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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.446/94 & O.A.476/94

1. Shri Ramchandra Suryanarayan Shastri
2. Shri R.D.Gambhir .. Applicants in O.A.446/94
1. Shri Murlidhar Venkatesh Annigeri
2. Shri Kundapur Chandrasekhar Naik .. Applicants in O.A.476/94

-versus-

1. Union of India
through
The Chief General Manager,
Telecommunications,
Maharashtra Circle,
Old GPO Building, 2nd Floor,
Bombay - 400 001. .. Respondent No.1
in both the OAs
2. Shri J.B.Sonavane .. Respondent No.2
in O.A. 446/94
3. Shri LY.Dixit .. Respondent No.2
in O.A.476/94

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

Appearances:

1. Mr.Y.R.Singh
Counsel for the
Applicants.
2. Mr.S.S.Karkera
Counsel for
Mr.P.M.Pradhan
for respondents.

JUDGMENT:
(Per M.R.Kolhatkar, Member(A))

Date: 13-1-95

As these two cases are similar
in respect of facts and reliefs claimed
they are being disposed of together. The
reasons for the order are contained in
O.A.476/94

O.A.476/94

There are two applicants in this
case. Applicant No.1 was appointed as

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Telegraphist on 1-12-1958 in the then scale of Rs.110-240 and applicant No.2 was appointed as a Clerk and became Telegraphist on 19-1-1959. The respondent No.2 with whom the applicants compare their case was appointed as Telegraphist on 20-10-1959. Thus respondent No.2 is junior to both the applicants. The next promotional post was Asstt. Superintendent Telegraph Traffic and the applicants No.1 and 2 were promoted to this post in the then scale of Rs.425-750 w.e.f. 27-9-77 and 29-7-78 respectively, when they drew the pay of Rs.470/- and Rs.500/- respectively. Respondent No.2, however, was promoted to the post of A.S.T.T. on 1-10-81 and although he was junior, his pay came to be fixed at Rs.560/- It appears that this happened because the respondent No.2 was ^{since 1979} working on the post of LSG TM which was in the pay scale of Rs.425-640 which was a different pay scale from that of A.S.T.T. In 1979 when he ^{first} was promoted as LSG TM his pay under FR 22 C came to be fixed at Rs.500/- w.e.f. 1-10-79. He drew Rs.515/- in 1980 and in 1981 when he was further promoted as A.S.T.T. in the pay scale of Rs.425-750 his pay was again fixed under FR 22-C as a result of which he began to draw Rs.560/- which was higher than Rs.530/- ^{then being} drawn by applicant No.1 and Rs.545/- which was being drawn by applicant No.2.

2. However, the applicants ~~have~~ appear to have taken ^a long time to get ~~wise to the situation~~ because it was only on 23-5-92 and 18-6-92 i.e. after a lapse of 10 years ^{that} they made ^{respective} representations. Applicant No.1 received an interim reply viz. that his representation is being

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forwarded, on 25-8-93 and applicant No.2 received an interim reply on 1-7-92. They have filed this application on 28-1-94.

3. The applicants do not challenge any particular order. They challenge the action of the respondents in discriminating between respondent No.2 and the applicants in the matter of grant of pay inasmuch as respondent No.2 though junior not only in 1981 but also in 1991 as per the gradation list quoted by the applicants (applicant No.1 is at Sr.No.34, applicant No.2 at Sr.No.27 and respondent No.2 at Sr.No.61) is getting a higher pay.

According to the applicants they are entitled to relief in terms of Govt. of India, Min. of Home affairs, Deptt. of Personnel & A.R. O.M.No. 4(3)-82/Est.(P-I) dt. 15-2-1983. This memorandum deals with removal of anomaly introduced as a result of introduction of non functional selection grades and reads as below :

"(c)As a result of introduction of Selection Grades in Groups 'C' and 'D' cadres. - Cases have come to notice where a senior Government servant promoted to a higher post before the introduction of non-functional selection grade draws less pay than his junior who is promoted to a higher post later, after having been appointed in the selection grade.
2. In order to remove the above anomalies, it has been decided that in such cases the pay of senior employee in the higher grade may be stepped up to make it equal to the pay of the junior person, subject to the fulfilment of the following conditions:-

(i)The scale of pay of the lower post (ordinary grade) and higher post in which both junior and senior are

entitled to draw pay should be identical.

