

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 101/1995

Transfer Application No.

Date of Decision 28-12-85

R. Parthasarathi

Petitioner/s

Shri A.I. Bhatkar.

Advocate for
the Petitioners

Versus

Union of India & Anr.

Respondent/s

Shri V.S. Masurkar. with Shri S.S. Karkera

Advocate for
the Respondents

CORAM :

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

Hon'ble Shri.

- (1) To be referred to the Reporter or not ? *
- (2) Whether it needs to be circulated to x
other Benches of the Tribunal ?

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY - 1

ORIGINAL APPLICATION NO. 101 / 1995

Pravara, this the 28 day of Dec 1995

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

R.Parthasarathi,
C/o.Shri A.I.Bhatkar,
4/13, Mohamed Ussain Chawl,
Opp. Antop Hill Post Office,
Wadala,
Bombay - 400 037. ... Applicant.
(By Advocate Shri A.I.Bhatkar)

V/s.

1. Union of India
through Secretary, Ministry
of Communications, Department
of Telecommunications, Sanchar
Bhavan,
New Delhi.
2. Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House, V.S.Marg,
Prabhadevi,
Bombay - 400 028. ... Respondents.
(By Shri V.S.Masurkar) with Shri S.S.Karkera)

ORDER

¶ Per Shri M.R.Kolhatkar, Member(A) ¶

In this O.A. under section 19 of the Administrative Tribunals Act the applicant has challenged the order dt. 31.5.1993 at Exhibit.1 on the subject of "stepping up of pay of senior in case junior drawing more pay due to fortuitous increase of pay" in which it has been stated that if any such claims based on ~~the facts~~ the decision of Central Administrative Tribunal, Hyderabad Bench in O.A. No.816/89 Smt. N. are made, Lalitha and Others the representations need not be forwarded to the Directorate because the benefits of the Judgment cannot be extended to other similarly

placed government servants. The applicant contends that he had made a representation for stepping up of his pay with reference to his junior Shri G.Natarajan, but the same was not replied to in the context of order dt. 31.5.1993 and therefore, he has prayed that the Respondents be directed to step up the pay of the applicant so as to bring the same on par with that of his junior and to direct the respondents to grant all consequential benefits including arrears of pay and allowances.

2. The applicant states that he was promoted as Accounts Officer on regular basis w.e.f. 2.6.1982 and the pay was fixed at Rs.840/-, his Blue Book Number is 80561 and the seniority number in the grade is 333. His junior Shri G.Natarajan's Blue Book Number is 80596 and seniority in the cadre is 368^{who} was promoted from 26.2.1983 and his pay on promotion was fixed at Rs.960/- Thus there is an anomaly in the pay fixation and in terms of settled law on the point he is entitled to have his pay stepped up w.e.f. 26.2.1983 to the level of the pay of Shri G.Natarajan. Apart from relying on the case of Shri N.Lalitha V/s. Union of India reported at (1992) 19 ATC 569) which was a case pertaining to promotion of UDC in the Ministry of Steel and Mines, the applicant has also relied on the case of O.P.Gupta & Ors. V/s. Union of India and Ors. reported at (1995)31 ATC 84 decided on 15.12.1994 by a Division Bench at Chandigarh. That was a case relating to promotion from Telegraph Traffic Superintendent group 'C' to T.T.S. Group 'B'. In that

case also, the same memorandum dt. 13.5.1993 from Ministry of Communications was cited. The Tribunal granted relief. Finally, the applicant relies on a Single Judge ^{of this Bench} decision/disposing of 11 cases relating to the same cadre viz. the cadre of Accounts Officers. The leading case was O.A. 926/93 and the Tribunal apart from relying on the Judgment of Smt. N. Lalitha and Anil Chandra Das V/s. Union of India (1988) 7 ATC 224) also relied on a Division Bench Judgment of the Ernakulam Bench in O.A. No. 1150/93 in which relief was given to 21 applicants vis-a-vis their junior Shri K. Sankaranaayanan all of whom were Accounts Officers. The applicant particularly invites our attention to the fact that O.A. No. 5/94 was among the group of 11 cases before the Division Bench in which relief was granted to the applicant with reference to G. Natarajan, the same Officer with reference to whom the present applicant is claiming the relief.

3. The respondents have opposed the O.A. firstly on the ground of limitation because the cause of action, if any, arose on 26.2.1983 when Shri G. Natarajan was promoted. Not only in Smt. N. Lalitha's case which / ^{was a} but ^{being DB cases} Single Bench case, ~~whereas~~, in all other cases/to which we have made reference, it was held that the cause of action is a continuing one, the issue being that of stepping of pay which ^{therefore} has a periodical character. We are ~~also~~ not inclined to accept the plea of the Respondents that the O.A. is barred by limitation.

