

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE THIRTEENTH DAY OF JANUARY, 1987

Present: Hon'ble Shri CH.Ramakrishna Rao

Member(J)

Hon'ble Shri P.Srinivasan

Member(A)

APPLICATION NO. 681/86(T)

G.A.Majali,  
Junior Engineer,  
Indian Posts and Telegraphs Department,  
Belgaum.

... Applicant

( Smt. Shantha Chellam ... Advocate )

Vs.

1. The Secretary to Government of India,  
Ministry of Communications,  
Parliament House,  
New Delhi.

2. The General Manager,  
Telecommunications, Karnataka circle,  
Maruthi Complex, Gandhi Nagar,  
Bangalore - 9.

3. The Director of Telecommunications,  
Karnataka Circle, Maruthi Complex,  
Gandhi Nagar,  
Bangalore - 9.

... Respondent

( Shri N.Basavaraj ... Advocate )

This application has come up before the court today.

Hon'ble Shri P.Srinivasan Member(A) made the following :

O R D E R

This is a transferred application received from the High Court of Karnataka.

2. The applicant was working as a Technician in Belgaum Exchange of the Post and Telegraph Department, Karnataka Circle. In 1973 he took a competitive examination for selection to the post of Phone Inspector (PI) which carried a higher scale than that of Technician. He passed this examination and by an order dated 5.3.1974 he was directed to proceed for training preparatory to being appointed as PI. The pay scale of the post of PI at that time was Rs.380-560. The training was for a period of 8 months from 15.3.1974 to 14.11.1974. During the period of training he

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was paid salary in the Scale of Technician. Initially his pay as PI was fixed at the minimum of scale i.e. Rs.380/- . The normal promotional avenue for a Technician is to the Higher Selection Grade (HSG) whose pay scale was Rs.425-640. The post of PI belongs to a different line of posts to which a Technician can aspire only if he passes the requisite competitive examination. Early in 1975 the Director General, P and T departmental created some additional posts in the Higher Selection Grade of Technicians with effect from 1.6.1974. As a result, by an order dated 2.1.75, the applicant was promoted to the HSG with effect from 1.6.1974 and his pay was also fixed at Rs.425 from 1.6.1974. As a consequence of this his pay from 15.11.1974 as PI was also fixed giving him an increment on the basis that the post of PI carried higher responsibilities than that of a Technician HSG. In this way his pay from 15.11.1974 was fixed at Rs.452. With effect from 14.10.1976 the applicant was promoted from PI to Junior Engineer, the latter post carrying the pay scale of Rs.425-700. Since he was already drawing Rs.464 in the grade of PI his initial pay as Junior Engineer was fixed at Rs.485. M

3. However, in 1978, the respondents realised that they had made a mistake in promoting the applicant to the HSG with effect from 1.6.74. Certain instructions had been issued by the DG P&T on 5.5.1976 in which it was stated that Technicians undergoing training for the post of PI would not be entitled for promotion to the HSG, but would have to seek promotion from PI to higher posts in that line. Therefore, the applicant's promotion to the HSG from 1.6.74 was cancelled and as a result the earlier fixation of his pay as PI from 15.11.74 and as Junior Engineer from 14.10.1976 had to be revised downwards. The Respondents thereupon worked out the excess payment of salary and allowances to the applicant in the past and directed him to refund a sum of Rs.5,142.20 by letter dated 9.12.1980 (Annexure J). In the writ petition originally filed before the High Court the applicant has challenged this letter as well as (Annexure C) order dated 24.8.78 by which the applicant's promotion to the HSG w.e.f. 1.6.1974 was cancelled.

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4. Smt. Shanta Chellam, learned counsel for the applicant contends that the respondents were not right in asking the applicant to repay the alleged overpayments made to him in the past. As on 1.6.1974, from which date the post of HSG became available the applicant was still only a Technician albeit on training for becoming a PI. Therefore, whatever promotion was due to a Technician as on that date should have been given to him. Therefore the authorities themselves had promoted him to the HSG w.e.f 1.6.74. She further pointed out that as on 1.6.74 it could not be said with certainty that the applicant would eventually be posted as PI because that was subject to successful completion of the training which he was undergoing at that time. Thus the applicant was rightly promoted as on 1.6.74 and given benefits of pay fixation in subsequent stages. Therefore, the cancellation of his promotion and the direction to him to refund the excess payment was illegal.

5. Shri. N.Basavaraju, counsel for the respondent strongly refutes the arguments of Smt. Chellam. It was the clear policy of the P&T Department that once a person working in a particular line of posts chose to take up a different line of posts he cannot expect promotion in his original line. That is why the DG P&T had issued the letter dated 5.5.76 clarifying the position that Technicians undergoing training as PI could no longer be considered for promotions available to Technicians. The respondents had however made a mistake when they accorded to the applicant the promotion as HSG with effect from 1.6.74 and it was this mistake that was subsequently corrected. The respondents had every right to correct an obvious mistake committed by them and this did not amount to awarding any punishment on the applicant requiring that he be given an opportunity of being heard. Shri Basavaraju therefore pleaded that the application be rejected. He also stated that the applicant had given a declaration when he was selected for training for the post of PI that he would not seek promotion available to Technicians.

6. We have given the matter anxious thought. We feel that there is force in the contention of counsel for applicant when she says

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that on 1.6.74 the applicant, not having actually been posted as PI, was rightly treated as still continuing in the cadre of Technicians and accordingly given promotion to the HSG. There is also merit in the contention that as on 1.6.74, the applicant was only undergoing training for the post of PI and his eventual appointment as PI dependent on his completing the training successfully and that, therefore, he could not be denied promotional opportunities available to Technicians till he was actually posted as PI in November 1974. The letter of the DG P&T relied upon by Shri Basavaraju was issued in May 1976 and can have no application in 1974 or 1975, with which period we are concerned here. It seems to us that till a person is actually appointed to a post in a different line, he is deemed to continue in his original post and cannot be denied promotional avenues available to the original post. In this case, the post of Technician HSG was created from 1.6.74 and at that time it was only a matter of speculation whether the applicant would complete his training and be posted eventually as PI. One cannot be guided by hindsight in these matters. In this view of the matter the applicant was rightly promoted to HSG w.e.f. 1.6.74. Therefore Annexure C has to be quashed. However, when we come to fixation of pay in the grade of PI we feel it was not correct to treat the post of PI as one carrying higher responsibilities than that of a HSG Technician. The post of PI carried a lower pay scale than that of HSG Technician. At best, the applicant could have been given protection of the same pay which he would have drawn in the HSG before his appointment as PI i.e. Rs.425/-. Therefore, we direct that the pay of the applicant on his appointment as PI from 15.11.1974 be fixed at Rs.425/- or, if there was no such stage in the pay scale of PI, at the next higher stage in that scale of pay. His pay on promotion as Junior Engineer may thereafter be fixed according to the rules applicable to promotion to a post carrying higher responsibilities. If after doing this, it is found that there is still some overpayment to be recovered, such overpayment will have to be recovered from the applicant.

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