

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

1. OA 1333/93

Shri V.G. Kelkar & Ors. ... Applicants

versus

Union of India & Ors. ... Respondents

2. OA 457/94

Shri M.D. Garde ... Applicant

versus

Union of India & Ors. ... Respondents

3. OA 512/94

Shri S.V. Prabhu & Ors. ... Applicants

versus

Union of India & Ors. ... Respondents

CORAM:

Hon'ble Shri N.K. Verma, Member (A)

APPEARANCES:

1. Shri H.Y. Deo, learned counsel for the applicants
2. Shri S.S. Karkera, Proxy for Shri P.M. Pradhan for respondents

DATE OF ORDER:

16.3.95

(PER HON'BLE SHRI N.K. VERMA, MEMBER (A))

These three applications have a common question of law regarding stepping up of pay of the applicants who are senior to one Shri Baleshwar Singh, admittedly a junior officer of the TTS

Group 'B' in the Department of Telecommunications. All these three OAs can be decided by a common judgement. The facts of the OA 1333/93 are illustrative of the points involved in the two other cases.

O.A. 1333/93 :

2. The applicants in this OA are working as in TTS Group 'B' in the Telecommunications Department (Maharashtra Telecom Circle), Government of India. Admittedly, all these applicants are senior to Shri Baleshwar Singh, who was drawing a pay of Rs. 845/- on promotion to TTS Group 'B' on 1.9.1984. The applicants were promoted as TTS Group 'B' which is earlier to the date on which Shri Baleshwar Singh was promoted. However, their pay was fixed at substantially lower level as given in Annexure 'A'. Shri Baleshwar Singh was officiating in the TTS Group 'B' in a different circle due to fortuitious adhoc promotions which he enjoyed for several years prior to his regular promotions to TTS Group 'B', on the basis of his local seniority in U.P. Circle. This has resulted in anomaly of pay and allowances of the applicants and Shri Baleshwar Singh. The applicants have, therefore, prayed for stepping up of their pay in terms of F.R. 22-C to be brought on par with Shri Baleshwar Singh. Since they all belong to the same cadre of TTS Group 'B', the action of the respondents in not doing so is in violation of Article 16 of the Constitution. The applicants have largely based their

claims on the basis of the judgements given by this Tribunal in the cases of Smt. N. Lalitha and Anil Chandra Das. Respondents have, on the other hand, rebutted the claim on the ground that the promotion of Shri Baleshwar Singh in the TTS Group 'B' on officiating post was given on the basis of the seniority of the officials in the respective Circle and not on All India basis. The promotion of Shri Baleshwar Singh in the U.P. Telecom Circle was due to local adhoc promotion and that is why his pay was fixed at higher stage taking into consideration the officiating period. Since the applicants were not working in U.P. Telecom Circle, they could not be given promotion on par with Shri Baleshwar Singh though the applicants were senior to him. The respondents, therefore, submitted that the anomaly in pay arose due to the facts for which there is no provision in the existing rules in stepping up of pay of seniors to the level of juniors in such case. The respondents have also stated that the judgement of the Hyderabad Bench of Central Administrative Tribunal in the case of N. Lalitha cannot be made applicable in the applicants' case as facts of that case are not identical to the facts of the instant case.

4. During the arguments, the learned counsel for the applicants placed his reliance on the judgements rendered in the case of Smt. N. Lalita decided by CAT, Hyderabad Bench and the order dated 18.8.94

of the Tribunal at Calcutta in the case of Baidyanath Bandopadhyay vs. Union of India, which was also a matter of identical case. Shri Deo referred to ~~the~~ a judgement of this very Bench of the CAT delivered on 28.7.94. The position with regard to stepping up of the seniors drawing less pay as a result of F.R.22-C would arise when :

- (a) both the junior and senior officers who belong to the same cadre and the post 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; and
- (c) the anomaly should be directly as a result of the application of F.R.22-C.

5. In the present case, the respondents have averred that Shri Baleshwar Singh was an officer of Telegraph Traffic Service, Group 'B' in the U.P. Telecom Circle where he got promoted on adhoc basis and the officiating periods were counted towards his fixation of pay on his regular promotions to the TTS Group 'B' on All India basis. The officiating pay drawn by him in the U.P. Telecom Circle cannot be claimed by officers senior to him in other Telecom Circles who were not working in the U.P. Telecom Circle. The whole question of stepping up of pay is related to anomaly arising out difference in pay of senior officers belonging to the same cadre. Shri Karkera, learned counsel for the respondents reiterated that no anomaly has arisen in this case

to give the applicants' the benefit of stepping up of their pay as ^{they} did not belong to same cadre to invoke the provisions of F.R. 22-C.

