

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 51/92  
T.A. No. -

198

DATE OF DECISION 23.12.93

1 R. A. Hattiholli

2 J. S. Kanade

Petitioner

Mr. G. R. Manghani

Advocate for the Petitioner(s)

Versus

U.O.I. & Ans.

Respondent

Mr. P. M. Pradhan


Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Justice H. S. Deshpande, V.C.

The Hon'ble Mr. -

1. ~~Whether Reporters of local papers may be allowed to see the Judgement?~~
2. To be referred to the Reporter or not? No.
3. ~~Whether their Lordships wish to see the fair copy of the Judgement?~~
4. Whether in needs to be circulated to other Benches of the Tribunal? No.

  
V.C.

(14)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.51/92

1. R.A.Hattiholli

2. J.S.Kanade

.. Applicants

-versus-

1. Union of India  
through  
The Secretary,  
Department of Telecommuni-  
cation,  
New Delhi.

2. Chief General Manager,  
Telecommunication,  
Maharashtra Circle,  
G.P.O. Building, 2nd Floor,  
Bombay - 400 001.

3. Chief Superintendent,  
Central Telegraph Office,  
Bombay - 400 001.

.. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande,  
Vice-Chairman

Appearances:

1. Mr.G.R.Menghani  
Advocate for the  
Applicants.

2. Mr.P.M.Pradhan  
Counsel for the  
Respondents.

ORAL JUDGMENT:

(Per M.S.Deshpande, V.C.)

Date:23-12-93

The two applicants for themselves and on behalf of all similarly placed employees seek a direction to the respondents to step up their pay to that of Shri C.B.Rege w.e.f. 1-1-87 who though being junior to them is drawing pay higher than the applicants and for arrears as a result of this stepping up w-e-f- 1-1-87 with interest @ 12%.

2. The present applicants joined as Telegraphist with the Bombay C.T.O. while Shri C.B.Rege had joined as Telegraphist at Indore C.T.O. on 20-3-1964. Rege was transferred to Nagpur C.T.O. and later on 30-11-1974 to Bombay Circle.

-: 2 :-

By virtue of the policy of granting one time bound (OTBP) promotion/after lapse of 16 years by being required to undergo a sort of process of selection the present applicants who were 19 in numbers as listed in Ex. 'A' to the application, came to be promoted on 13-11-1983. Rege was considered in the year 1983 but was not found fit for promotion and after lapse of three years on 18-6-1986 was given the one time bound promotion. The List No.1 at Ex. 'A' shows that Rege was appointed on 20-3-64 and his pay before OTBP was Rs.480/- and ~~hit~~ continued to be Rs.480/- on 30-11-83. His basic pay on 1-1-86 when he secured OTBP was Rs.1520/- and after getting two increments he reached the basic pay of Rs.1640/- on 1-1-87 and Rs.1900/- on 1-1-91. The present 19 persons who came to be appointed between 20-7-60 and 9-11-62 drew Rs.530/- before OTBP. Their pay was Rs.560/- on 30-11-83 and by virtue of the OTBP their basic pay was raised to Rs.1560/-. When Rege was fixed at Rs.1640/- on 1-1-87 the 19 applicants were drawing on Rs.1600/- and their corresponding pay on 1-1-91 when Rege was drawing Rs.1900 was Rs.1800/- only. According to the applicant by virtue of Note-7 of the CCS Rules they would be entitled to get the pay equal to Rege who was junior. Govt. of India, Ministry of Finance, O.M. No.F.2(78)-E.III(A)/66 dt.4-2-1966 provides for removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior which is reproduced here :

"(a) As a result of application of F.R.22-C - In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant

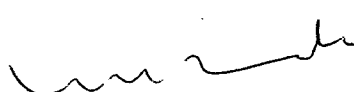
...3/-

junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely :-

- (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 F.R. 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.

The orders re-fixing the pay of the senior officers in accordance with the above provisions shall be issued under FR 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay."

3. There is no dispute about the position that the requirements of (a) and (b) are fulfilled in the present case. What is contended on behalf of respondents is that condition (c) is not fulfilled



here because Rege was drawing in the lower post a higher rate of pay than his senior by virtue of grant of advance increments and therefore this provision cannot be invoked to step up the pay of the applicants. There is no dispute about the fact that Rege was drawing Rs.480/- which was the maximum of the pre-revised time scale until he was found suitable for OTBP.

