

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO.667/92

DATE OF ORDER : 4/01-1997.

Between :-

B.Rajagopala Rao

And

1. Union of India, rep. by Director General,
Telecommunications, Sanchar Bhavan,
New Delhi - 110 001.
2. Chief General Manager, Telecommunica-
tions, A.P.Telecom, Circle, Hyderabad-1.
3. General Manager, Telecom. District,
Suryalok Complex, Gunfoundry, Hyd-33.

... Applicant



... Respondents

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Counsel for the applicant : Shri C.Suryanarayana

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

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CORAM:

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI : VICE-CHAIRMAN

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (A)

(Order per Hon'ble Justice Shri M.G.Chaudhari,
Vice-Chairman).

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6. The learned counsel relied in support heavily on the following decisions :

(1) N. Lalitha & others Vs. Union of India & others (1992) 19 ATC 569 (CAT Hyderabad Bench).

(2) Anil Chandra Das and another Vs. Union of India & others (1988) 7 ATC 224 (CAT Calcutta Bench).

(3) K. Venkateswarlu & Others Vs. The Chief General Manager, Telecom & another in OA 1035/93 (with OA 1366/93 and 69/94) decided on 30-11-91 by CAT, Hyderabad Bench.

7. Shri N.R. Devaraj, the learned standing counsel submitted for the respondents that the decision of the respondents rejecting the claim of the applicant is correct according to the applicable rules. Additionally, Smt. Chayya, Accounts Officer, O/o Chief General Manager (Telecom), AP Circle appeared at our request and tried to explain as to how the respondents' view was correct.

8. Since the applicant has rested his claim on Note (8) below Rule 22(c) ^{as per} Govt. of India decision in Note 7 below Rule 7 of CCS (RP) Rules 1986, we may now examine the implication of the said rules.

9. The Central Civil Services (Revised Pay) Rules, 1986, framed under Article 309 and clause (5) ^{of Article 148} of the constitution of India came into force with effect from 1.1.86. Rule 7 provides for 'fixation of initial pay in the revised scales'. Note-7 below the said rule is as follows :-

Note 7.-- In cases, where a senior Government servant promoted to a higher post before the 1st day of January, 1986, draws less pay in the revised scales than his junior who is promoted to the higher post on or after the 1st day of January, 1986, the pay of the senior Government servant should be stepped up to an

not satisfied as B.Ganpathi Rao was drawing a pay of Rs.1080/- increment with date of next / on 1-4-85 whereas applicant was drawing Rs.1040/- with date of next increment on 1-12-85 and had no occasion to draw more or equal pay in TES Group 'B' cadre than his junior. They also contend that under the Government of India decision (31) under Rule 7 of CCS (RP) 1986 Rules the condition being that the senior government servant promoted before 1-1-1986 should draw equal or more pay in the lower post than his junior promoted after ~~xxx~~ 1-1-86 ~~and but~~ that condition is also not satisfied in the case of the applicant.

3. The short question therefore that arises for consideration is whether the decision of the respondents is wrong?

4. The applicant inter alia contends that as he was promoted much earlier on 24-9-1984 than B.Ganpathi Rao who was promoted on 29-7-87 to the senior Time scale of IFS Group A the pay of B.Ganpathi Rao should have been fixed either equal or less to that of his own basic pay which he was drawing on that day. However, after raising such a contention in para 5(v) of OA, he proceeds to submit that in accordance with Note 7 below Rule 7 of CCS (RP) Rules, 1986 which is incorporated as item (II) under Government of India, Note (8) below FR 22(c) he is entitled to fixation of his pay equal to that of B.Ganpathi Rao as on 29-7-1987 and to be paid the arrears accordingly.

5. Shri C.Suryanarayana, the learned counsel for the applicant reiterated the above contentions and submitted that as the applicant was admittedly senior by virtue of his earlier appointment to STS-ITS Group A he is entitled to get stepping up of the pay and the anomaly needs to be removed.

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service was more than that of the applicant on the date of his promotion to Group-A i.e. 29-7-1987. In this connection two fold submission has been urged urged by Shri Suryanarayana. Firstly he says that fortuitous increments earned by B.Ganpathi Rao by reason of adhoc promotion in group-B cannot be treated as advance increments ^{not} to be ignored as clause (c) of Note 7 of Rule-7 of CCS (RP) Rules merely speaks of advance increments ^{not} to be ignored, and secondly that the local ad hoc promotion given to B.Ganpathi Rao was itself not justified in as much as although the applicant was senior to him. He was ignored and not offered that promotion. Thus giving benefit of the fortuitous local adhoc promotion to B.Ganpathi Rao and the weightage given to him of that promotion to read his pay higher than that of the applicant in Group-B is unfair and unjust and cannot be a reasonable ground to deny benefit of stepping up of the pay to the applicant as that puts him in an anomaly ^{one} position where a junior person is getting more pay than him.

10. We are not impressed by the second part of the submission. That grievance should have been made when B.Ganpathi Rao was given adhoc promotion to Group-B in the year 1971 and cannot be entertained now particularly as B.Ganpathi Rao is not a party to this O.A. Hence that contention is rejected.