6. I have given anxious consideration to the entire averments made by the learned counsel of both the sides. There have been a catena of judgements by several Benches of the Tribunal on this issue taking into consideration that T.T.S. Group 'B' is one common cadre and hence a pay of senior has to be stepped up with reference to a junior officer working in any Circle of the Country. The term 'cadre' as per Mitra's Legal & Commercial Dictionary is 'strength of establishment'. The word 'cadre' is defined in Fundamental Rules 9(4) to mean the strength of an establishment or service sanctioned as a separate unit. The word does not mean a 'post'. The main question to be decided in this case veers round the definition of the word 'cadre'. The word 'cadre' is not synonymous with a service. As per the later part of the definition in F.R. 9(4), a small service perhaps can be a cadre as well as a service that may not have the ramifications of services like the All India Services of Indian Administrative Service, Indian Police Service and Indian Forest Service. Some of the Central Services like the T.T.S. Group 'B' and 'C' have the same ramifications. These services are having an All India Character but generally serving one particular Circle. These services are very

large services having ramifications in various States and Circles, where the cadres are determined according to the sanctioned strength of posts or designations therein. For example, in the I.A.S., which is an All India Service, the cadres are distributed Statewise having several types of grades, posts and designations therein. An officer belonging to one State cadre cannot claim parity in pay with an officer of I.A.S. belonging to another. The recruitment and promotions to the various All India Services and Central Services are made centrally by the Government of India in various Ministries and promotions of these services are also decided by the Government of India centrally through various Ministries. However, the promotions are processed in relation to the vacancies in various cadres and units of the several States and Union Territories and the Circles.

7. In respect of P&T Department, such approved promotion select list officers are allocated to various cadres/Circles for further placements. Recruitment and promotion Rules are available in the P&T Manual Vol. IV, Chapter VI (Rules 168-180) which also prescribes method of recruitment and promotion to the services like Telegraph Traffic Supervisor Group 'C' and Telegraph Traffic Supervisor Group 'B'. The examination / DPCs for promotions to these services are done centrally by the Director General Telegraph. However, after having been found

fit for promotion through DPC or a competitive examination, such officers are placed at the disposal of the Heads of the Circles who are authorised to transfer them within their own Circle. A Head of a Circle is also required to maintain a gradation list / seniority list of such officers class-wise within his Circle with a copy to the Director General Telegraph, who maintains All India Seniority list. These rules are available in the P&T Manual Vol. IV (Rule 32A to E). It is the Head of the Circle who is responsible for maintaining gradation list of all officers posted in his Circle including those who belong to the T.T.S. Group 'B' and above.

8. The P&T Volume IV - Rules No. 63 to 75 deal with the transfer powers of the officers of Telegraph Traffic branch. As per the reading of these powers, transfers at Government expense of any members of the Traffic branch from one Circle to another require the prior sanction of the Director General. Transfers without relief or exchanges between the officers of the Telegraph Traffic Services Group 'B' of one Circle and those of another, at the expense of the applicants, may be ordered by the Head of the Circles concerned but the formal sanction of the Director General should be obtained in each case. Rule 71 deals with the applications for transfers from one Circle to another from officers of the Telegraph Traffic

Service, Group 'B' Telegraph Traffic Supervisors and Telegraphists may be disposed of by the Heads of Circles. The provisions are as follows :-

- (a) If a telegraphist can be spared without relief and is willing to be transferred to another Circle at his own expense, the Head of the Circle after consulting the Head of the Circle concerned and obtaining the latter's consent may order the transfer. A report of the fact should, however, be made to the Director General for his information.
- (b) If a man who cannot be spared without relief, is unable to arrange an exchange or to travel at his own expense, or cannot be accommodated in the office he asks for, the Head of the Circle should note his name for the transfer when a suitable opportunity occurs and inform the applicant accordingly.
- (c) Only in very exceptional cases when there are good grounds, which should be stated, for a transfer at the expense of the State, and provided the Head of the Circle can spare the man without relief and has ascertained that the man can be accommodated in the office he asks for, the application should be forwarded to the Director General for his decision.

