

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, NAGPUR BENCH,

N A G P U R .

Date of Order : 29-5-97.

OA No.948/1995

1. J.L. Chattani, Sub Divisional Engineer,  
C/O General Manager Telecom, Nr. 'O'  
Mile Stone, Civil Lines, Nagpur.
2. R.B. Wagh, Sub Divisional Engineer,  
C/O Western Region Project, Amaraoti Road,  
Nagpur.
3. R.R. Jawanjal, Sub Divisional Engineer,  
C/O Director Maintenance, W.T.R. Nagpur.

... APPLICANTS

VERSUS

1. Union of India, through the Secretary,  
Ministry of Communications, Sanchar Bhavan,  
New Delhi.
2. Chief General Manager Telecom, Maharashtra  
Circle, G.P.O. Bldg, Bombay.
3. Chief General Manager, Maintenance Western  
Telecom Region, Telephone House, Veer Sawarkar  
Marg, Bombay-28.
4. Chief General Manager Projects, 462, S.B. Marg,  
Phonix Mills Compound, Lower Parel, Bombay-13.
5. General Manager Telecom Bhavan, Nr. Zero Mile  
Stone, Civil Lines, Nagpur-440 001.

... RESPONDENTS

Applicant: present in person.

Mr. M.G. Bhangde, for the Respondents.

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CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member.

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PER MR. A.K. MISRA, JUDICIAL MEMBER

The applicants who are Sub Divisional Engineers,  
posted at various places under the circles of the respondents

have prayed for stepping-up of their pay at par with their junior Shri K.S. Murthy.

2. Briefly stated the facts of the case are that the applicants are working as Sub Divisional Engineers in Telecom Department of Government of India and are posted at places shown in the cause title. It is alleged that all these applicants are senior to Shri K.S. Murthy. They were promoted as Sub Divisional Engineer vide orders dated 14.3.1988, 18.7.1988 and 23.12.1987 respectively- and joined on the promoted post on 30.3.1988, 6.9.1988 and 20.5.1988 respectively and their pay was fixed at Rs.2,240/-. Shri K.S. Murthy who is junior to all the applicants, was promoted vide an order dated 10.9.1988 and he joined on the same date, his pay was fixed at Rs.2,675/-. It is alleged by the applicants that they were promoted and posted earlier than Shri K.S. Murthy, yet the pay of Shri Murthy was fixed at much higher stage and is drawing more pay than the applicants. This anomaly has arisen due to the fact that respective junior enjoyed ad hoc / officiating promotion in the cadre of Sub Divisional Engineer and consequently, his pay was fixed at higher point. The applicants have further alleged that as per the existing judgments and rules propounded therein, the pay of the senior is required to be stepped-up at par with that of the junior, therefore, applicants are entitled to get their pay stepped up at par with their junior Shri K.S. Murthy. Since the respondents have refused to grant the relief claimed by the applicants in their representation/s, hence this OA.

3. The respondents have filed the reply in which it is alleged by them that the applicants and Shri K.S. Murthy, are all working in different functional units and, therefore, applicants cannot compare their case with Shri K.S. Murthy. The case of the applicants was carefully considered by the departmental authorities and it was found that Sh. Murthy, was getting more pay due to continuous officiation and, therefore, the applicants are not entitled to their pay stepped up in view of departmental letter dated 4.11.1993. The Telecommunication department is a vast organisation and ad hoc promotions are granted to facilitate easy and quick implementation of various works whatsoever. They have also pleaded that stepping up of pay can only be granted strictly in terms of the Government of India Circular dated 4.7.1992 and on fulfilling the conditions laid down therein. In the

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present case, there exists no such situation as such, applicants are not entitled to stepping up of their pay as claimed. The various judgments have their limited application and applicants cannot take advantage of the same. Original Application deserves to be rejected.

4. The applicants have filed their rejoinder in which they have said that respondents gave continuous officiating/ ad hoc promotion to the junior officers without break for years together whereas the officiating period is limited to 180 days only. Similarly, Shri K.S. Murthy has been benefited in this way and the applicants have been put to loss and disadvantageous position. Since the department is maintaining consolidated seniority, therefore, applicants are fully entitled to claim benefits as per the seniority shown in the blue book of the Telecom services. It is further alleged that till Shri K.S. Murthy and applicants were working as Junior Engineers, they were drawing equal pay and there existed no anomaly but the anomaly has arisen because Shri K.S. Murthy was given officiating promotion as Assistant Engineer in the year 1982 till 1988 and thereafter Shri Murthy was given regular promotion as Assistant Engineer on 30.9.1988 and his pay was fixed at Rs.2,675/-. Thus, applicants are entitled to stepping up of their pay.

