

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 1040/94 AND 1057/94.

Dated this Thursday the 8th day of July, 1999.

CORAM : HON. SHRI JUSTICE S. VENKATARAMAN, VICE-CHAIRMAN.

HON. SHRI S. K. GHOSAL, MEMBER (A).

V. R. Samant,  
Asstt. Engineer, V.F.T.  
Maintenance,  
Fountain Telecom Bldg. I,  
3rd. Floor,  
Bombay - 400 023.

Residing at -

Krupa Prasad,  
Dawood Bagh Road,  
Bombay - 400 058.

... Applicant in  
O.A. No. 1040/94.

B. R. Annigeri,  
Asstt. Engineer,  
Co-axial Maintenance,  
Fountain Telecom Bldg. -I,  
4th Floor, Bombay-400 023.

Residing at -

Joshi Wadi,  
Brahmanali Papady Vasai,  
Dist. Thane - 401 207.

... Applicant in  
O.A. No. 1057/94.

(By Advocate Ms. S. Gode for  
Shri G. K. Masand).

VERSUS

1. Union Of India through  
The Secretary,  
Department of Telecommunication,  
New Delhi.
2. The Chairman,  
Telecom Commission,  
Department of Telecommunication,  
New Delhi.

3. The Chief General Manager,  
Maintenance,  
Western Region,  
Telephone House,  
12th Floor, V.S. Marg,  
Prabhadevi, Bombay-400 028.

... Respondents in  
both the O.As.

(By Advocate Shri S. S. Karkera  
for Shri P. M. Pradhan).

ORDER (ORAL)

PER.: SHRI JUSTICE S. VENKATARAMAN, VICE-CHAIRMAN.

The applicants have filed these applications seeking stepping up of their pay in par with their junior Shri A.G.N. Pai on the ground that the junior who had been given adhoc promotion earlier and whose pay was <sup>projected</sup> ~~affected~~, is now getting more than the pay drawn by them. The applicants have relied upon the judgement of the Tribunal in support of their claim. However, the Apex Court in Union Of India & Others V/s. R. Swaminathan reported in 1997 SCC (L&S) 1852 has held that stepping up can be given only in cases covered by F.R.-22 or by relevant Government orders and that if the junior is getting more pay than the senior on account of he having worked in the higher post on adhoc basis, his seniors would not be entitled to stepping up of pay. In view of this decision of the Apex Court, the applicants' claim for stepping up cannot be sustained.

2. For the above reasons, both the applications fail and <sup>they are</sup> ~~it is~~ accordingly dismissed. No costs.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

ORIGINAL APPLICATION NO. 1057 OF 1994

B.R. Annigeri

.. Applicant.

Versus

Union of India & Ors.

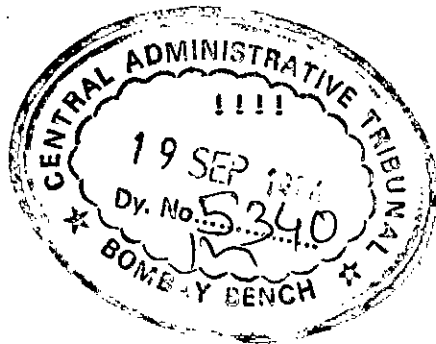
.. Respondents.

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Mr. Sinha

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

ORIGINAL APPLICATION NO. 1057 OF 1994

B.R. Annigeri,  
adult Hindu, Indian  
Inhabitant, working as  
Asstt. Engineer, Co-axial  
Maintenance, Fountain  
Telecom Building.I, 4th  
floor, Bombay-400 023 and  
residing at Joshi Wadi,  
Brahmanali Papady Vasai,  
District Thane-401 207.

... .. APPLICANT.

Versus

1. Union of India,  
through the Secretary in  
the Department of Teleco-  
-mmunication, New Delhi.
2. The Chairman,  
Telecom Commission,  
Department of Telecommu-  
-nication, New Delhi.
3. The Chief General Manager,  
Maintenance, Western  
Region, Telephone House,  
12th floor, V.S. Marg,  
Prabhadevi, Bombay-400 028.

... .. RESPONDENTS.

