at par with the pay of
Shri N.A. Tejwani AND G. SITAPATI.
- (C) To direct the Respondents to step up the pay of
the Applicant to Rs.775/[from 28.1.1977 & to
fix his pay in subsequent yrs. as per the
Rules & by granting annual increments.
- (D) To grant the arrears of pay & allowances
arising out of stepping up of pay at par with
the juniors.

- (E) To grant 12% interest on the arrears which becomes payable to the Applicant.
- (F) To award the cost of Application.

2. Heard S/Shri S.P. Saxena and Vinay S. Masurkar learned counsel for the applicant and the respondents respectively.

3. The applicant joined as a Building Supervisor in P & T Civil Wing on 19.8.1963, in a job equivalent to Section Officer (Junior Engineer) and opted for absorption on 26.6.1973. The two posts were merged in 1975. The next promotion from the post was that of Assistant Engineer to which post, he was promoted on adhoc basis on 28.1.1977, but was thereafter regularised with effect from 26.7.1974 with retrospective effect. In the seniority list of 20.6.1994 he was at sl. No.187, vis-a-vis M.A. Tejwani at 205, who had been promoted on regular basis on 17.8.1974. Another individual Shri G. Sitapati was at Sl. No.195 who had been promoted on regular basis on 191.3.1973. The same was the position in the feeding cadre of Junior Engineer, wherein also the applicant had been appointed earlier than Shri Tejwani and Shri Sitapati. However, both the individuals had drawn higher pay than the applicant on 28.1.1977 which should have been granted to the applicant as well. The applicant came to know of his relative position in the seniority list only after the same was published on 20.6.1994/26.6.1994. The applicant's representation dated 16.8.1994 for

rectification of the above mistake, had not been answered. On the same analogy the applicant was entitled to have his pay revised in tune with the higher pay being enjoyed by the two juniors after the adoption of the 4th Pay Commission's recommendations and their promotion as Executive Engineer on 01.9.1994. This has not been done leaving the applicant, being placed below his juniors in the matter of emoluments causing him considerable loss financially. His another representation dated 05.11.1996 also did not yield any result. Hence this OA.

4. The grounds raised by the applicant are that (i) his initial appointment was prior to that of Shri Tejwane and Shri Sitapati, (ii) he was granted quasi permanence earlier than others. (iii) in the seniority list of Junior engineer, he was ahead of the other two, (iv) Shri Tejwane and Shri Sitapati were given adhoc promotion as Assistant Engineer in 1973 ahead of the applicant who was promoted in 1977 on account of promotion, being made on provisional seniority list but he was given regular promotion from 1974 ahead of them pointing to his seniority, (v) the applicant being made to draw less pay then his juniors which irregular and improper, (vi) he was being made to lose Rs.1000/- a month for quite some time and (vii) he is entitled to have his honour vindicated and pay granted to him at least by the evening of his official career. So that he would get some increased pensionary benefits.

5. All the above pleadings were forcefully reiterated by Shri Saxena, learned counsel for the applicant.

6. It is pointed out by the respondents in reply that the revised seniority list dated 20.6.1994 on the basis of which the applicant was given the seniority vis-a-vis Shri Tejwane and Shri Sitapati had been issued in implementation of the Bangalore Bench of the Tribunal's decision dated 20.12.1991 in OAs 1108 to 1110/89, where the applicants therein were granted the benefit of seniority with no consequential monetary benefits. That being the case, the applicant in this OA is also not entitled to any extra monetary benefits, as claimed. The applicant cannot claim stepping up of his pay vis-a-vis his juniors, who were given adhoc promotion as laid down by the Hon'ble Supreme Court in the case of Union of India & Others Vs. R. Swaminathan & Others [(1997) 7 SCC 690]. Both Shri Tejwane and Shri Sitapati coming from the stream of Section Officers who were given promotion as adhoc Assistant engineers in 1973 while the applicant who came over from the Building Overseer stream, got his adhoc promotion only in September, 1977 and therefore the applicant's plea for stepping up of pay was not tenable. Further, the decision of the Bangalore Bench of the Tribunal on the basis of which the revised seniority list dated 20.6.1994 was issued, on which the applicant places

reliance, had given the benefit only of seniority but not of consequential monetary benefits. In view of the above, the applicant cannot be granted the benefit sought by him, places Shri Masurkar.

