

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD



O.A. 1037/92.

Dt. of Decision : 21.11.94.

G. Suryanarayana

.. Applicant.

Vs

1. The Telecom Distt. Manager,  
Eluru - 534 050.
2. The Chief General Manager,  
Telecommunications, A.P.,  
Hyderabad-500 001.
3. The Chairman, Telecom Commission  
(representing Union of India),  
New Delhi - 110 001.

.. Respondents.

Counsel for the Applicant : Mr. C. Suryanarayana

Counsel for the Respondents : Mr. N.R. Devaraj, Sr. CGSC.

CORAM:

THE HON'BLE SHRI A. B. GORTHI : MEMBER (ADMN.)

25/11/94

O.A.No.1037/92

Dt. of decision 21.11.1994.

O R D E R

( As per the Hon'ble Sri A.B. Gorthi, Member(A) )

The claim of the applicant is for stepping up his pay to bring it at par with that of his junior w.e.f. 1-1-88.

2. The applicant while working as a Telephone Operator (Rs.975-1660) was given 'One Time Bound Promotion' to the higher scale of pay of Rs.1400-2300 w.e.f. 16-5-87, vide G.M. Telecom, Hyderabad order dt.24-9-1987. The said order was communicated to the applicant vide endorsement dt.30-9-88 and was actually seen by the applicant on 4-10-88. He had however assumed the appointment of H.S.T.O. on 12-10-87 on the basis of instructions received from intermediate authorities. His pay in the higher scale was fixed at Rs.1400/- w.e.f. 16-5-87 with the 'date of next increment' fixed as 1-5-88. Some juniors promoted subsequently opted for pay fixation from the date of next increment and accordingly it was fixed at Rs.1440/-. The applicant could not exercise such option due to his ignorance. The promotion order called for option within one month, but unfortunately, as per the applicant, the order of promotion was served upon him more than one year after it was issued, as would be evident from the endorsement dt.30-9-1988.

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3. The respondents in their reply affidavit asserted that the pay of the applicant was correctly fixed with effect from the date of his promotion on 16-5-87. They further contended that some employees junior to the applicant had opted for pay fixation on promotion with effect from the date of next increment. Had the applicant given such an option his pay too would have similarly been fixed. In otherwords, the anomaly of the applicant drawing lesser pay than his juniors had arisen entirely on account of the applicant's omission to exercise his option within time.

4. Heard learned counsel for both the parties.

Sri C. Suryanarayana, learned counsel for the applicant referred to the undermentioned cases in support of his plea that it would be unjust if the pay of the senior is not stepped up to bring it at par with that of his junior:-

- 1) T.R. Sunderraja Iyengar Vs P.M.G. Karnataka (1989) 9 ATC 43.
- 2) N. Lalitha Vs. UOI (1992) 19 ATC 569.
- 3) T. Achutaramaiah Vs. Regional Director, ESIC, Hyderabad (1992) 21 ATC 78.
- 4) O.A.337/93 and O.A.1134/93 decided by the Ernakulam Bench of the Tribunal by a common order dt.29-10-93.

There can be no dispute that it would rather be incongruous if a senior's pay happens to be lesser than that of his junior, unless, of course, the senior's pay gets reduced as a penalty.

5. As per extant rule (F.R. 22-C), a government servant on promotion is entitled to pay fixation in the time scale of pay of the higher post at the stage next above his pay notionally arrived at by increasing his pay in the lower post by one increment. Under the said provision, promotion of a junior to the higher post after accrual of increment in his lower post gives rise to the anomaly of his senior drawing lesser pay in the promotional post. To resolve the same, it was decided vide Department of Personnel & A.R. OM dt. 26-9-81 read with 24-12-81 to give the following options to the promotee:-

"(a) either his initial pay may be fixed in the higher post on the basis of F.R. 22-C straightaway without any further review on accrual of increment in the pay scale of the lower post, or

(b) his pay on promotion, may be fixed initially in the manner as provided under F.R. 22(a)(i) which may be refixed on the basis of the provisions of F.R. 22-C on the date of accrual of next increment in the scale of pay of the lower post."

6. In view of the above, if an employee opts for a particular method of pay fixation and gets immediate benefit, he should not be allowed to complain if his juniors who opt for a deferred pay fixation finally stand to gain an advantage over his seniors, unless of course the very rule position permitting different options is held to be unfair or unjust. To step up the pay of a senior under such circumstances would amount to give him double benefit, first he gains by his pay fixation under F.R. 22-C immediately on promotion and next he gets the advantage of stepping up of his pay at par with

his juniors who opt for fixation of pay under F.R.22(G) from the date of next increment.

7. In the instant case, it is therefore of importance to examine the applicant's contention that he should not be penalised for not having exercised his option in time as the very promotion order mentioning the requirement of exercising option within a month was communicated to the applicant, and to some others similarly promoted, only after a gap of about one year. The respondents asserted that the applicant knew all along that he had to exercise option with regard to his pay fixation. It does not seem to be so. A perusal of Annexure A-7, which <sup>is</sup> the promotion order dt. 24-9-87, clearly shows that there is an endorsement dt. 30-9-88 thereon directing copy to "the officials through the concerned S.D.O.Phones/Telecom". It is also seen that it was received by the applicant on 4-10-1988. These facts, irrefutable as they are, clearly indicate that the applicant was in the dark about the need to exercise his option. He realised the damage done only when the pay of his junior, Smt. Ch. Leelavathi was fixed at Rs.1440/- w.e.f. 1-5-88. Obviously she opted for pay fixation from the date of next increment and not from the date of her promotion.