5. The respondents have filed reply to the rejoinder refuting the claim of the applicants. To this reply, applicants have again filed reply reiterating their claim on the ground of natural justice and equity.

6. The applicant No.1 has argued the case for all the applicants. I have heard the applicant and learned Counsel for the respondents and gone through the record.

7. The applicants have stated that their junior Shri K.S. Murthy got the higher pay due to continuous ad hoc officiating promotion and have further alleged that this anomaly arose for the first time in 1982. In my opinion, when Shri K.S. Murthy was promoted by-passing the claim of the applicants, then the applicants should have raised their claim for ad hoc promotion but they have not disputed the position at that time. Thus, Shri K.S. Murthy continued to draw higher pay because he was given officiating ad hoc promotion. If he was continuing on officiating promotion more than 180 days, continuation of that ad hoc promotion should have been challenged at that stage but that has also

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not been done. If due to officiating promotion, pay of Shri K.S. Murthy was fixed at a higher stage and again if his pay was raised on his regular promotion, then the same should have been challenged at that stage but applicants havenot challenged the pay fixation of said Shri K.S. Murthy at the relevant time. The applicants individually represented in the matter for the first time on 14.10.1994 vide Annexure-11, on 27.8.1994 vide Annexure-13 and 1.7.1995 vide Annexure - 16 respectively only after they came across the judgment rendered on 13.4.1994 by the Bombay Bench of CAT., in OA No.224 of 1993 Shri S. Santhanum Vs Union of India & Ors. In my opinion, for representing the claim for stepping up of pay at par with Shri K.S. Murthy, cause of action to the individual applicant arose when Shri Murthy was given ad hoc officiating promotion and in any case in 1988 when Shri K.S. Murthy was given regular promotion in the higher cadre. The applicants did not raise any dispute when cause of action arose to them for the first time. All the applicants are seeking cause of action after coming across the judgment rendered by the Bombay Bench in 1994. In my opinion, the claim of the applicants is much belated and utterly time barred. On this ground alone, they are not entitled to any relief.

8. However, in the latest judgment, reported in 1997(1) ATJ 1, B.L. Somayajulu & Ors. Vs. Telecom Commissioner & Ors. the Full Bench of the Central Administrative Tribunal has laid down the following principles for stepping up of pay of an individual :

"Stepping up can be granted only where there is a provisional in law in that behalf, and only in accordance with that.

A claim for stapping up can be made only on the basis of legal right and not on pervasive notions of equity or equality, un-related to the context of statutory law.

Every claim must be based on an enforceable legal right - A right arises by conferment and not by comparison.

Held a jurisdiction in equity does not inhere in the Tribunal.

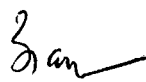
If wrong fixation of pay in the case of Junior is to bring about a corresponding fixation in the case of a senior by applying the principle of equity. Held that would be an instance using Article 14 to perpetuate illegality.

If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a Junior-Without challenging the wrong, he cannot claim a remedy from a wrong-He cannot acquiesce in a wrong, and make a gain from that wrong by a comparison."

9. If the rule propounded in the above case is applied in the instant case then it would be clear that applicants are claiming stepping up of their pay not on account of certain specific provisions of law but they are claiming the same by comparison of the pay of their junior Shri K.S. Murthy and also on the ground of equity, which is not at all permissible as per the rule laid down. If the pay of their junior was wrongly fixed then that wrong should have been challenged at the appropriate time. The applicants cannot be permitted to gain themselves by comparing their case with such fixation of pay. At the relevant time Shri K.S. Murthy and the applicants were working in different units although under the same Department. Thus, the case of the applicants cannot be got equated with that of Shri K.S. Murthy.

10. In view of the Full Bench judgment, referred above, and in view of the above discussion the applicants are not entitled to get their pay stepped-up at par with Shri K.S. Murthy. The Original Application deserves to be rejected.

11. The Original Application is, therefore, rejected. The parties are left to bear their own costs.

  
( A. K. MISRA )  
Member (J)

MEHTA

dt 29.5.97  
order/Judgement despatched  
to Applicant/Respondent (s)  
on 5.6.97

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