7. We have carefully considered the matter. Applicant in this OA claims that he should get the benefit of stepping up of pay vis-a-vis Tejwani and Sitapati as the latter were placed below him in the seniority list but had drawn higher pay. To examine the merits of the applicant's claim comparisons of the case of all these individuals are called for.

R.M. Joshi	Tejwani	Sitapati
Date of initial appointment	19.6.1963 as Building Supervisor	20.6.64 14.8.64 as as Sec Section Offr. tion Ofrr
Position in seniority list of Jr. Engineer	82	116 117
Date of quasi permanency	01.3.66	01.3.69 01.3.69
Date of adhoc promotion as A.E.	28.1.77	13.12.73 17.3.73
Date of regular promotion as A.E.	26.7.74	17.8.74 19.3.73
Position in seniority list of A.E.	186	205 195
Pay as on 28.1.77 in the Jr. Engineer grade	Rs.650/-	Rs.775 Rs.775/-

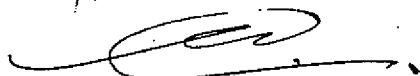
Pay in the revised scale from 1994	Rs.2975/-	Rs.3600/-	Rs.3600/-
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It would thus appear that while the applicant is senior to the other two individuals both in the feeder cadre and the promotion post, but had been paid lesser amounts, which would *prima facie* appear to be wrong. The fact however is that while the applicant (Shri R.M. Joshi) became an adhoc Assistant Engineer only on 28.1.1977, the other two (Shri Tejwani and Shri Sitapati) came over as Assistant Engineer in 1973 itself. Therefore as adhoc Assistant Engineer, they were senior to the applicant. Their being the case they were granted higher pay than the applicant. The same cannot be assailed. However, it is found that following the decision of this Tribunal dated 20.12.1991/07.1.1992 in OAs 1108 to 1110/88 those like the applicants were given the benefit of adhoc service, being treated his regular service the seniority was revised on 20.6.94. The said decision had however, held that "the applicants shall not be entitled to any consequential monetary benefits. But they shall be entitled to all other benefits such as seniority and consideration for further promotion on the basis of their revised seniority". The benefit of revised seniority given to the applicant as a result of specific direction by the Tribunal did not give him the benefit of stepping up of pay. Respondents have correctly declined to grant the same and it cannot be accepted in

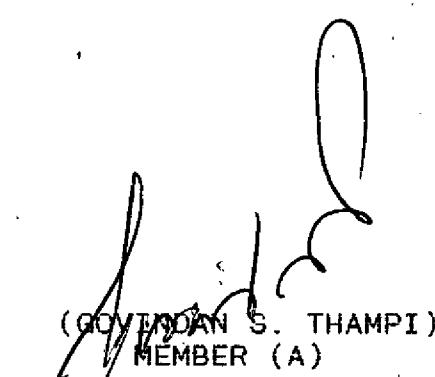
law. Our stand is also justified by the decision of the Hon'ble Supreme Court in R. Swaminathan's case (supra). The Hon'ble court held that stepping up of pay in tune with those of the juniors who had been given adhoc promotion much earlier cannot be granted. the applicant's case is squarely covered by the above decision.

8. We are convinced that the applicant has not made out any case for our interference. OA being devoid of any merit fails and is accordingly dismissed. No costs.

9. Promised



(K.V. SACHIDANANDAN)
MEMBER (J)



(GOVINDAN S. THAMPI)
MEMBER (A)

Gajan