(ii) The senior employee should have been eligible for appointment to selection grade but for his working in the higher post on or before the date on which the junior was appointed to the selection grade;

(iii) The junior person should not have drawn more pay than the senior by virtue of fixation of pay under the normal rules or any advance increment granted to him in the lower post, and the anomaly should be directly as a result of the junior person holding selection grade in the higher scale at the time of his promotion to the higher grade.

3. The orders refixing the pay of senior employees in accordance with the provisions of this O.M. should be issued under F.R. 27 and the next increment of the senior employee be drawn on completion of the required qualifying service w.e.f. the date of refixation of pay.

4. The stepping up should be done with effect from the date of promotion of the junior employee to the higher grade but the actual benefits would be available from the date of issue of these orders or date of anomaly, whichever is earlier."

4. Let us consider whether these three conditions are applicable in the present case. Condition no.(i) viz. that both the junior and senior government servants should belong to same cadre has been fulfilled. Condition No.(ii) requires that the pre-revised and revised scales of pay should be identical. The pre-revised scale, that of Telegraphist, prior to 3rd Pay Commission ~~was Rs. 110-240~~ was of Rs. 110-240, and, in terms of 3rd Pay Commission the pay scale became Rs. 260-480. Thus pre-revised scale is identical.

drawn by both parties
The revised scale of A.S.T.T. is Rs.425-750.
Thus condition No.2 also appears to be fulfilled.
The third condition is that anomaly should be directly as a result of the junior person holding selection grade in the higher scale at the time of his promotion to the higher grade and should not be by virtue of advance increment or similar situation. This is also satisfied.

5. The respondents have resisted the application. According to the respondents the anomaly has arisen as a result of the fact that respondent No.2 was granted LSG scale which was Rs.425-640 and this LSG scale was a different scale than the one held by the applicants who were in the pay scale of Rs.260-480. Thus according to the respondents condition no.(ii) is not fulfilled in the case of applicants and because the applicants chose not to appear for the examination for LSG TM, they are drawing less scale of pay.

6. In the rejoinder, applicants have pointed out that LSG TM examination is not a step-in-aid to A.S.T.T. examination and seniority in the gradation list of A.S.T.T. cadre is not affected by passing the LSG examination. Moreover this issue as to whether condition No.(ii) can be said to have been fulfilled or not has also been settled by this Tribunal in S.T.Papalkar v. Union of India & Ors. decided on 15-10-91 in O.A.297/89. We are inclined to accept the contention of the applicants that passing of selection grade adversely by respondent No.2 does not affect the claim of the applicants to step up of pay. It is to be noted that the only condition for LSG TM examination

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is that of completion of 10 years of service. That examination was introduced to provide an intermediate non-functional grade to the candidates who were not in a position to pass the A.S.T.T. examination. It is not disputed that passing of A.S.T.T. examination and promotion to the post of A.S.T.T. represents ^a functional change as distinguished from LSG TM which is a non functional grade. The Govt. orders referred to specifically deal with this aspect. In Papalkar's case also it has been held that selection grade is not determinative of seniority.

7. The applicants ^{have} cited a number of cases both on the question of ^{their} entitlement of stepping up in the pay as well as on the question of limitation, because it is not disputed that the cause of action arose in this particular case on 1-10-81 ^{and still} the applicants chose to make a representation only in 1992 and chose to approach this Tribunal in January, 1994. On the point of entitlement, the applicant has relied on the following cases which we are quoting ^{mainly} ~~only~~ because they have been decided by Division benches.

(1) M. Mallikharjuna Rao v. G.M.
South Central Railway, Secunderabad
and another
(1993) 24 ATC 297

(2) M.L. Narula v. Union of India &
Ors.

A.T.R. 1986 CAT 161. In this latter case a Division bench presided over by Justice K. Madhava Reddy, the then Chairman of the C.A.T. allowed the relief of stepping up under FR 27 on the broad ground of discrimination irrespective of fulfilment of three conditions in the Govt. of India

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Ministry of Finance O.M.No.F.2(10)E.III/62 dt.
6-3-1962.