From the foregoing, it is amply clear that the officer of the Telegraph Traffic Service Group 'B' is normally required to be transferred within the cadre of a particular Circle and it is only in very exceptional cases when there are good grounds for a transfer at the expense of the State, and provided the Head of the Circle can spare the man without relief and has ascertained that the man can be accommodated in the office he asks for, the application should be forwarded to the Director General for his decision.

9. The position which emerges from ^{clerk} VI of the Manual that the T.T.S. Group 'B' is a service [^] ⁱⁿ which provides officers for the various cadres/grades of Assistant Chief Superintendent of Telecom, Addl. Superintendents and Superintendents etc. As per Rule 32-2(e) details three category of services under TTS Group 'B', Superintendents & Additional Superintendents of Telegraph Offices and Assistant Director (Traffic). There are two cadres of T.T.S. Group 'A' and also for T.T.S. Group 'B'. As per Rule 174.1. (1) officers for Grade II of the T.T.S. Group 'B' are recruited by promotion from the grade of Telegraph Traffic Supervisor Group 'C'. Promotion will be strictly by selection. There is yet another stream from where promotions to T.T.S. Group 'B' is resorted to. As per Rule 177 - Promotions:- Permanent vacancies in Grade II of the Telegraph Traffic Service Group 'B' are filled by promotion of selected Telegraph Masters in the order of priority fixed by the Board of Selection detailed at Rule 174.1. (ii). However, there is no All India Cadre of such posts. Whenever there are requirements of officers to fill up various cadre posts, the Telecom Directorate is approached as per Rule 180 which in turn allots required number of officers of these services by holding DPCs or competitive examination whichever is prescribed. The responsibility for manning the post are squarely shouldered upon the Heads of Circles who are empowered to make local / station arrangements wherever necessary. (Rule 177.1).

10. The word 'cadre' means 'permanent and temporary posts' of a particular service which has already been decided by the Hon'ble Supreme Court in its judgement quoted at 1974 SC L&S 541. The meaning of 'cadre' also has been pronounced upon by the Apex Court. It says that the word 'cadre' includes both permanent and temporary posts of a service or part of a service sanctioned as a separate unit. Based upon this judgement and the definition of cadre in F.R. 9(4), the averments of the respondents seem to be quite acceptable that the U.P. Telecom Circle is having separate cadre of officers in T.T.S. Group 'B' manning several posts of different grades / category sanctioned in that Circle. The blue list annexed by the applicants is an All India list of T.T.S. Group 'B' circulated by Director General Telegraph. But that cannot be said to be the gradation / seniority list of the several cadres of sanctioned posts of the three category of officers in T.T.S. Group 'B' i.e. cadres of (i) Superintendents of Telegraph Offices (ii) Addl. Superintendents of Telegraph Offices and (iii) Assistant Director (Traffic). That would not give any help to the officers of the Group 'B' working in the Maharashtra Circle, claiming parity with reference to the stepping up of pay to that of the officers of the U.P. Circle.

11. As would appear from the provisions of P&T Vol. IV, the Heads of Circles are required to make local arrangements till they are able to get regularly promoted officers from the Telecom Directorate and it was in this context that one Shri Baleshwar Singh of UP Circle got adhoc promotion continuously for several years before he was regularly promoted to TTS Group 'B' and started getting higher pay compared to the applicants. This advantage of higher pay cannot be passed on to the seniors working in other Circles who belong to different cadres and units of the TTS Group 'B'. The intention in providing for stepping up of pay under F.R. 22-C did not envisage such type of circumstances. The stepping up of pay is permissible under F.R. 22-C when:

- (a) both the junior and senior officers who belong to the same cadre and the post 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; and
- (c) the anomaly should be directly as a result of the application of F.R. 22-C