4. The Respondents in para 3 have stated that the basic factual averments in para 4.1 of the

application are substantially correct. They have also conceded that the applicant is borne on the single All India Gradation List maintained by R.1 for regular promotion. However, the main contention of the respondents is that the applicant is not entitled to the pay being stepped up in comparison with Shri G.Natarajan because Shri G. Natarajan was working under C.G.M. Maintenance, Bombay and for ascertaining under what circumstances the said junior of the applicant got promoted it is necessary to make CGM Maintenance, Bombay as a party respondent. ^{The O.A. should be rejected} / For non-joinder of necessary parties. ^{We} are unable to accept the contention that the CGM Maintenance should have been joined as the necessary party because the applicant has made the Secretary, Ministry of Communications, Department of Telecommunications along with Chief General Manager, M.T.N.L. as ^{party} and the Departmental Secretary having been made a party it was for the respondents to show the circumstances under which Shri G.Natarajan got ad hoc promotion and therefore began to draw higher salary than the applicant which according to respondents dis-entitled him from claiming the relief of stepping up. The Respondents have further contended that in accordance with ^{the} provisions of F.R. 26 the spell of period spent by an officer while working on a higher post on ad hoc basis also counts towards increment and this provision results in junior getting a higher

pay at the time of regular promotions if they have a longer spell of ad hoc service at their credit. According to Respondents this provision under F.R.26 was neither challenged by the applicant nor considered by the Tribunal. It is also contended by the respondents that under F.R. 35 and in accordance with the Department of Personnel and Training O.M. dt. 22.10.1990 pay of official working in officiating capacity cannot be restricted if the officials satisfy all the eligibility conditions for regular promotions as prescribed in Recruitment Rules i.e. like educational qualifications etc.

5. In our view, the provisions of F.R. 26, F.R. 35 and erstwhile F.R. 22C need to be considered harmoniously. There may be several circumstances which lead to drawing^{of} the higher salary by a junior whether by operation of F.R. 26 or F.R. 35, but so long as conditions of F.R. 22C as enumerated under the Government of India Decision No.23 reproduced below are fulfilled, the applicant is entitled to the stepping up of pay with reference to that of his junior. Reproduced below are the conditions under decision No.23 under F.R.22-C:

- "(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."

6. Lastly, the respondents contended that a similar matter arose before a Division Bench of the Hyderabad Bench of the CAT in O.A. Nos. 1412/93, 127/94 & 129/94, the applicant in the leading case i.e. O.A. 1412/93 being B.L.Somayajulu V/s. Secretary, Ministry of Communications. That was a case relating to promotion of Junior Telecom Officers to the cadre of Assistant Engineers Group 'B'. While the JTO's are having circle seniority unit, AEs (Group 'B') are having all-India seniority unit. While interpreting the three conditions referred to above, the Division Bench felt that there was some ambiguity regarding comparison of pay in the lower category when the parties belonged to different seniority units and therefore, the Division Bench decided to refer the matter to Full Bench. The issue framed was as below:

"Whether the senior can claim stepping up of pay with reference to the pay of his junior when they worked in different seniority units before promotion and when the promotion was on the basis of integrated seniority list."

7. The learned counsel for the respondents Shri V.S.Masurkar vehemently argued that in the light of the reference to a Full Bench, this court may also be refer the matter to the Full Bench or

await the decision of the Full Bench.

8. The counsel for the applicant pointed out that the issue referred to by the Hyderabad Bench in Somayajulu's case was a different one applicable to the facts of that case viz. the promotion of Junior Telecom Officers to the cadre of Assistant Engineers ~~where~~ the JTOs are having circle seniority while the Assistant Engineers are having all-India seniority. In the instant case, however, this is not so. On the respondents' own admission both the applicant and person viz. Shri G.Natarajan with whom he compares himself belong to a single all-India gradation list. We are, therefore, of the view that the request ~~for~~ awaiting the decision of the full bench is not well conceived and is

rejected. We also hold that DOP instructions dt.11.12.1993 are fully complied with.

9. We are much impressed by the contention of the counsel for the applicant that this Tribunal is required to follow the binding ratio of 11 cases decided by this Tribunal on 19.7.1994 led by O.A. ~~926/94~~ and including O.A. ~~5/94~~ in particular. In the latter case viz. O.A. ~~5/94~~ the Tribunal had granted relief to the applicant in that case with reference to Shri G.Natarajan with reference to whom the applicant is claiming relief. We are therefore of the view that while the decision ^{about stepping up} is required to be taken in the light of facts and circumstances of the case including the department involved which may have different cadre structures, We are bound by the ratio of the Division Bench at Ernakulam, ~~which~~ in

the case of G.M.Yacob, Accounts Officers and Ors in O.A. 1150/93 decided on 29.10.1993 wherein the applicants were all Accounts Officers in the Telecom Department. The ratio of the Division Bench at Ernakulam was followed by a Single Bench of this Bench in O.A. 5/94 relating to the same department and the same cadre viz. Accounts Officer and the relief was granted with reference to the same junior viz. G.Natarajan. We have therefore no escape from granting of relief in this particular case, but so far as the relief relating to consequential benefits including the arrears is concerned the same has to be moulded according to the date of filing of the application. We therefore dispose of this O.A. by passing the following order.

O R D E R

The O.A. is allowed. The respondents are directed to fix the pay of the applicant with reference to his junior Shri G.Natarajan notionally w.e.f. 26.2.1983. The arrears of pay fixation should, however, be confined to one year prior to the date of filing of the application. The respondents are directed to make pay fixation and payment as directed above within four months from the date of communication of this order. There would be no order as to costs.

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)