

42

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

AT HYDERABAD.

O.A. No. 16 of 1987.

Date of Order 10-11-1989

K.S.Chalapathi Rao ...Applicant

Versus

The General Manager, ...
Telecommunications, A.P., ...
Hyderabad and Others. ...Respondents.

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For Applicant: Mr.C.Suryanarayana.

For Respondents: Mr.E.Madan Mohan Rao, Standing Counsel
for Respondents.

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C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI J.NARASIMHA MURTHY: MEMBER (J)

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(Judgment of the bench delivered by
Shri B.N.Jayasimha, HVC)

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The applicant who is a selection grade Junior Engineer has filed this application seeking a direction to Respondents to give effect to the promotion of the applicant to the post of Transmission Assistants from 6.9.1970 instead of 8.6.73 and Consequenctly fix his pay in the scale Rs.425-640.

2. The applicant says that he was recruited in 1961 as a TA and after training appointed on 6.8.1963. After passing the Departmental Examination, he was promoted as Junior Engineer on 9.2.1974. By an Order dated 23.10.74, he was promoted as SG TA w.e.f. 8.6.1973. The applicant further says that had the orders of DG P&T dated 8.6.73 been correctly understood and implemented in its true

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spirit, he should have been promoted as SG TA w.e.f. 6.8.1970, the date on which he had completed seven years of service as TA. He should also have been paid arrears of salary from that date. There is no promotion to the selection grade as it does not involve any duties or responsibilities of greater importance. The employee performs the same duties. If a proper and correct interpretation of the order and a fair implementation would have enabled the applicant would have enabled the applicant to draw the salary at Rs 270 P.M. from 6.8.70. In that case his pay in the IIInd pay Commission scale would have been fixed at Rs.515. However, the respondent implemented the promotion only from 8.6.73.

Further while fixing the pay, respondents also ignored the Ministry of Finance (Department of Expenditure) Implementation cell O.M. No.60-17/1C-78 dated 29.9.78 and DG P&T, Memo No. 13-13/78-PAT(Pt) dated 6.11.79.

The applicant further contends that as a result of wrong interpretation and wrong implementation of the Government orders, his pay has not been properly fixed.

He was promoted as SG JE, seven years after his promotion as JE, w.e.f. 9.2.81. If his pay had been correctly fixed, he would have drawn a pay of Rs. 680 as on 9.2.81, consequently on his promotion to Group B, his pay would have fixed at Rs 740 P.M. He contends that he should have been promoted w.e.f. 6.3.1970 and the orders of the Government of India, Ministry of Finance OM No. 60-17/1C-78, dated 29.9.78 (Enclosure IV) and DG P&T O.M.No. 13-13/78-PAT (Pt) dated 6.11.1979 have not been applied properly. Hence he has filed this application.

3. The respondents in their counter state that prior to 8.6.73, the service limit for selection grade in

RSA (now called Transmission Assistant) was 10 years subject to availability of post and seniority cum fitness. The service limit was reduced to 7 years by the letter of the DG P&T, No.5-6-71/NCG dated 8.6.73. The DG P&T clarified in his letter dated 16.8.73 that the orders for promotion to selection grade should be implemented from the date of the issue of the letter dated 8.6.73. Accordingly the applicant while working as JE, was given SG RSA w.e.f. 8.6.73 although he had completed 7 years of service on 5.8.70. His pay was correctly fixed on the basis of his promotion from 8.6.73. The applicant was also given the protection of his emoluments i.e. difference in the pre-revised and revised scale of SG RSA by way of PP as per DG P&T letter No. 13-13/78-P&T dated 6.11.79. The respondents, therefore, contend that there was no wrong interpretation or wrong implementation of the DG P&T orders. This order was implemented to all persons in the same manner.

4. We have heard Shri C.Suryanarayana, Learned Counsel for the applicant and Shri E.Madan Mohan Rao, Standing Counsel for the Department.

5. The only question raised in this application is that the orders of DG P&T has not been implemented properly: To consider the contention of the applicant, we may first notice the relevant portions of the DG P&T letters dated 8.6.73, 16.8.73 and the letter dated 6.11.79.

"1. Letter dated 8.6.73 of DG P&T. It has now been decided by Government that for the purpose of promotion to Selection Grade in the cadres of ESs and RSAs, the condition of service limit shall be seven years instead of ten years as at present. Other conditions for eligibility, however, remain unchanged. The above decision is subject to the stipulation that the P&T Board will review the matter having regard to the implications of the reduced limits with reference to the revised scale

of pay of Engineering Supervisors and the Selection Grade recommended by the Pay Commission, when decisions thereon are taken.

2. Letter dated 16.8.73 of DG P&T, stating that order dated 8.6.73 would be implemented from that date.

3. Letter dated 6.11.79 of DG P&T ~~as~~

Para 2(a) A decision to appoint the concerned officials to Selection Grade has been taken by the P&T Board sometime in June, 1973. The Circles were also addressed to implement the decision without delay. The Staff side have represented that in certain circles the implementation of the decision was done subsequent to announcement of revised scale of pay. The matter has been considered carefully in consultation with Ministry of Finance, and the President is pleased to decide that the pay of RSAs appointed as SG RSAs retrospectively with effect from a date falling between 1.1.73 and 16.12.73 be fixed initially in the pre-revised scale of Rs. 270 - 350 and allowed protection of emoluments as envisaged in the Ministry of Finance O.M. dated 1.6.74 (cited above) provided the orders of appointment to Selection Grade were issued prior to 17-12-73. In other words the difference in emoluments on account of pay fixation in the pre-revised scale of Rs. 270 - 350 and refixation in the revised scale of 425 - 640 would be protected by grant of personal pay to be absorbed in future increments. Payment of arrears as a consequence would also be admissible.