4. According to Mr.P.M.Pradhan, learned counsel for the respondents the service book of Rege showed that stagnation increment of Rs.480/- + 12PP was granted from 1-5-85 vide Department of Posts and Telegraphs New Delhi No.1/16/78 PAP(Vol.II) dt.18-8-83. The submission was that since this increment came to be granted in the pre-revised scale the latter part of condition (c) would apply and stepping up would be impermissible under the letter dt. 4-2-66. This however entirely <sup>overlooks</sup> ~~fulfills~~ the position that by virtue of OTBP Rege had ~~been~~ got increments which he could not have been got by virtue of stagnation <sup>but</sup> as a consequence of revision of pay and that was the benefit which came to him due to revision and not because of any rules which applied prior to the revision. This position is not excluded by the latter part of condition(c).

5. My attention was also drawn to Rule 8 of the CCS Revised Pay Rules, 1968 which provides that the next increment of a Government servant whose pay has been fixed in the revised scale in accordance with sub-rule (1) of Rule 7 shall be granted on the date he would have drawn his increment, had he continued in the existing scale. The first two provisos are not material.



Reliance was placed on the third proviso which says that in the case of persons who had been drawing maximum of the existing scale for more than a year as on the 1st day of January, 1986 next increment in the revised scale shall be allowed on the 1st day of January, 1986, and this was the basis on which Rege's entitlements were worked out after he was promoted to OTBP and his pay came to be fixed in the revised scale. No exception can be taken to the manner in which Rege's entitlements were worked out and even the applicants do not challenge what is being given to Rege by virtue of OTBP on 1-1-87. Rule 8 deals with the question of fixation of ~~of~~ the pay of the employee who gets the revised scale of pay while Note 7 below Rule 7 of CCS(Revised) Pay Rules, 1968 deals with the stepping up of the seniors. In fact the complaint taken by the applicants also seems to have been accepted by the Govt. of India, Ministry of Finance, O.M.No:1(14)E.III/89 dt. 16-6-89 which has been annexed as Ex. 'A' to the rejoinder filed by the applicants and it is clarified that the Govt. is of the view that even if the anomaly is as a result of increments in terms of provisos 3 and 4 Rule 8 of C.C.S. (R.P) Rules, 1986 combined with application of F.R. 22-C anomaly may be rectified by stepping up the pay of senior promoted before 1-1-1986, equal to junior promoted on or after 1-1-1986 subject to fulfilment of following conditions:

- (a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre;

(b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical and,

(c) the senior government servant promoted before 1.1.1986 has been drawing equal or more pay in the lower post than his junior promoted after 1.1.1986.

It is therefore clear that the applicants were entitled to this stepping up of their pay so that it would be equal to that of Mr. Rege on that day when he received OTBP.

6. Shri P.M. Pradhan urged that the present application would be barred by time. But it is clear that the matter has been pursued and representations were being made from 12-1-90 by the Union. The letter at Annexure 'F' dt. 31-10-90 showed that the department was pursuing the matter. Annexure 'G' <sup>is</sup> letter by Chief Superintendent Shri Veeranna written on 22-10-90 to Shri Mohinder Singh, DFA showed that the applicants were entitled to be benefitted under the relevant provisions to which I have made reference earlier and asked Shri Mohinder Singh to give advise on the correct position for early regularisation of the case. Letter dt. 19-2-91, Ex. H to the application, to the the A.O., C.T.O. showed that Rege would stand junior to about 23 officials. Ex. 'I' is letter dt. 15-4-91 written by Doddamani V.M. Accounts Officer to the Chief Accounts Officer which shows that the representation of these categories have not been considered and they will not be taken up with the Circle Office for sanction under FR 27 and an early action was therefore proposed. The matter came to be closed only after meeting between Union held on

13-9-91 as it is apparent from the minutes at Ex.'J' and the aggrieved persons were asked to take up the matter with the department of Telecommunication. It is therefore clear that the cause of action for filing this application had ~~been~~ accrued on 13-9-91. The present application came to be filed on 24-12-91 and ~~the question of~~ therefore would be within time.

7. In the result the respondents are directed to step up the pay of the 19 persons listed at Ex.'A' to that of Shri Rege w.e.f. 1-1-87 and to pay the arrears on that basis from 1-1-87 with interest @ 12% p.a.

8. This shall be done within three months from the date of communication of this order to the respondents. No order as to costs.

M

  
(M.S.DESHPANDE)  
Vice-Chairman