

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 11 AUG 1987

APPLICATION NO 417 / 87(F)

W.P. NO _____

Applicant

Shri G. Babu

v/s The Divisional Engineer(Telegraphs)
B'lore & 2 Ors

To

1. Shri G. Babu
Junior Engineer
Office of the Assistant Engineer(TMG)
Bangalore - 560 002
2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009
3. The Divisional Engineer(Telegraphs)
Bangalore - 560 001
4. The General Manager
Mtcc, Southern Telecom Region
Madras - 600 001
5. The Director General
Telegraphs
New Delhi - 110 001
6. Shri M. Vasudeva Rao
Addl Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~SENT~~/
~~INTERIM ORDER~~ passed by this Tribunal in the above said
application on 4-8-87.

Encl : as above

B. V. Venkatesh Reddy
DEPUTY REGISTRAR
~~SECTION OFFICER~~
(JUDICIAL)

RECEIVED
13/8/87

*Pls see
11/8/87*
O/K

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

- DATED THIS THE 4TH AUGUST, 1987

Present: Hon'ble Sri P. Srinivasan

Member (A)

APPLICATION NO. 417/87(F)

Sri G. Babu,
Junior Engineer,
Office of the Assistant Engineer,
T.M.G. Bangalore- 560 002.

Applicant

(Dr. M.S. Nagaraja, Advocate)

Vs.

1. The Divisional Engineer
(Telegraphs)
Bangalore- 560 001.

2. The General Manager,
Mtcc, Southern Telecom Region,
Madras-600 001.

3. The Director General,
Telegraphs,
New Delhi-1.

Respondents

(Sri M.V. Rao, Advocate)

This application has come up for hearing before
this Tribunal to-day, Hon'ble Member (A) made the
following :

O R D E R

This is an application made under Section 19
of the Administrative Tribunals Act, 1985. The
applicant was working as a Phone Inspector in the
Telegraph Department at Bangalore from 1965 in the
scale of Rs. 380-560 prior to the Fourth Pay Commission.
By order dated 27.10.1975 he was promoted ^{with effect from 10.12.1974} to the
rank of Selection Grade Telephone Inspector (SGTI)



which carried a pay scale of Rs. 425-640 at the time. He got a further promotion to the post of Junior Engineer (JE) with effect from 20.2.1975 and that post carried a pay scale of Rs. 425-700. When he was promoted as JE, his initial pay in that post was fixed under Fundamental Rule ^b 22-C on the basis that ^{the} post of JE carried duties and responsibilities of greater importance than those attached to the post of SGTI. In this way, his pay was fixed at Rs. 455/-. It appears that some time in 1983-84 the pay scale of SGTI was extended to Rs. 750/- ie., the span was Rs. 425-750. Thereupon the respondents reviewed their decision fixing the applicant's pay under FR 22-C on his promotion as JE in 1975. They took the view that after the extension of the scale of pay of SGTI to Rs. 750 beyond that of JE ^{or} ~~scale~~ which ended at Rs. 700/-, a SGTI promoted to the post of JE could not be treated as having been appointed to a post carrying higher responsibilities and FR 22-C would ^{not} come into operation. In this view of the matter, the initial pay of the applicant with effect from 20.2.1975 in the post of JE was brought down from Rs. 455 fixed earlier to Rs. 425/- ie., the minimum of the scale. The revised fixation of initial pay was made under FR 22a(ii) instead of under FR 22-C. The applicant is challenging order dated 20.10.1986 by which the revised fixation of pay was made (Annexure 4) and also orders dated 9.10.1985 and 27.7.1984 (together appearing as Annexure 3 to the application) by which the decision was taken in principle to refix the initial pay of the applicant and others similarly situated under FR 22a(ii) instead of under FR 22-C.



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to agree with the contention of Dr. Nagareja. It would be a strange situation if one had to wait to fix the initial pay of an official in a post to which he is promoted in expectation of the pay scale of that post or of the subordinate post from which he is promoted being revised. Alternatively if one did not wait, there would be no finality about a pay fixation even though it may have been made strictly according to the rules and facts prevailing at the time. When the applicant was promoted to the post of JE there was no doubt that the post of JE carried higher responsibilities than that of SGTI and that, therefore FR 22-C was applicable for fixing his initial pay. The fact that the post of JE carried higher responsibilities at that time cannot be displaced by a decision taken much later to revise the pay scale of the lower post. FR 22-C clearly provides that where a Government servant is appointed to another post "carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued to him". In my view this has reference only to the position actually existing at the time the promotion or appointment is made and is not subject to review in the light of events which happen several years later. I have, therefore, no hesitation in striking down Annexures A3 and A4 and directing the respondents not to disturb the initial

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2. Dr. M.S. Nagaraja contends that the fixation of the applicant's initial pay as JE made earlier applying FR 22-C was correct and the respondents were not justified in revising the same downwards 11 years later merely because the pay scale of SGTI was extended beyond that of JE long after the applicant was promoted as JE. According to him, the question of applying FR 22-C arises at the point of time when a Government servant is actually appointed or promoted to a post and if at that time that post carried higher responsibilities, then FR 22-C had to be applied. In this case, when the applicant was promoted as JE, the respondents had acknowledged that the post of JE carried higher responsibilities than that of SGTI. Events that happened ten years later cannot upset this situation. It may be that after the decision was taken to extend the pay scale of SGTI to Rs.750/-, a view may be taken that the post of JE ceased to carry such higher responsibilities. But this position did not exist in 1975 when the applicant was promoted. In view of this he submits that the orders directing retrospective fixation of pay under FR 22(a) (ii) and the order implementing this decision should be struck down.

3. Shri M.V. Rao strongly opposes the contentions of Dr. Nagaraja. Though the pay scale of SGTI was extended beyond that of JE in 1983-84, it was done with retrospective effect i.e., even from the date from which the applicant was promoted as JE. It followed therefrom that even in 1975 promotion to the post of JE did not involve the assumption of higher responsibilities.

4. Having heard counsel on both sides I am inclined

pay originally fixed when the applicant was promoted as JE in 1975. As a consequence, no recovery of past payments shall be made.

5. Shri Vasudeva Rao drew my attention to a decision of this Tribunal dated 9.7.1987 in A No 315/87 where under similar circumstances this Tribunal quashed the impugned order and directed the Respondents therein to give an opportunity to the applicant of being heard before revising his initial pay already fixed. This Tribunal did not go into the merits of the case but felt that ^{the} applicant therein should have been heard. I have had the opportunity of examining the position on merits in some detail and have heard arguments of both sides at some length and I feel that the application deserves to be allowed as indicated above.

6. In the result the application is allowed.
Parties to bear their own costs.



sb.

Sd/-

MEMBER (A)

4/5

- True Copy -

B. V. Venkatesh
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE