

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

5

O.A. 1102/94

M.G.Joshi & 8 Others

... Applicants.

V/s.

1. Union of India,
Through: The Chairman
Telecom Commission
Department of Telecom
Sanchar Bhavan,
Ashoka Road,
New Delhi - 110 001.

2. The Chief General Manager,
Maharashtra Telecom Circle,
G.P.O. Building, Near V.T.,
Bombay - 400 001.

3. The Chief General Manager,
Telecommunication Project
Western Zone
Phonex Mills Compound
Lower Parel
Bombay - 400 013.

... Respondents.

O.A.1359/94

S.K.Joshi & 7 Ors.

... Applicants.

V/s.

1. Union of India,
Through: The Chairman
Telecom Commission
Dept. of Telecom,
Sanchar Bhavan,
Ashoka Road,
New Delhi - 110 001.

2. The Chief General Manager
Maintenance,
Western Telecom Region,
Telephone House,
Veer Savarkar Marg,
Prabhadevi, Dadar (West)
Bombay - 400 028.

... Respondents.

CORAM : Hon'ble Shri M.R.Kolhatkar, Member (A).

APPEARANCE :

Shri D.V.Gangal with
Shri H.Y.Leo, Counsel
for Applicant.

Shri P.M.Fraðhan, Counsel
for Respondent (OA-1102/94)

Shri Suresh Kumar alongwith
Shri M.I.Sethna, Counsel
for Respondents (OA-1359/94)

JUDGEMENT:

DATED : 20-10-95

[Per Shri M.R. Kolhatkar, Member (A)]

As the facts in these two cases are similar and the issues raised are identical, they are being disposed of by a common order. There are nine applicants in OA-1102/94 and there are eight applicants in CA-1359/94. These applicants are at present working as Sub-Divisional Engineers within the jurisdiction of Respondent-2. The applicants are comparing their pay with the pay of Shri Pillai K Shivshankaran who is drawing higher pay than all the applicants though he is junior to all applicants in the cadre of Sub-Divisional Engineer. The feeder cadre for the post of Sub-Divisional Engineer is Junior Telecom Officer (JTO). Their promotion was governed by Rule 206 of the P&T Manual Vol. IV which is reproduced below:-

"206. All Junior Engineers recruited after the 1st January, 1929 under the new system after serving for 5 years in Engineering Branch may be permitted to appear at the Departmental Qualifying Examination, which will be held from time to time in the subjects enumerated below, provided they have a good record. This qualifying examination is intended to test the general ability of Junior Engineers and their knowledge in the latest developments in Telegraphy and Telephony. A pass in this examination is an essential condition for promotion to Telegraph Engineering and Wireless Service, Group 'E'.

2. Promotion to the T.E. & W.S. Group 'B' will be made according to the principle of seniority-cum-fitness but the Engineering Supervisors who pass the qualifying earlier will rank senior as a group to those who pass the examination on subsequent occasions i.e., officials who passed the examination held in 1956 will rank as en bloc senior to those who passed in

7

1957. Their seniority inter se will, however, be according to their seniority in the cadre of Engineering Supervisors."

2. In accordance with this rule, the respondents are maintaining separate seniority list for the qualified Junior Telecom Officers for purpose of giving them promotions to the post of Sub-Divisional Engineer as and when vacancy arises according to the order of recruitment. Junior Telecom Officers qualifying this in the first attempt were placed in the seniority list in accordance with the marks obtained by them. Junior Telecom Officers qualifying this in subsequent attempts were placed in seniority list below the officers who qualified themselves in the first attempt. Because of this method of maintaining seniority list, Junior Telecom Officers who qualified themselves subsequently would get the promotion of Sub-Divisional Engineer earlier as compared to Junior Telecom Officers who were qualified earlier but were recruited at a later stage in the cadre of JTO. Some Junior Telecom Officers challenged this system of promotion before Allahabad High Court by Writ Petition No. 2739/81. Allahabad High Court gave its judgement on 28/2/85 by which the department was directed to promote petitioners w.e.f. day prior to the date of promotion of any person who passed the departmental examination subsequent to petitioners. By virtue of this judgement, the department circulated the new seniority list in April, 93. All the applicants claim to be senior to Shri Pillai K. Shivshankaran whose serial number in revised seniority list is 5843. The serial number of the applicants in the two OAs in this new seniority list is as below:-

8
OA.1102/94.

5178, 4099, 4517, 4345, 3821, 5515, 4679, 1747
and 4963.

O.A.1359/94.

5215, 5667, 5105, 5860, 3665, 5205, 5662 and 5020.

3. It is contended by applicants that though Shri Pillai.K.Shivshankaran had passed the exam quite later than all the applicants, Shri Pillai continues to enjoy the benefit of fortuitous officiating promotion as Sub-Divisional Engineer from June, 1978 and regular promotion from March, 79. Hence he is fixed on higher point in time scale of pay as Sub-Divisional Engineer as compared to applicants. The applicants then made a representation for stepping up of their pay vis-a-vis Shri Pillai.K.Shivshankaran who was now their junior., But the Department of Telecommunications issued a blanket order dated 31/5/93 directing the circle authority that such representations should not be forwarded to the Directorate in future, as these cases do not constitute an anomaly and stepping up of pay cannot be allowed under the existing orders. The relief claimed by applicants therefore is to set aside the order dated 31/5/93 and step up the pay of the applicants on par with the pay of Shri Pillai.K.Shivshankaran w.e.f. the day on which Shri Pillai started getting higher pay in the cadre of Sub-Divisional Engineer. and to pay the arrears of pay and consequential benefits.

4. Respondents have opposed the OA. They have stated that there have been certain developments consequent on the judgement of the Allahabad High Court. OAs were filed before/Tribunal for getting various benches of the

the judgement of Allahabad High Court and these OAs were consolidated and the Principal Bench held that the applicants were entitled to the benefit of judgement of Allahabad High Court dated 20/5/85 except that in the event of refixation of seniority and notional promotions with retrospective effect, they would be entitled only to refixation to their present pay, which should not be less than that of those who were immediately below them and that they would not be entitled to any back wages. This judgement was delivered on 22/4/92 and appears as Exhibit R-1 to the written statement of OA-1102/94. Respondents further contend that they had filed SLP before Supreme Court vide SLP 16698/92 decided on 13/5/94 and the Hon'ble Supreme Court directed the respondents to refix the scale as per judgement of Allahabad High Court. However, regarding backwages the Supreme Court had declined to grant backwages except that in the event of notional promotion with retrospective effect, they would be entitled to only their present pay which should not be less than that of those who were immediately below them. The respondents contend that in terms of the direction of the Hon'ble Supreme Court, respondent-1 issued order No. 16-3/92-STG-II dated 5/7/94. In para-2 of this communication it is stated as below:-

" In respect of those TES Group 'B' officers whose deemed date of promotion as indicated in above list have been later than their actual date of regular promotion to TES Group 'B', their pay may also be fixed with reference to their revised deemed date of promotion as contained in our 14 lists. However they will be allowed to draw their present pay and the differences in the pay so fixed and the pay they were drawing on the date of issue of these orders is to be treated

as personal pay to be absorbed in future increments."

5. It is contented by respondents that they have implemented the directions of the Supreme Court, and therefore the question of allowing any further stepping up of pay in terms of FR 22C, does not arise. According to the respondents, the promotion of Shri Pillai.K. Shivshankaran could not be considered to be fortuitous because he was promoted in terms of the rules then operative. The applicants cannot compare their pay with that of Shri Pillai.K. Shivshankaran and are not eligible for stepping up of pay.

6. The applicants contend that the interpretation placed by respondents on Supreme Court judgement is wrong and that the applicants are entitled to stepping up of pay with reference to Shri Pillai.K. Shivshankaran in terms of FR-22C in terms of case law on the point. In this connection, they refer to judgement of C.M. Hyderabad reported at 1992, 19 ATC 569, Smt. N. Lalitha and Others v/s. Union of India and Others where the Tribunal held that "increments earned during ad hoc promotion on the basis of local seniority leading to fixation of pay of junior at a stage higher than the senior's pay, in such circumstances, the senior, held, entitled to fixation of his pay on par with the pay of such junior." They also referred to the judgement of Shri G.K. Nair v/s. Union of India delivered by Ernakulam Bench of Tribunal on 29/10/93 in which it was held that the senior drawing pay lesser than juniors is entitled to have his pay stepped up to the level of that of his junior, irrespective of the reasons that lead to the anomaly

in pay. The respondents in OA-1102/94 have given a comparative statement of all applicants alongwith Shri Pillai.K.Shivshankaran as on 8/6/80 i.e. one day prior to the promotion of Shri Pillai.K.Shivshankaran.

Table giving the relevant information
regarding the applicants.

| Sr. No. | Name of the Applicant. | Year of Recruit- ment in J.T.O.'s Cadre. | Date/Year of join- ing quali- fying exam. for SDE. |
|------------|--------------------------------|--|--|
| 1. | Shri M.G.Joshi | 1969 | Sept.73. |
| 2. | Shri R.S.Nashte | 1967 | 12/8/71. |
| 3. | Shri M.C.Sindagi | 1968 | Oct.70 |
| 4. | Shri A.N.Kulkarni | 1967 | Jan.71 |
| 5. | Shri P.L.Waghmare | 1968 | Oct.70 |
| 6. | Shri V.R.Kulkarni | 1969 | Sept.73 |
| 7. | Shri S.M.Mupið | 1967 | July 69 |
| 8. | Shri Y.A.Kotnis | 1966 | 23/12/67 |
| 9. | Shri A.G.Pal | 1969 | 4/12/71 |
| 10. | Shri Pillai.K. Sivasankaran | 1961 | - |

| Year of Passing qualifying exam. for SDE. | Date/Year of continuous appointment as S.D.E. | Seniority List No. | Present Basic Pay. |
|---|--|-----------------------|--------------------------|
| 1976 | 1984 | 5178 | 2900 |
| 1975 | 1981 | 4099 | 3125 |
| 1976 | 1984 | 4517 | 2975 |
| 1975 | Jul. 84 | 4345 | 2900 |
| 1977 | Aug. 81 | 3821 | 2900 |
| 1976 | 13/7/81 | 5515 | 3050 |
| 1975 | 31/7/81 | 4679 | 3050 |
| Dec. 74 | 17/4/80 | 1747 | 3400 |
| 1976 | May. 23 | 4963 | 2750 |
| 1977 | March, 79 | 5843 | 3500 |