12. The one case which has been the basis of the judgement of Hon'ble Single Member of the Calcutta Bench of the Tribunal, the case of Anil Chandra Das Vs. UOI and Ors decided on 28th January, 1988. In that judgement, the details of the applicants' office

and those of the juniors are not mentioned. However, there is a mention that the applicants were given stepping up of pay which was subsequently cancelled by the respondents. However, both the applicants and their juniors were in the same cadre before promotion and were promoted to identical cadre after promotion. Accordingly, the learned Single Member ordered the stepping up of pay. This was followed by another Single Member of the Hyderabad Bench of the Tribunal in the case of Smt. N. Lalitha & Ors versus UOI & Ors decided on 15th November, 1991. In this case, the applicants had prayed to step up their pay at par with their immediate juniors in the same category of Upper Division Clerks w.e.f. 1.3.1985 in the old scale and w.e.f. 1.1.1986 in the new scale. The facts and circumstances of that case were entirely different as the applicants happened to be Upper Division Clerks in the same unit / office. There is a mention in this judgement regarding another case, V. Vivekananda Vs. Secretary, Ministry of Water Resources in OA No.622 of 1989 and RP 71 of 1990 of Hyderabad Bench wherein the pay of the juniors were fixed at a higher point by virtue of the ad hoc promotion they enjoyed. Hyderabad Bench, following the Calcutta Bench judgement decided that not having had the benefit of fortuitous adhoc promotions the senior should not be at a disadvantage in pay fixation, and, therefore, directed the respondents to step up the pay of the applicant therein on par with his juniors. This matter was appealed against by the Government in the Hon'ble Supreme Court which, by its order dated 22.8.91, in disposing of the SLP No.13994 of 1991 upheld the decision of the Hyderabad Bench. However, the details of V. Vivekananda case ~~are~~ not available now. If the facts and circumstances of this case are identical with

those of Smt. N. Lalitha & Ors, this case also has no present relevance to the application. In this context, learned Counsel for the applicant referred to the recent judgment of this Bench in which the learned Vice Chairman in a Single Member Bench conferred the benefit of stepping up the pay of some senior Accounts Officers who admittedly belonged to one common cadre (OA No. 926/93 decided on 19.7.1994). Besides, the learned counsel was also able to cite a latest judgement rendered by a Division Bench of the Tribunal at Calcutta on 18.8.1994 (Baidyanath Bandopadhyay vs. UOI & Ors.). It is a totally identical case in favour of the applicants. In that OA, with reference to the same of Baleshwar Singh of UP Circle, the applicants were given the benefit of stepping up of pay. While deciding this case, Hon'ble Division Bench also referred to various cases cited herein and a case decided by the Ernakulam Bench in OA No. 337 of 1993 (G.K. Nair vs. UOI) reported in 1994 (1) ATJ 36, where the pay of the seniors were ordered to be stepped up with reference to Baleshwar Singh who was admittedly a junior.

13. Now there are two Division Benches orders conferring the benefit of stepping up of pay to Group 'B' officers belonging to different circles of Telecom Department with reference to a junior officer of TTS Group 'B' belonging to UP Telecom Circle. As discussed above, the question primarily relates to the definition of the word 'Cadre'. Since F.R.22-C applies to officer belonging to the same cadre and promoted to the same

cadre. If the cadre is considered to be synonymous with a service, then the Division Bench judgement in the matter decided in similar cases will hold good. However, I respectfully disagree with the views of Hon'ble Division Benches of Ernakulam and Calcutta of this Tribunal that the cadre of TTS Group 'B' is synonymous with a Telegraph Traffic Service Group 'B' on the ground that when a service happens to have ramifications all over the Country having several categories/classifications/designation of posts, the definition of the word 'cadre' in its proper perspective has to be clearly spelt out and canvassed before the Tribunal.

This term has scarcely been used in P&T Manual Vol IV and has not been defined. Rule 32A, 32B and 32C mentions that gradation list should be maintained for each class of officials, according to seniority. It is only in the Rule 32-E dealing with seniority that the word 'cadre' has been used. Rule 32-E reads as follows :

"Subject to any special rules prescribed for any particular service, the seniority of an official in the cadre to which he belongs should be fixed according to the date of his permanent appointment to that cadre. When this date happens to be the same in the case of two or more officials, seniority should be determined according to the following principles :-

- (a) In cadres to which recruitment is made through an examination,
 - (i) If the examination is competitive, seniority should be fixed according to the order of merit in the examination. Where recruitment is made

partly from departmental candidates and partly from outsiders, the former should always rank senior to the latter.

(ii) If the examination is qualifying, seniority should be fixed according to the position of the official on the waiting list.