Para 2(b) In respect of whom orders of appointment to SG were issued subsequent to 17.12.1973, but taking effect from a date falling between 1.1.1973 and 16.12.1973, pay fixation and protection of emoluments as envisaged above should be admissible but no arrears for the period prior to 17.12.1973 would be payable.

Para 3 The above orders do not apply to those appointed as SG RSAs with effect from 17.12.73 or thereafter.

These letters read together lay down:

- a) The Service limit of 10 years is reduced to 7 years.
- b) The orders is to be implemented w.e.f. 8.6.73.
- c) Pay fixation and arrears to be regulated as per Para 2(a) & 2(b).

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6. The applicant had completed 7 years of service earlier to 8.6.73. The promotions being given w.e.f 8.6.73, he was promoted from that date. His case falls under Para 2(a) of letter at S.No. 3 above. He has been given the pay protection by giving him ~~the pay~~ ^{a financial pay}.

7. Shri Suryanarayana's contention is that he should have been promoted from 6.8.70, the date on which he completed 7 years of service and that the instructions have not been interpreted correctly or implemented properly. The only reason advanced is that if he is given the promotion from 6.8.70, he would get benefit of higher pay fixation in successive posts. That cannot be a reason to say that the orders have not been implemented, ^{properly} It is well settled that Government can extend any benefit with effect from any particular date. We are, therefore, unable to accept the contention that the orders have been not understood properly or implemented properly.

8. In the course of his argument, Shri Suryanarayana, seeks to question the instructions themselves saying that fixation of date 8.6.73 for implementing the order is arbitrary. As we have noticed earlier, the entire case of the applicant as averred in the application is that the instructions have not been implemented properly and not they are arbitrary. Nevertheless we proceed to consider this contention also. In support of his contention, Shri Suryanarayana relies upon the Supreme Court decision in D.S.Nakra's case (AIR 1986 SC 130). In Nakra's case Supreme Court was dealing with the application rules to Govt., servants retiring capability of revised, after a particular date. The Supreme Court held that excluding pensioners who had retired earlier was bad and directed that they should also get the benefit. However, the order was not retrospective.

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i.e. the order was applicable to all pensioners prospectively only and not from the date the pensioners retired from service. In the case before us, the employees were given the promotion from 8.6.73. There is no discrimination of excluding any employee from the operation of the order. Nakra's case does not lay down that fixing of a date for implementation of an order is arbitrary as claimed by Shri Suryanarayana. The contention that fixing 8.6.73 for ~~implementing~~^{ting} the order is arbitrary has, therefore, to be rejected.

9. The next point urged by Shri C. Suryanarayana, again in the course of arguments but not urged in the application is that in the case ^{of} one G. Krishna Murthy, the benefit of fixing the pay from the date he completed 7 years of service was given, and therefore, there is discrimination. Shri E. Madan Mohan Rao, states there is discrimination. Shri E. Madan Mohan Rao, states there being no mention of this in the affidavit filed by the applicant, he has no information as G. Krishna Murthy belongs to a different accounting unit. He is, therefore, not in a position to explain the manner and circumstances under which the pay was fixed in his case. He, further, states that in all cases promotion has been given with effect from 8.6.73 and not from the date the employees completed 7 years of service. If in one case by mistake or otherwise, pay was fixed not in accordance with the rule, that cannot be a ground for setting aside the general instructions issued and give the benefit to all. We have gone through the application once again and no where in his application the applicant had referred to the case of Shri G. Krishna Murthy. Nevertheless, it is not disputed that the instructions referred to above have

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been applied uniformly in respect of all the employees.

As rightly pointed out by Shri Madan Mohan Rao, a wrong fixation in an individual case cannot be urged to support a claim which is not otherwise admissible.

10. In the result we do not find that there is any misinterpretation of the instructions or unfair implementation of the instructions. The application fails and we accordingly dismiss the same. No Costs.

B.N.Jayasimha
(B.N.JAYASIMHA)
Vice-Chairman

J.N.MURTHY
Member(J)

Dated: 10 November, 1989.

S. Venkateswaran
DEPUTY REGISTRAR(J)
16/11/89.

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To

1. The General Manager, Telecommunications, A.P., Hyderabad - 500001.
2. The General Manager, Maintenance, SRT., Telephone House, Madras - 600001.
3. The General Manager, Telephones, Hyderabad. 500033.
4. The Director General, Telecom, Sanchar Bhavan, New Delhi - 110001.
5. One copy to Mr.C.Suryamarayana, Advocate, 1-2-593/50, Srinilayam, Sri Sri Marg, Gagan Mahal, Hyderabad.
6. One copy to Mr.E.Madan Mohan Rao, Addl.CGSC., CAT., Hyderabad.
7. One spare copy.

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