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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A.630/89.

Dt. of Order: 21.10.1992.

A.Kanakalingeswara Rao

....Applicant

Vs.

1. The Union of India rep. by
The Chairman, Telecom Commission,
New Delhi.
2. Chief General Manager, Telecom,
Andhra Pradesh, Hyderabad.
3. Telecom District Manager,
West Godavari, Eluru.
4. Divisional Engineer, Telecommunications,
Bhimavaram.
5. Sub-Divisional Officer, Phones,
Bhimavaram.

....Respondents

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Counsel for the Applicant : Shri K.S.R.Anganeyulu

Counsel for the Respondents : Shri N.V.Ramana, Addl.CGSC

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CORAM:

THE HON'BLE SHRI R.BALASUBRAMANIAN : MEMBER (A)

THE HON'BLE SHRI C.J.ROY : MEMBER (J)

(Order of the Division Bench passed by
Hon'ble Sri C.J.Roy, Member (J)).

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This is an application filed by Sri A.Kanakalingeshwar Rao against the Chairman, Telecom Commission, New Delhi and 4 others under section 19 of the A.T.Act, 1985, praying that the impugned order No.E 36/Pay Fix/TAs/122 dt.4-3-87 of the 4th Respondent reducing his pay treating him as reverted to lower post of Technician from that of the Technical Supervisor (D) and the proceedings No.17-74/81/NCG dt.29-8-88 of the Telecom Director rejecting the representation of the applicant, be

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declared as arbitrary, illegal and untenable and to direct the Respondents to fix his pay on appointment as ~~as~~ Transmission Assistant with effect from 19-11-86 under F.R.22(c) taking his last pay drawn in the category of Technical Supervisor (O) and to refund the amount recovered from the applicant.

2. The case of the applicant is that he was initially appointed as Mechanic (Phones) now being called as Technician on 25-1-70 in the scale of Rs.260-480. The applicant was promoted on adhoc basis to the next higher grade of selection grade Technician (Higher Grade Technician) now being called Technical Supervisor (O) in the scale of Rs.425-640 with effect from 24-1-83. Subsequently he was regularised in the ~~as~~ said post with effect from 11-8-83. While continuing in the post of T.S.(O) on adhoc basis the applicant applied for the competitive examination conducted for the post of Transmission Assistant etc., (carrying the pay scale of Rs.380-560). The examination was conducted subsequently in December, 1983, which he appeared and was declared successful. However ~~xxxxxx~~ due to his personnel problems he opted to be sent for training for the post of T.A. along with the next batch of recruits i.e. 1984 batch./ In the meanwhile the applicant was informed by the Department that since he was holding the post of Technical Supervisor (O), which is carrying higher pay scale than the post of Transmission Asst., he was not eligible to be selected as Transmission Asst. If he wished to be considered for T.A. post he had to seek reversion to his

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Technician cadre. This he had disputed and was making representations to the Respondents. While ~~as at the time of~~ Ultimately the applicant submitted a letter on 21-2-86 that he would not go for T.A. training seeking reversion as Technician as the same would be to his dis-advantage. ^(after he was posted to another station) Subsequently on 3-7-86 ~~the~~ the applicant made another representation to the 2nd Respondent requesting to depute him for T.A. training without asking for reversion, which was followed by a telegraphic representation dt. 11-7-86 since the 1984 batch recruits were being called for the training. The applicant was asked to give a declaration, pursuant of which he gave ^{the} declaration on 30-7-86, which reads as follows :-

" I should get ~~reverted~~ to the parent cadre i.e. Technician before I relieved for T.A. Training.

I should take my seniority in T.A. cadre along with the 1984 departmental candidates.

I will not claim any promotional benefits in my parent cadre i.e. Technician at a later date."

The applicant was relieved from the post of T.S.(O) for the T.A. Training on 2-8-86 AN. He underwent the T.A. training from 4-8-86 at R.T.T.C., Hyderabad. After completion of the training the applicant was appointed as Transmission Asstt on 19-11-86. Pursuant to his appointment as T.A. his pay was fixed by the Respondents in March, 1987, with effect from 2-8-86 AN. He was treated as reverted from the post of T.S.(O)

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as Technician on 2-8-86 AN and his pay was therefore reduced from Rs.1520/- to Rs.1360/- (under revised scales) and from 19-11-86 his pay was fixed at Rs.1410/- in the category of T.A. carrying the pay scale of Rs.1320-2040 (Rs.380-560 old scale) under F.R.22(c). The difference in pay drawn by the applicant from 3-8-86 to 31-3-87 in excess of the above fixation had been worked out at Rs.1729-60 and the same had been recovered from him. The applicant made a representation to the 1st and 2nd Respondents on 24-3-87 disputing the above fixation and requesting for protection of his last pay drawn as on 2-8-86 in the category of T.S.(O). This had been rejected by the impugned proceedings of the 1st Respondent dt.29-8-88. Aggrieved by this the applicant had approached this Tribunal with this D.A.

3. The applicant contends that the benefit of promotion from Technician to T.S.(O) earned by him cannot be denied to him for being appointed to T.A.Post on the ground that T.S.(O) carries higher scale than T.A. and he is entitled to get the benefit of last pay drawn in the category of T.S.(O) protected while fixing his pay in the category of T.A. He also contends that ~~xxx~~ inspite of difference in pay scales, actually the post of T.A. is higher than the T.A.(O). In support of his claim he also depends upon a judgment of the Ernakulam Bench of this Tribunal dt.16-3-89 in OA 126/87, in which it was held that the Technician cannot be denied the

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benefit of higher grade as Higher Grade Technician (T.S.(O))0 solely on ~~the~~ account of his ~~going xxx xxxxxxxxxx~~ ^{selection} in a competitive examination for another higher post and undergoing training for that post viz., Transmission Asst., Phones Inspector etc.,.