ALTERNATIVE

DETAILS OF THE APPLICATION:

I. PARTICULARS OF THE ORDER AGAINST WHICH  
THE APPLICATION IS MADE :

Applicant takes exception to the in-action of the Respondents in not stepping up the pay of the Applicant to that of his junior, who, though having been promoted to TES Group-B later in point of time and assigned seniority position below the Applicant is drawing more pay than the Applicant. Applicant states that on coming to know about anomalous situation, applicant made representation for stepping up his pay. However Respondent No.3, by letter No.Nilk received by the Applicant on 11.1.1994, rejected the Applicant's representation for stepping up his pay to that of his junior. A copy of the said letter is annexed hereto and marked as Exhibit-A.

Exh.A.

II. JURISDICTION OF THE TRIBUNAL:

Applicant declares that the subject matter for which he wants redressal is within the jurisdiction of this Hon'ble Tribunal.

III. LIMITATION :

Applicant states that he has recently come to know about the anomalous situation of his junior drawing more pay than him and accordingly made representation to the Respondent No.2 which was rejected by letter dated 7.1.1994 (Exh.A). The present application is therefore within the limitation period prescribed under the Administrative Tribunals Act.

IV. FACTS OF THE CASE :

1. Applicant states that he joined the Department of Telecommunication as Engineering Supervisor and allotted 1970 as the year of recruitment. Applicant states that he passed qualifying Departmental Exam for promotion to TES Group-B service held in November 1977 and became eligible for promotion to TES Group-B Cadre from that date in accordance with the seniority which is determined on the basis of the date on which candidate/Engineering Supervisor passed the qualifying examination for promotion to TES Group-B service under the promotions of Para.-206 of P & T Manual Vol.IV. Applicant states that he was regularly promoted to the post of TES Group\_B on regular basis with effect from April 1990 under the Order of Department of Telecommunication dated 25.4.1990 . Applicant states that he is presently posted as Assistant Engineer in the office of Respondent No.3 in the TES Group-B Service.

2. Applicant states that at this stage, it is necessary to give reference to Shri A.G.N.Pai who is presently working as Assistant Engineer, TES Group-B Service in MTNL Bombay. The said Shri A.G.N.Pai was appointed as Engineering Supervisor on 26.12.1973 and allotted 1972 as the year of recruitment. The said Shri A.G.N.Pai passed his qualifying examination for promotion to TES Group-B in 1980 and was promoted to TES Group-B by Order dated 16/19-11-1990. Applicant's

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name in the seniority list of TES Group-B is at Serial No.10705 and that of Shri A.G.N.Pai in the said list is at 11987.

3. Applicant states that in November 1990 Applicant's basic pay was Rs.2240/- whereas the basic pay of Shri A.G.N.Pai was Rs.2675/- In August 1994 the basic pay of the Applicant was Rs.2525/- whereas the basic pay of Shri A.G.N.Pai was Rs.2900/-. It will be seen from the above the Applicant's junior Shri Pai is drawing more pay than the Applicant.

4. Applicant states that under the Circulars and other Memorandum issued by the Government of India under the provisions of FR 22-C the pay of a Government Servant cannot be fixed lower than that of his junior at any point of time. Applicant states that in accordance with the relevant Rules and regulations, applicant's pay is required to be stepped up to that of Shri A.G.N.Pai, who, being Applicant's junior, is drawing more pay than the Applicant. In this regard the Government of India, Ministry of Finance, have issued Office Memorandum No.F-2(78)-E-3(A)66 dated 4.2.1966 in which it is stated that where, as result of the application of FR 22-C, a Government Servant promoted or appointed to higher post drawing a lower rate pay in that post than another Government servant, Junior to him in the lower grade and promoted or appointed subsequently to another identical post, the pay of the senior officer in the higher grade should be stepped up to a figure equal to the pay as fixed for Junior Officer in