8. We have, therefore, no doubt that the applicants are entitled to the relief claimed not only because they have fulfilled the three conditions ~~is~~ contained in the Ministry of Personnel Memorandum dt. 15-2-83 which appears to be ~~revised~~ version of Finance Ministry's Memo of 6-3-1962 but also on the ground of discrimination.

9. Now coming to the question of limitation, no doubt the applicants have approached us much after the cause of action arose. The applicants however relied on the ratio of N.Lalitha and Ors. vs. U.O.I. & Ors. (1992)19 ATC 569 in which the learned Tribunal while noting that the representation was rejected on 5-8-1987 and the applicant did not approach in time, opined that since the point of law is very much in favour of the applicants they are entitled to the benefit of higher pay fixation but restricted the arrears to the period of one year prior to the filing of the application. They have also ^{cited} the authority of the Division bench decision in T.Atchutaramaiah vs. Regional Director, Employees' State Insurance Corporation Hyderabad, (1992)21 ATC 78 in which the applicant was entitled to relief from 1-1-86 but the applicant made a representation on 30-6-1988, the same was rejected in August, 1988 and he approached the Tribunal on 1-1-1991. The Tribunal granted the relief but ^{held that} he is entitled to arrears only with effect from one year prior to the filing of the application keeping in view ^{provisions} of Section 21 of the Administrative Tribunals Act.

10. We, in the light of ratio of cases cited consider that the applicants are entitled to the relief of notional stepping up of pay with reference to their junior respondent No.2 with effect from 1-10-81 but they would be entitled to arrears only from one year prior to the date of filing of the application viz. 28-1-93. So far as applicant No.1 is concerned, he has already superannuated on 31-8-92. He will therefore not be entitled to any pay arrears. He will be, however, entitled to refixation of his pension on the basis of notionally stepped up pay on the date of superannuation. He would also be entitled to arrears of pension so stepped up but only from the date of 28-1-93. There will be no order as to costs.

O.A.446/94

We grant the relief of stepping up to both the applicants in this case. The notional stepping up should be with reference to 22-9-81 from which date the respondent No.2 began to draw the higher pay scale. The arrears of pay would be available only for one year prior to the date of filing of the application viz. 28-1-93.

No order as to costs.

(M.R.KOLHATKAR)
Member(A)

R.P.No. 25/95
by Circular
2/10/12

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The RP No. 25/95
is fixed on 24/3/95
as directed by D.R.
Notice issued to the
both parties on 8/3/95.
Counsel Shri Y.R. Singh
has already noted,
for 8/3 Date noted

For
Y.R. Singh
Adv.
for Applicant.

Issue Notice to
the Respondents on 8/3/95
for 8/3
21/3

Order/Indo at despatched
to Applicant
on _____
no. sent (s)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

R.P.25/95 in OA 476/94.

1. Shri Murlidhar Venkatesh Annigeri &
2. Shri Kundapur Chandrashekhar Naik ... Applicants.
V/s.

1. The Union of India
Through: The Chief General Manager,
Telecommunication,
Maharashtra Circle,
Old G.P.O. Building, 2nd Floor,
Bombay - 400 001.
2. Shri L.Y.Dixit,
Asstt. Supdt. T.T.Incharge,
Telegraph Office,
Ichalkaranji, Distt.Kolhapur. ... Respondents.

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

APPEARANCES:

Shri Y.R.Singh, Counsel for
Applicants.

Shri Karkera for Shri P.M.Pradhan,
Counsel for Respondents.

TRIBUNAL'S ORDER:

DATED: 24/3/95.

¶ Per Hon'ble Shri M.R.Kolhatkar, Member(A) ¶

'Heard Shri Y.R.Singh for the Applicants and
Shri Karkera for the Respondents. Shri Karkera states
that he has not received the copy of the Review Petition.
Shri Y.R.Singh undertakes to supply a copy in the course
of today. We have considered the petition which is in the
nature of "speaking to the minutes" and we are of the view
it would be just and fair to make the following corrections
in para-10 of the order.

1. In Line No.8 counted from the top, the term
"applicant No.1" to be replaced by the term
"Applicant No.2."

2. In Line No.15 counted from the top, the term
"Pension" should be replaced by the term
"Pension, Gratuity, etc."