8. There is no explanation from the respondents as to why and how the order of promotion dt.24-9-1987 issued by the General Manager, Telecom, A.P. Circle, was endorsed to the promotees, including the applicant, after a gap of about one year, that is, on 30-9-88. It is settled principle of service jurisprudence that an employee should not be made to reap the consequences, good or bad, of the lapses of his employer. In the peculiar circumstances of the case, equity demands that the applicant's grievance be redressed.

Copy to: ~~1. The Telecom District Manager, Eluru - 534 050.~~

2. The Chief General Manager, Telecommunications, A.P., Hyderabad - 500 001.

3. The Chairman, Telecom Commission, Union of India, New Delhi - 110 001.

4. One copy to Mr. C. Suryanarayana, Advocate, CAT, Hyderabad.

5. One copy to Mr. N. R. Devraj, Sr. CGSC, CAT, Hyderabad.

6. One copy to Library, CAT, Hyderabad.

7. Copy to All Reporters as per the list of CAT, Hyd.

8. One spare copy.

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Ratio 10/-  
(.50/-A) ~~each~~

100/- ~~each~~ ~~each~~

100/-

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9. The grievance of the applicant arose as early as in 1988 when he realised that his junior's pay was higher. His repeated representations bore no fruit. In fact the respondents objected to the maintainability of this O.A. on the ground of limitation. Also repeated representations do not extend the limitation period. Nevertheless, where a case is meritorious, it ought not to be rejected at the threshold, as often observed by the Supreme Court. As the case of the applicant deserved to be considered on merits, the plea of limitation need not come in its way.

10. For the reasons aforesated the O.A. deserves to be allowed. Accordingly the respondents are directed to step up the pay of the applicant to Rs.1440/- per month w.e.f. 1-2-1988 when the pay of his junior, Smt. Ch. Leelavathi was fixed at Rs.1440/- per month. Such stepping up shall be on a notional basis but consequential arrears accruing shall be paid to him w.e.f. 1-11-1992, i.e. one year prior to his filing this O.A. Respondents shall comply with this order within a period of three months from the date of receipt of this order.

11. O.A. is ordered accordingly. No costs.

*transcript*  
( A.B. Gorthi )  
Member (Admn.)

Dated 21 November, 1994.

*Publge 23/11/94*  
Deputy Registrar (S)

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Contd.

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of next increment. Had the applicant given such an option his pay too would have similarly been fixed. In otherwords, the anomaly of the applicant drawing lesser pay than his juniors had arisen entirely on account of the applicants omission to exercise his option within time.

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AT HYDERABAD.

Between

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Dated: 21.11.1994

G.Suryanarayana

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VS.

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... Respondents

Counsel for the Applicant : Sri. C.Suryanarayana

Counsel for the Respondents : Sri. N.R.Devaraj, Sr. CGSC.

CORAM:

Hon'ble Mr. A.B.Gorthi, Administrative Member

(Order as per Hon'ble Mr. A.B.Gorthi, Administrative Member)

The claim of the applicant is for stepping up his pay to bring it at par with that of his junior w.e.f. 1.1.88.

2. The applicant while working as a Telephone Operator (Rs.975-1660) was given 'One Time Bound Promotion' to the higher scale of pay of Rs.1400-2300 w.e.f. 16.5.87, vide G.M. Telecom, Hyderabad order dt. 24.9.1987. The said order was communicated to the applicant vide endorsement dt. 30.9.88 and was actually seen by the applicant on 4.10.88. He had however assumed the appointment of H.S.T.O. on 12.10.87 on the basis of instructions received from intermediate authorities. His pay in the higher scale was fixed at Rs.1440/- w.e.f. 16.5.87 with the 'date of next increment' fixed as 1.5.88. Some juniors promoted subsequently opted for pay fixation from the date of next increment and accordingly it was fixed at Rs.1440/-. The applicant could not exercise such option due to his ignorance. The promotion order called for option within one month, but unfortunately, as the applicant, the order of promotion was served upon him more than one year after it was issued, as would be evident from the endorsement dt. 30.9.1988.

3. The respondents in their reply affidavit asserted that the pay of the applicant was correctly fixed with effect from the date of his promotion on 16.5.87. They further contended that some employees junior to the applicant had opted for pay fixation on promotion with effect from the date

of the case, equity demands that the applicants grievance be redressed.

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11. O.A. is ordered accordingly. No costs.

Sd/-  
Deputy Registrar(Judl.)

CERTIFIED TO BE TRUE COPY

*R. Devaraj*  
Date. . . 21.11.94  
Court Officer,

Central Administrative Tribunal,  
Hyderabad Bench, Hyderabad.

Copy to:-

1. The Telecom District Manager, Eluru-050.
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7. One spare copy (*Four copies*)
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Rsm/-

*R. Devaraj*

Case Number	OA 1037/92
Date of Judgement	21.11.94
Copy made ready on	30.11.94
Section Officer (1)	