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the higher graded

5. Applicant states that in or about October 1993, Applicant learnt that such an anomaly viz. that his junior was drawing more pay than him, had arisen, whereupon the Applicant, by his letter dated October 20, 1993 made a representation to Respondent No.2 wherein Applicant pointed out that though he was promoted earlier than Shri A.G.N. Pai and shown senior to the said Shri A.G.N. Pai in ~~is~~ the seniority list yet the Applicant's junior had been drawing more pay. Applicant requested that the anomaly be rectified and his pay be stepped up to that of his junior Shri A.G.N. Pai and grant to him all the consequential benefits including defference of pay etc. Annexed hereto and marked as Exhibit-B is the copy of Applicant's letter dated 20.10.1993. The Applicant on enquiries learnt that Applicant's junior Shri A.G.N. Pai who ~~h~~ was then working ~~x~~ in MNFL had been promoted to TES Group-B on adhoc basis from 3.5.1982 onwards and continuously held the promoted post in TES Group-B service till he was regularly promoted in November 1990, in the cadre of TES Group-B. The said Shri A.G.N. Pai on account of such continuous ad-hoc officiation was not only paid the pay attached to the post of TES Group B service but was also drawing yearly increments regularly. Therefore, on his regular~~x~~ promoted in 1990, the said Shri A.G.N. Pai's pay was fixed taking into consideration not only the pay drawn by him earlier but also the increments earned by him, from 1982 onwards till 1990. As a gainst

Exh.B



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this applicant who promoted in 1986 May on adhoc basis in TES Group-B was reverted in December 1989 with the result Applicant did not get the benefit of earning extra increments.

6. Applicant states that TES Group-B service is an All India Cadre and the seniority list is maintained on All India basis. The basis eligibility for promotion to the TES group-B service is that the Candidate viz. the Engineering Supervisor is required to pass the qualifying examination for TES-Group-B service under para 206 of P&T Manual and on the basis of the date of passing the said qualifying examination the Engineering Supervisor becomes eligible for being considered for promotion in TES Group-B in accordance with the seniority position determined on the basis of the date of passing of the qualifying examination. Applicant states that the applicant has passed the qualifying examination for promotion to TES Group-B earlier in point of time and was therefore eligible for being considered for promotion to TES Group-B earlier in point of time than his juniors. However the Respondents did not fill the vacancies which had arisen in TES Group-B on regular basis but resorted to fill said posts on adhoc basis on local arrangement basis. Though the promotions were made as local arrangement and on adhoc basis, the said promotion continued for 7 to 8 years. Applicant states and submit that it was incumbent upon the Respondents to promote the senior most eligible persons who had passed the qualifying examination earlier in point of time even while the respondents resorted to filling up the post on adhoc basis for such long period.

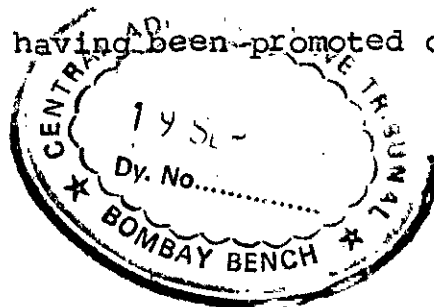


7. Applicant further states that adhoc promotion/appointments to TES group were made purely on temporary, fortuitous and adhoc basis and in any case could not have exceeded 6 months Applicant further states and submits that the practice of giving adhoc promotions, particularly on local basis was to meet the exigencies and such promotions (even continuous) would not confer any benefit of seniority to the incumbent promoted from the post of Junior Engineer/Junior Telecom Officer/Engineering Supervisor to TES Group-B on adhoc basis.

8. In response to his representation dated 20.10.1993, Applicant received on 14.5.1994 a letter from Respondent No.3 by which he was informed that in view of the Directorate of Telecom letter dated 31.5.1993 it was held that the applicant was not entitled to stepping up of pay to that of his junior. Applicant states that the said letter was waved in view of the judgement of Hyderabad Bench of this Hon'ble Tribunal in the case of Smt. N. Lalitha Vs. Union of India and others reported in 1992 (19) ATC para 569 wherein this Hon'ble Tribunal held that the increments earned by a junior during his adhoc promotion on the basis of local seniority leading to fixation of junior's pay at ~~the~~ a higher pay than that of the senior, would amount to anomaly within the meaning of FR22-C which would entitle the senior to fixation of pay on par with the