4. The Respondents have filed a counter opposing the O.A. It is the case of the Respondents that the post of T.S.(O) is the line of promotion from the post of Technician and the post of T.A. is a separate cadre post, which are filled through a competitive examination. The lower cadre officials viz., Technician are eligible to compete in this examination. Since the post of T.S.(O) is carrying a higher scale of pay of Rs.425-640, The applicant is not eligible to the post of T.A., which is carrying the lower scale of Rs.380-560. They denied the allegation that his consent for reversion to Technician cadre was obtained by any coercion and he gave his declaration seeking reversion on his own accord and willingly and the pay fixed for the applicant on his appointment as T.A. ~~also xxxxxxxxxx~~ ^{and also for} the preceding training period treating him as he had been reverted to the post of Technician with effect from 2-8-86 AN was correct and the same is in order.

5. We have heard Sri K.S.R.Anjaneyulu, learned counsel for the applicant and Sri N.V.Ramana, learned counsel for the Respondents.

6. The questions before us for consideration, in this case are (i) whether the Ernakulam Bench decision is applicable in this case or not; & (ii) whether the applicant, who was admittedly holding a post carrying higher pay scales was eligible to be appointed to an another cadre post carrying a lower scale and consequently whether he is entitled for promotion of his last pay drawn.

7. We have gone through the Ernakulam Bench judgement. It was a case in which it had been held that a Technician undergoing training for the post of Phone Inspector would not cease to be a Technician during the training period and that he will be entitled to get all the benefits including promotion to the higher post of T.S. (0) accusable to the Technician on par with his juniors during that training period and that his lien in the category of Technician would continue until he was substantially appointed as Phone Inspector etc. In the instant case before us the facts are different from the case before Ernakulam Bench. The applicant was already promoted in his present cadre before he was asked to undergo training and his subsequent appointment as T.A. Since the post of T.A. is carrying the lower scale than the post of T.S. (0), the applicant was asked to seek reversion first before being called for training as T.A.

8. With regard to the next question, F.R.15 clearly prescribes as under:-

- (a) the president may transfer a Govt. servant from one post to another; provided that except:
- (1) on account of inefficiency or misbehaviour or
 - (2) on his written request,


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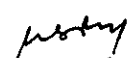
a Govt. servant shall not be transferred substantially to or except in a case covered by Rule 49. Appointment to officiate in a post carrying less pay than the pay of the permanent post on which he holds a ~~lien~~ or would hold a ~~lien~~, had his ~~lien~~ not been suspended under Rule-14".

9. The above rule clearly prescribes that any Government servant shall ^{not} be appointed or transferred to another post carrying lesser pay unless he volunteers. The Respondents have therefore ~~insisted~~ ^{insisted} upon the applicant to specifically declare in writing for his being reverted to the post of Technician from the post of T.S.(0) before being appointed as T.A. since the post of T.S.(0) is carrying the higher scale than the T.A. and the promotion channel for appointment to T.A. is through Technician only. Since the applicant volunteered in writing for being reverted before he is being appointed as T.A. The Respondents have rightly treated the applicant as reverted to the post of Technician from that of T.S.(0) before being appointed as T.A. Since reversion to a lower post naturally involves reduction in emoluments and since the reversion is on the applicant's own volition, he cannot claim any protection of his last pay drawn, as T.S.(0). His pay is necessarily ^{to} be fixed first in the category of Technician ^{in the scale of Rs.975-1660} and then in the category of T.A. ^{in the scale of Rs.1320-2040} which the Respondents did from the date of his appointment as T.A. i.e. 19-11-86. However during the

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the preceding training period the applicant need not be considered as reverted to the Technician post and he could have been treated as continuing in the T.S.(O) post since during the training period he continues to enjoy the benefits of his parent cadre post and only at the time of his actual appointment as T.A. he ought to be treated as reverted to Technician post and his actual appointment as T.A. took place only after the training period. We, therefore, direct the Respondents to re-fix the pay of the applicant accordingly at Rs.1520/- in the ~~xxxxx~~ ~~xx~~ category of TS(O) during the the training period from 2-8-86 AN to 18-11-86 and the amount recovered from the applicant on that account be refunded back to him. We direct that this should be done within three months from the date of receipt of this order. The O.A. is disposed of accordingly with no order as to costs.


(R. Balasubramanian)
Member (A)


(C. J. Roy)
Member (J)

Dated: 21/10 October, 1992. Dy. Registrar (Judl.)
17/10/92

mhb/avl.

Copy to:-

1. Chairman, Telecom Commission, Union of India, New Delhi.
2. Chief General Manager, Telecom, A.P. Hyderabad.
3. Telecom District Manager, West Godavari, Eluru.
4. Divisional Engineer, Telecommunications, Bhimavaram.
5. Sub-Divisional Officer, Phones, Bhimavaram.
6. One copy to Sri. K.S.R. Anjaneyulu, advocate, CAT, Hyd.
7. One copy to Sri. N.V. Ramana, Addl. CGSC, CAT, Hyd.
8. One spare copy.

Rsm/-

Handwritten notes:
Rm/-
17/10/92

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TYPED BY

O.A. 635189

CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY:
M(JUDL)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (JUDL)

Dated: 21/10/-1992

ORDER/JUDGMENT:

R.A./C.A./M.A.No

in

O.A.No. 635189

T.A.No.

(wp.No)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A.Ordered/Rejected

No orders as to costs.

pvm

