

(h1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

O.A.No.732/89.

Date of Judgment 19-2-92

P.Subba Rao

.. Applicant

Vs.

1. Union of India,  
Rep. by its Secretary,  
Min. of Communications,  
Parliament Street,  
New Delhi-110001.

2. The Chief General Manager,  
A.P. Telecom. Circle,  
Triveni Complex,  
Hyderabad-500001. .. Respondents

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Counsel for the Applicant : Shri Chakravarthy for  
Shri G.Bikshapathy

Counsel for the Respondents : Shri N.R.Devaraj, Addl. CGSC

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CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri C.J.Roy : Member(J)

[ Judgment as per Hon'ble Shri R.Balasubramanian, Member(A) ]

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This application has been filed by Shri P.Subba Rao under section 19 of the Administrative Tribunals Act, 1985 against the Union of India, Rep. by its Secretary, Min. of Communications, Parliament Street, New Delhi-110001 & another, seeking a direction to the respondents to accept the option of the applicant under Rule 5 of the CCS(RP) Rules, 1986 and to fix his pay at Rs.2600/- in the new scale from 1.9.86 at the stage of Rs.880/- in the pre-revised scale on accrual of his annual increment and for all consequential benefits including arrears.

2. The applicant was working as Jr. Accounts Officer in the Dept. of Telecommunications from June, 1976 in the scale of Rs.500-900. During the year 1985 while he was officiating as Accounts Officer in a short-term vacancy

in the scale of Rs.840-1200 in P&T Accounts & Finance Services Gr.B post w.e.f. 28.11.85 in the Office of the Director of Telecommunications, Tirupathi he was posted on a regular basis as Accounts Officer to the Guwahati Telephone District vide Director-General Telecommunications letter No.DOT-9-1/85-SEA dated 16.12.85. Earlier, the pay of the applicant was fixed under F.R.22-C when he was promoted on 28.11.85. He joined the new post in Guwahati Telephones on 7.2.86. In September, 1986 the Govt. of India accepted the recommendations of the IV Pay Commission and fixed new scales w.e.f. 1.1.86. On 1.9.86, the applicant's pay in the pre-revised scale would have been Rs.880/-. If this is taken into account, his pay in the revised scale would be fixed at Rs.2600/- but the respondents instead fixed it at Rs.2525/- not giving him the benefit of option to choose the new scale from 1.9.86. It is the contention of the applicant that he has the option to go into the revised scale from 1.9.86 which would be beneficial to him. He was aggrieved that the respondents did not give him the benefit of option and fixed his pay in the new scale w.e.f. 1.1.86. The applicant represented but in vain and hence this application.

3. The respondents have filed a counter affidavit and oppose the application. It is their case that as on 1.1.86 he was only a substantive Jr. Accounts Officer and was working as Accounts Officer purely in local arrangement on adhoc basis and the rules do not permit option being given to such applicants.

4. The applicant has filed a rejoinder. In this he represents that he has been adversely affected as a result of not being given the option to choose the new scale from 1.1.86. He has also filed a list of written arguments.

- 3 -

5. We have examined the case and heard the learned counsels for the rival sides. Rule 5 of the CCS(RP) Rules, 1986 permits an official to elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale. Explanation 2 thereto states that the aforesaid option shall not be admissible to any person appointed to a post on or after 1.1.86 whether for the first time in Govt. service or by transfer or promotion from another post and he shall be allowed pay only in the revised scale. "Existing scale" is defined in Rule 3(2) as the scale that a person is drawing whether in a substantive or officiating capacity. In the case of the applicant this is the scale in which he was placed on 1.1.86 in a substantive capacity. On 1.1.86, the applicant had only a substantive capacity i.e., Jr. Accounts Officer. He had no officiating capacity on that date. His discharging the duties of Accounts Officer on that date was only a local arrangement purely on adhoc basis ordered not by the competent authority to appoint him. His appointment (emphasis supplied) as Accounts Officer was done by the competent authority vide his order dated 16.12.85 and in pursuance of this he took over the job in an officiating capacity only on 7.2.86. Hence he is not entitled for option according to Explanation 2 under Rule 5.

6. The applicant has cited two cases of Shri P.Thangappan and Shri S.Venkataraman. In the course of the hearing, the learned counsel for the respondents stated that it was a mistake and that they are shortly rectifying the mistake. Moreover, a Full Bench of this Tribunal relying on the Hon'ble Supreme Court judgment reported in AIR 1966 SC 1547 had held that the applicant in the application before them cannot claim the benefit

of higher pay on the analogy or erroneous pay fixation of two other staff (C.Seetharamaiah & others Vs. The Accountant General, A.P. & others) I (1988 7 ATC 507 I).

7. In view of the above, we find no reason to interfere in this case and we accordingly dismiss the application with no order as to costs.

R.Balasubramanian

( R.Balasubramanian )  
Member(A).

*Lesley*  
( C.J.Roy )  
Member(J).

*102*  
Dated: 19<sup>th</sup> February, 1992.

Dy. Registrar (Jd1.)

8/3/92

Copy to:-

1. Secretary, Ministry of Communications, Parliament Street, Union of India, New Delhi-110001.
2. The Chief General Manager, A.P.Telemc, Circle, Triveni Complex, Hyderabad-500001.
3. One copy to Shri. G.Bikshapathy, Advocate, CAT, Hyd.
4. One copy to Shri. N.R.Devraj, Addl. CGSC, CAT, Hyd.
5. One spare copy.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V.C.  
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: 19/2/1992

ORDER/JUDGMENT:

R.A.C.A./M.A.N.

in —

O.A.N.C.

732187

~~T. A. N.~~

←W.P.NO.

Admitted and interim directions issued.

Allowed

Disposed of with directions.

Dismissed ✓

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/ Rejected

No order as to costs.

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