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said junior. The said letter dated 31.5.1993 clarified that the benefits of the said Judgement would not be extended to other similar Government servants as the same did not constitute an anomaly, and stepping up of pay could not be allowed under the extant orders. Applicant states that not only the said instructions issued by the Department of Telecommunication is illegal and bad in law but is also in violation of the Principles laid down by the Hyderabad Bench of this Hon'ble Tribunal. Applicant further states that infact thereafter the Madras Bench of this Hon'ble Tribunal vide its Judgement dated 4.6.1993 in Original Application No.1800 of 1992 and 1801 of 1992 reiterated the principles laid down by the Hyderabad Bench of this Hon'ble Tribunal and directed the respondents to step up the pay of the applicant in the said cases, to that of their juniors, who by virtue of being promoted on adhoc basis had earned increments in the higher posts. Thereafter the Ernakulam Bench, dealing with the same Department of Telecommunication reiterated the Judgement given by the Hyderabad Bench ~~of~~ and Madras Bench of this Hon'ble Tribunal and directed the Respondents therein to step up the pay of the Applicants therein. The Bombay Bench of this Hon'ble Tribunal, in various Original Applications, including Original Application No.224 of 1993 has, in similar circumstances, directed the Respondents to step up the pay of the Applicants therein whose pay was fixed at lower stage than their respective juniors in view of the juniors, having ~~been~~ promoted on ad hoc basis



and earned increments. Applicants crave leave to refer to and rely upon the judgements delivered by this Hon'ble Tribunal when produced at the time of hearing of this Original Application.

V. GROUND FOR RELIEFS WITH LEGAL PROVISIONS:

Being aggrieved by the impugned action of the Respondents in not stepping up the pay of the Applicant, to that of his juniors in accordance with the provisions of FR 22-C and the office memorandum of Government of India dated 4.2.1966, Applicant is constrained to approach this Hon'ble Tribunal and submits that appropriate reliefs be granted in favour of the Applicant on the following amongst other grounds :

- (a) Applicant submits that it is a cardinal principle that the pay of senior cannot be lower than that of his junior. And in case such an anomaly occurs it is the paramount duty of the Government to step up the pay of the senior equal to that of his juniors, especially when the junior ~~xx~~ has all along remained a junior. Applicant states that in the present case admittedly Shri A.G.N. Pai is junior to the Applicant not only in the grade/post of Junior Engineer/Junior Telecom Officer/Engineering Supervisor but is also junior to the Applicant in the TES Group-B. Applicant

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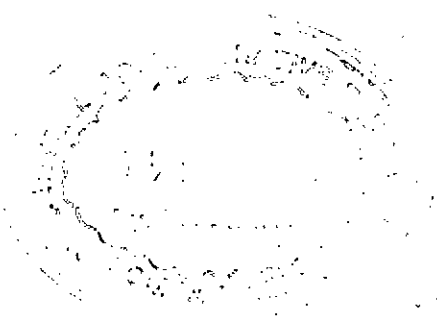
therefore submits that Respondents are liable to be directed to step up the pay of the Applicant equal to that of his juniors Shri A.G.N.Pai with retrospective effect.

- (b) Applicant submits that a perusal of the Government of India O.M.Dated 4.2.1966 clearly shows that where a Government Servant draws lower rate of pay than another Government servant, junior to such Government Servant in the lower grade and promoted or appointed subsequently to another identical post, the pay of the senior officer in the higher post has to be stepped up equal to the pay of the junior officers in that higher post. Applicant submits that he qualifies and fulfils all the conditions prescribed in the said office memorandum dated 4.2.1966. The Respondents are therefore liable to step up the pay of the Applicant equal to that of his juniors with retrospective effect.
- (c) Applicant submits that it appears that the pay of the said Shri A.G.N.Pai and others has been fixed at higher rate than the applicant on the ground that applicant had no benefit of continuous adhoc promotion in the TES Group-B prior to his regular promotion in March 1990



whereas the said Shri A.G.N.Pai had during the said period earned increments while being posted to TES Group-B on adhoc basis prior to his being promoted on regular basis in November 1990.

Applicant submits that on account of such fortuitous adhoc promotions, applicant who is senior to Shri A.G.N.Pai should not be put at a disadvantage position in the matter of pay fixation. Applicant submits that applying the Judgement of the Central Administrative Tribunal, Hyderabad Bench in the case of Smt. N. Lalitha Vs. Union of India and Ors. reported in 1992 (19) ATC page 569, the Respondents be directed to step up the pay of the Applicant on par with his junior Shri A.G.N.Pai.