11. We however find considerable substance in the first part of the submission. There cannot be any dispute on the point that the applicant and B.Ganpathi Rao ^{both} had belonged to the same cadre and same substantive post namely AE, Group B, before ^{their} promotion as DE. ~~The officiating and adhoc promotions of both of them earlier to promotion as AE.~~ The officiating and ad hoc promotions of both of them earlier to promotion as ^{DE} AE upto 1.1.86 ^{may} be ignored. The applicant was appointed as AE

amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfilment of the following conditions, namely :-

- (a) both the junior and the senior Government servants should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre,
- (b) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical, and
- (c) the anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22-C or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him provisions of this Note need not be invoked to step up the pay of the senior officer. (Underlines supplied)

The orders relating to refixation of the pay of the senior officer in accordance with the above provisions should be issued under Fundamental Rule 27 and the senior officer will be entitled to the next increment on completion of his required qualifying service with effect from the date of refixation of pay.

The requirement to bring out anomaly therefore is that the applicant and B.Ganpathi Rao both should have been belonging to the same cadre and the posts in which they have been promoted. This requirement stands fulfilled as both were in Group B before their respective promotion to Group-A. The applicant and B.Ganpath Rao both were in Telecom Engineering and Wireless Services Group-B All India cadre earlier. B.Ganpathi Rao was promoted wholly on adhoc basis while he was in other wing of Department of Telecommunications for some time before his regular promotion to STS ITS Group A and due to the weightage given to the length of service rendered while on adhoc promotion his basic pay while in Group-B

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required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer. On refixation of the pay of the senior officer by applying the principle of stepping up, the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of the refixation of pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay."

13. The instant case therefore has to be decided in the light of said principle as the same is fully attracted in this case. Consequently, ^{we} ~~we~~ hold that as the applicant was promoted as D.E. earlier while B.Ganpathi Rao was continuing as A.E. and was promoted as DE later to the applicant there arises an anomaly as pay of applicant who was senior was fixed at a lower rate and this anomaly is required to be removed. As held in the above decision of the Supreme Court the stepping up is required to be done with effect from the date of promotion of B.Ganpathi Rao namely 29-7-1987.

14. In view of the above mentioned decision of the Hon'ble Supreme Court, it is unnecessary to discuss the various decisions of the C.A.T. relied upon by the learned counsel for the applicant. I may however mention here that in the decision in Chief Personnel Officer, SC Railway Vs. Vazir Ali Mahboob Ali, Civil Appeal No.5136/96 decided on 21-03-1996, the Hon'ble Supreme Court the claim of the official for payment of Rs.35/- per month ~~is~~ only on the ground of seniority was negatived ^{by} the Supreme Court. With respect in my view the decision referred to above in the case of P.Jagdish ^{is} squarely ⁿ applicable to the facts of the instant case and therefore with res-

on 6-4-76 whereas B.Ganpathi Rao was appointed earlier on 1-4-76. As on 6-4-76 the substantive pay of applicant was Rs.710/- which was less than the pay of B.Ganpathi Rao which was Rs.740/-. However as on 23-9-84 i.e. immediately prior to promotion of applicant as D.E. on 24-9-84 the substantive pay of applicant was Rs.1250/- whereas that of B.Ganpathi Rao was Rs.1080/- which was less. That difference continued up to 27-7-1987 on which date the pay of applicant was Rs.3,500/- whereas pay of B.Ganpathi Rao was Rs.3,200/- which was less than that of the applicant. Thus in terms of Note 7 applicant was not drawing less pay on the date of his promotion i.e. 24.9.84 prior to 1.1.1986. Hence when on the date of promotion of B.Ganpathi Rao as D.E. on 29-7-1987 his (B.Ganpathi Rao) pay was fixed at Rs.3,625/- the applicant was entitled to have his pay stepped up to that level as he was fixed at a lower pay of Rs.3,500/-. We do not therefore accept the contention of the respondents that the claim of applicant was correctly rejected purporting to act under this note (note-7). Moreover in the counter they having referred to the pay of the two officers by reference to 1-4-85 without showing how that date was material. Their stand cannot be accepted as correct.

12. The principle of stepping up of pay contained in the fundamental rules has been explained by the Hon'ble Supreme Court in the latest decision in the case of Union of India & others Vs. P.Jaradish and Others in Civil Appeal No.16736 of 1996 dt.17-12-96 as follows :

"Under the provisions of Fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another government servant junior to him in the lower grade and promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. In such cases the pay of the senior officer in the higher post is

are directed to refix the pay of the applicant in the post of Divisional Engineer, STS-ITS Group A stepping it up on par with the pay of B.Ganapathi Rao as on 29-7-1987 and give him such consequential benefits as he may be entitled to be given on that basis under the rules.

18. Original application is allowed. No order as to costs.

CERTIFIED TO BE TRUE COPY

COURT OFFICER

Central Administrative Tribunal

HYDERABAD BENCH

किस मस्यवा

CASE NUMBER 04667/92

निर्णय का तारीख

Date of Judgement 8-1-92

प्रत तय्यार किया गया दिन

Copy Made Ready on 27-1-92

अनुभाग अधिकारी (न्य बिक)
Section Officer (J)