(b) In cadres to which recruitment is made by promotion,

(i) If it is on the basis of pure selection seniority should be fixed according to the order of preference; and

(ii) If it is on the basis of seniority subject to the rejection of the unfit, seniority should be fixed according to the position of the official in the cadre from which promoted.

From the foregoing, one can infer that a service and ^acadre are two different things. Chapter VI of the Manual dealing with Gazetted Officers of Telegraph Traffic does not mention this word in any of the rules ranging between 168 to 180. It mentions of Group 'A' and 'B' and the grades therein. Groups of service or grades of service obviously cannot be cadres of that service.

14. Therefore, the only definition applicable to the word 'cadre' is that of F.R. 9(4). In the case of G.R. Luthra vs. Lt. Governor decided by the Hon'ble Supreme Court (1974 SCC 541), the applicants contended that the expression "the length of service rendered by them in the cadres to which they belong" means the length of service has to be considered only with reference to the substantive appointment to permanent posts which alone were included in the service on May 17, 1971, which is the relevant date for the purpose of determining seniority."

Second, the length of service rendered by the candidates in the cadres to which they belong at the time of their initial recruitment to the service (Delhi Higher Judicial Service / Provincial Civil Service (Judicial Branch, Punjab) can have reference only to the cadre of Additional District & Sessions Judge and the cadre of District & Sessions Judge from which recruitment was made in accordance with Rule 6 (1). Cadre is a permanent establishment. The word 'belong' in the expression "cadres to which they belong" means that a person is a member of the cadre in a substantive appointment against a permanent post. The use of expression 'cadres' in contrast to the expression 'cadre' which is used in Delhi Judicial Service Rules shows that recruitment is from two distinct cadres of Additional District & Sessions Judges and District & Sessions Judges.

Court

Hon'ble Supreme Court observed in this context "the fallacy of the appellant is that the appellant wants to equate cadre with substantive appointment to permanent post." Their Lordships said "Temporary Post may be posts created to perform the ordinary work for which permanent posts already exist. Temporary post may also be temporary additions to the cadre. "Cadre" in Fundamental Rule 9(4) means the strength of a service or post of a service sanctioned as a separate unit. They further ruled that the word 'cadre' includes both permanent and temporary posts. In M.P. Shikshak Sangh & Another

vs. State of M.P. cited at 1987 LAB IC 1126, a Division Bench of that High Court elaborated the definition of the word 'cadre' as follows :-

"Therefore, according to the definition as well as its logical meaning which is being used in common parlance 'cadre' cannot be construed to mean a post unless and until the strength of an establishment or service sanctioned as a separate unit prescribing a separate scale of pay is demonstrated."

15. Thus, in the light of the foregoing, the T.T.S. Group 'B' cannot be limited to the narrow compass of a cadre which actually a part of the service sanctioned as a separate unit for each telegraph Circle. There are three cadres of categories of officers in this service - (i) Superintendents of Telegraph Offices (ii) Addl. Superintendents of Telegraph Offices and (iii) Assistant Director of Traffic. The officers belonging to these cadres do not have All India liability of transfer as a matter of routine, but can be transferred out of a Circle as a special case. T.T.S. Group 'B' as a Central Service has some of the character of All India Services like Indian Administrative Service, Indian Police Service and Indian Forest Service, working as State Cadres.. A cadre is composed of Temporary and Permanent posts manned by a members of a particular service. A service is not synonymous with a 'cadre' which means the sanctioned strength of service or establishment as a separate unit. It is nobody's case that there is an All India sanctioned strength for various categories of posts in the T.T.S. Group 'B'.

Such sanctions are available for each Circle separately as a Circle is an established Administrative Unit of Telecom Administration. I cannot but disagree with the conclusions arrived at by the Hon'ble Division Benches of Ernakulam and Calcutta for the reasons discussed above. Accordingly, I would like to have this matter placed before the Hon'ble Chairman of the Tribunal for constituting a larger Bench to adjudicate in the matter.

(N.K. VERMA)
MEMBER (A)

cvr.

Copy to:-

- (A) Mr. V.G. Kelkar & Ors. (OA. 1333/93),
 - (B) Mr. M.D. Garde (OA. 457/94),
 - (C) Mr. S.V. Parbhu & Ors. (OA. 512/94),
C/O. Mr. H.Y. Deo, Adv.
2. The Union of India & Ors.,
through Mr. P.N. Pradhan, Adv.

SECTION OFFICER.