- (d) Applicant submits that the said Shri A.G.N. Pai is Applicant's junior not only in the post of TES Group-B but also in the grade of Junior Engineer/Junior Telecom Officer/Engineering Supervisor. Applicant, therefore, submits that his pay, in accordance with relevant rules and regulations and Government of India instructions, is liable to be stepped up to that of Shri A.G.N.Pai with retrospective effect.
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- (e) Applicant submits that the action of the Respondents in not stepping up the pay of the Applicant, equal to that of Shri A.G.N.Pai with retrospective effect is otherwise illegal, bad in law and violative of Articles 14 and 16 of the Constitution of India.
- (f) The action of the Respondents in refusing to step up the pay of the Applicant is otherwise illegal bad in law and liable to be set aside.
- (g) Applicant submits that even otherwise the applicant having passed the qualifying examination earlier in point of time was entitled to be promoted even on adhoc basis earlier in point of time than his junior Shri A.G.N.Pai who, by virtue of said continuous on adhoc basis had not only drawn higher pay but also earned regulary early increments which have been taken into consideration while fixing his pay on his regular promotion.

VI. DETAILS OF REMEDIES EXHAUSTED:

Applicant submits that he has made representation to the Chairman, Telecom Commission by his letter dated 20.10.1993 and the same has been replied in the negative. The Applicant is therefore, deemed to have exhausted all the remedies ~~xxxxxx~~ available under the Service Rules and Regulations.

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VII. MATTER NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT:

Applicant further declares that he has not filed any Application, Writ Petition or Suit regarding the subject matter in respect of which this Application has been made before any Court or any other Authority or any other Bench of the Tribunal nor any such Application, Writ Petition or Suit is pending before any of these.

VIII. RELIEFS SOUGHT:

In view of the facts stated in para (IV) and grounds stated in para (V), Applicant prays for the following reliefs:

- (a) That this Hon'ble Tribunal will be graciously pleased to direct the Respondents to step up the pay of the Applicant equal to that of his junior Shri A.G.N.Pai with retrospective effect from the date the said Shri A.G.N.Pai was first promoted to the TES Group-B.
- (b) That Respondents be directed to pay to the Applicant arrears of difference in pay on account of such fixation with retrospective effect together with interest thereon at the rate of 18% p.a.
- (c) That costs of this Application be awarded to the Applicant; AND



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- (d) That such other and further reliefs as are expedient be granted in favour of the Applicant.

IX. INTERIM RELIEFS IF ANY PRAYED FOR:

Applicant submits that great harm, prejudice and humiliation is caused to him by the act of the Respondents in fixing the pay of the Applicant lower than that of his juniors. Applicant submits that he has made out a clear case of discrimination which is violative of Articles 14 and 16 of the Constitution of India. Applicant therefore prays that:

"Pending the hearing and final disposal of this Application, Respondents be directed by a mandatory order of this Hon'ble Tribunal to step up the pay of the Applicant equal to that of his junior, Shri A.G.N.Pai."

X. APPLICANT DESIRES ORAL HEARING:

XI. PARTICULARS OF POSTAL ORDER / BANK DRAFT IN RESPECT OF THE APPLICATION

FFEE: P.O. No. 8 of 381353 dt. 15/7/94.

XII. LIST OF ENCLOSURES:

- (1) Copy of letter dated 7.1.1994.
- (2) Copy of Applicant's letter dated 20.10.1993.



V E R I F I C A T I O N

I, B.R. ANNIGERI, the Applicant herein,  
do hereby verify that the contents of Paras I  
to IV, VII, X and XI are true to my personal  
knowledge and Paras V, VIII and XII are believed  
to be true on legal advice and that I have not  
suppressed any material facts.

PLACE : BOMBAY.

DATED : 19/9/94

*Lawyer*

Advocate for Applicant.

*B.R. Annigeri*  
Applicant.

To,

The Registrar,  
Central Administrative Tribunal,  
Bombay Bench,  
Gulistan Building, Fort,  
Bombay-400 001.