7. From the statement we see that the basic pay in the scale of Junior Telecom Officer, parent cadre of S.D.E. of Serial No. 1 to 9 is far below that of Serial No.10. It is pointed out that Shri Pillai is drawing more pay not because he is

senior but due to his higher pay before his promotion. However, in terms of directions issued on 5/7/94, the difference in the pay of Shri Pillai.K.Sivasankaran who now appears to be junior has been protected as his personal pay and accordingly it will be absorbed in future increments.

8. The protection of the pay of the erstwhile senior is strictly according to the direction of the Supreme Court which had observed

" We hold that in case the redrawing of the seniority lists results in reversion of Officers who had been duly promoted already, their interests should be safeguarded atleast to the extent of protecting the pay actually being drawn by them in case creation of the requisite number of supernumerary posts to accommodate them in their present posts is not found to be feasible. We order and direct accordingly."

9. It appears to us that what the applicants are asking us to do is to re-open the issue settled by the judgement of the Principal Bench and of the Supreme Court. In terms of the judgement of the Supreme Court, the department issued appropriate instructions dated 5/7/94. If the applicants feel that these instructions do not faithfully reflect the judgement of Supreme Court, the proper course of action for them would be to approach Supreme Court in appropriate proceedings. However, in the guise of -invoking case - law on the point of FR - 22C they cannot ask this Tribunal to grant backwages to the formerly junior Officers who have now become senior which backwages in terms were denied to them by Supreme Court.

It is well settled that there is required to be a finality to such matters and the settled position cannot be unsettled through such proceedings.

(13)

10. In our view, the reliance ~~referred to~~ ^{Made} by the applicants on the case law is entirely mis-placed. It is also significant whereas the applicants have challenged the circular dated 31/5/93 giving certain directions regarding mode of submission of representations, they have not challenged the instructions of the department dated 5/7/94 although the OAs were filed well after issue of the same viz. 19/9/94 (OA 102/94) and 27/10/94 (OA 1359/94).

11. In the light of the above, we find that the OAs are devoid of merit and dismiss the same. There will be no order as to costs.

(M.R.KOLHATKAR)
MEMBER (A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, PRESCOT RD. 4th FLOOR.

BOMBAY - 400 001.

REVIEW PETITION NO. 130/95 im

DATED : 02-01-96

ORIGINAL APPLICATION NO. 1359/94.

CORAM : HON'BLE SHRI M.R.KOLHATKAR, MEMBER (A).

S.K.Joshi & 7 Others

... Applicants

v/s.

Union of India & Others

... Respondents

ORDER (BY CIRCULATION)

X Per Shri M. R. Kolhatkar, Member (A) X

By my common judgement dated 20/10/95, I had disposed of two OAs namely OA No.1102/94 (M.G.Joshi & 8 Ors v/s. Union of India) and OA No.1359/94 (S.K.Joshi & 7 Others V/s. Union of India). The original applicants in OA-1359/94 have filed this review application praying for review of my judgement dated 20/10/95 on the ground that some of the specific statements/ averments made by the applicants in their OA as well as rejoinder are not taken into consideration by this Tribunal while pronouncing the judgement. It is further contended that the Tribunal has referred to the instructions issued by the department on 5/7/94 but those instructions were not issued by department with ^{the} direction of the Hon'ble Supreme Court but on their own, and moreover those instructions dated 5/7/94 did not have retrospective effect. The increments earned by these officials between the date of notional promotion

are treated by respondents as the personal pay of such officials. But the decision of the respondents of absorbing this personal pay in future increments of these officials is taken by the respondents on their own.

2. We have considered the submissions of the review petitioners. We have quoted ^{in our judgement} the relevant portion of the Supreme Court judgement which stated in terms that the interest of Officers liable to be reverted should be safeguarded atleast to the extent of protecting the pay actually being drawn by them. The direction to absorb the same, infact, ensures that the Officers do not continue to draw further increments and the divergence does not get widened.

3. On consideration of the submissions made in the Review Petition, I am of the view that no grounds have been made out warranting the review of my judgement dated 20/10/95 and especially relatable to rules under order 47 of CPC. The review petition, therefore, is dismissed. The order of dismissal is passed by circulation as provided in the rules.

M.R.Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

abp.