

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No.57/90

Shri D.R. Saptashwa  
V/s.

... Applicant

Secretary to the Minister of  
communication, New Delhi  
and two others.

... Respondents.

CORAM : Hon'ble Miss Usha Savara, Member (A)  
Hon'ble Shri S.Santhanakrishnan, Member (J)

Appearance

Mr. E.K. Thomas, advocate  
for the applicant

Mr. V.M. Bendre, advocate  
for the respondents.

Judgement

Dated: 7.4.92

[ Per Miss Usha Savara, Member (A) ]

This application has been filed claiming stepping up of the applicant's salary as the salary of his junior is higher than his salary. The facts are not disputed. The applicant was appointed as Telegraphist on 20.10.1959 on the pay scale of Rs. 110 - 240, whereas Shri J.B. Sonavane was appointed on 14.10.63 in the same pay scale. The applicant was brought to the cadre of A.S.T.T. as a result of qualifying examination which took place in the year 1980 and after undergoing prescribed training, he was appointed to the post on 26.9.81 in the pay scale of Rs. 425 - 750. Shri Sonavane failed to qualify in the departmental examination in 1979 but later appeared for selection grade examination and qualified on 3.9.79 when his pay was fixed on Rs. 470/- It was only his promotion to the higher post of A.S.T.T. that started drawing the pay of Rs. 530/- from 22.9.81 and from this date Shri Sonavane started drawing the pay higher than the applicant.

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Shri E.K. Thomas, learned counsel for the applicant submitted that in the gradation list of Telegraphists, applicant was placed at Sl. No. 340 whereas Shri Sonavane was placed at Sl. No. 476. Even in the gradation list of A.S.T.T. in 1987 applicant was placed at Sl. No. 42, whereas Shri Sonavane has shown under Sl. No. 82. It is pointed out by the learned counsel that anomaly occurred ~~whereby~~ the applicant's junior got more pay on his promotion as Assistant Superintendent though the applicant was drawing pay of Rs. 500/- in the higher post from November 80 to October 81 i.e. before Shri Sonavane was promoted to the higher post of A.S.T.T. The applicant, in these circumstances, has <sup>to</sup> prayed ~~the~~ the Tribunal for stepping up of his salary.

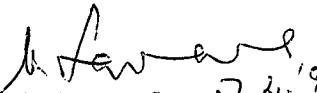
Shri Bendre, learned counsel appearing for the respondents resisted the claim of the applicant and submitted that the applicant's representation had been decided by letter dated 18.7.86, in which it was pointed out that the applicant does not satisfy the conditions of the Government of India's order dated 15.2.83. It was submitted that the applicant was not sufficiently senior for the post of Selection grade in the year 1974 and therefore he was not entitled for the said post in 1974. Further, Shri Sonavane was promoted to the post of selection grade after having passed the competitive examination and not by virtue of seniority. Therefore, it is submitted, it was not correct to assume that the applicant ~~also have~~ would ~~passed~~ passed the said examination for getting selection grade post. As such, the applicant does not satisfy the conditions mentioned in the Government of India's order 15.2.83 and he is not entitled the benefit claimed for.

Mr. Thomas has filed a copy of the order in OA 297/89 in the case of Shri S.T. Papalkar, Asstt. Superintendent (TT) v. Union of India, which was decided by the Bombay Bench on 15.10.91. The facts of the case before us are on all fours with the facts of the case of Shri Papalkar. It was held that the applicant was covered by the Memorandum dated 15.2.83. The first condition for stepping up of pay in the said memorandum is that the scale of pay of the lower post i.e. ordinary grade and the higher post in which both juniors and seniors are entitled to draw pay should be identical. The second condition is that senior employees should have been eligible for appointment to the selection grade ~~but~~ for working in the higher post on or before the date on which the junior was appointed to the selection grade. The third condition is that the junior should not have drawn more pay than the senior by virtue of fixation of pay under the normal rules or any other advance increment granted to him in the lower post and the anomalies should be directly result of the junior person holding selection grade in the higher scale at the time of his promotion in the higher grade. All these three conditions are fulfilled by the applicant before us. This is a fit case for removal of anomaly of the kind which ~~have~~ arisen in the present case.

Having heard both the learned counsel and after perusal of the relevant annexures and the memorandum dated 15.2.83 we are constrained to hold that the applicant is entitled to the same pay scale as the junior i.e. Shri Sonavane. The applicant is senior to Shri Sonavane in both the cadres and is also having longer length of service in the department. In view of this the respondents are

directed to step up the pay of the applicant to the level of Shri Sonavane from 22.9.81. The applicant will also be entitled to consequential benefit by way of payment of arrears arising from stepping up of his pay. The respondents shall comply with the directions within two months from the date of receipt of the copy of this judgement. The application is disposed of with the above observation with no order as to costs.

  
(S. SANTHANAKRISHNAN)  
MEMBER (J)

  
(USHA SAVARA) 7.4.92  
MEMBER (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

R.P.NO.101/92  
in OA NO.57/90

Shri D.R.Saptshwa

.... Applicant

V/s [redacted]

Union of India  
and others.

.... Respondents

Dt. 9.9.92

CORAM : HON'BLE USHA SAVARA, MEMBER (A)

HON'BLE S.SANTANKRISHNAN, MEMBER (B)

1. This review petition has been filed against the order and judgement dated 7.4.1992 passed in O.A. No.57/90. By that order the directions were given to step up the pay of the applicant of the applicant to the level of Shri Sonavane. By this review petition it is submitted that some facts remained to be considered and therefore this judgement should be reviewed and the application decide on merits.

2. The scope of the review is very limited and is confined to the provision of order 47 Rule (1) of C.P.C. The discretion to review may not exercise on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. The facts were discussed in detail in the order dated 7-4-92 and therefore the same are not an error apparent on the face of the records.

3. In the circumstances, the review application is rejected.

*S. Santan*  
(S.SANTANKRISHNAN)  
M/J

*b. Savar*  
(USHA SAVARA)  
M/A  
9.9.92