

O.A.NO.22 of 1993 & Batch

Between

Dated: 16.1.1995.

M.P.Kenduli

...

Applicant

And

1. The Telecom District Manager, Kurnool.
2. The General Manager, Telecom, C.T.O.Compound, Secunderabad.
3. The Chief General Manager, Telecom, Hyderabad.
4. The Director General, Telecom, New Delhi.

....

Respondents.

O.A.23/93.

Between

1. M.Savaranna
2. N.Hussain Saheb

....

Applicants.

And

1. The Director of Maintenance, Southern Telecom Sub Region, 5-1-85/10, Second floor, Saifabad, Hyderabad.
2. The General Manager(Maintenance), Southern Telecom Region, Infantry road, Bangalore.
3. The Chief General Manager(Maintenance), Southern Telecom Region, Carrier Annexure Building, Madras.
4. Chief General Manager, Telecommunications, Doorasanchar Bhavan, Station road, Abids, Hyderabad.
5. Director General Telecommunications, New Delhi

....

Respondents.

O.A.1455/93.

Between

1. B.V.S. Suryanarayana
2. S.S.Sastri.
3. K.Ratna Babu

....

Applicants

And

1. The Director, Southern Telecom Sub Region, Vijayawada.
2. Chief General Manager, (Maintenance), Southern Telecom Region, Career Annexure Building, Madras.
3. Chief General Manager(Telecom), A.P.Circle, Hyderabad.
4. The Director General, Department of Telecom, Sanchar Bhavan, 20, Ashok Road, New Delhi.

...

Respondents.

O.A.1456/93.

Between

1. D.Siddaiah
2. K.Ranganadham.
3. M. Ram Mohan Rao

...

Applicants.

Vs.

1. The General Manager, Telecom, 7 Star Building Labipet, Vijayawada.
2. The Chief General Manager(Telecom), A.P.Circle, Sanchar Bhavan, Nampally Road, Abids, Hyd.

3. The Director General Department of Telecom, Sanchar Bha
20, Ashok Road, New Delhi.

....Respondents.

O.A.1457/93.

Between:

D.Koteswara Rao

....Applicant
Vs.

1. The Telecom District Manager, Ongole.
2. Chief General Manager, Telecom, Sanchar Bhavan, Nampally road, Abids, Hyderabad.
3. The Director Genera, Department of Telecom, Sanchar Bhavan, 20, Ashok Road, New Delhi

...Respondents.

O.A.1458/93.

Between:

1. K.Ramesh
2. N.Rayanna
3. M.Nagendra Rao.
4. M.Bhaskar Rao
5. G.Rajendra Prasad.
6. K.V.S.R. Krishna
7. B.Jayarao

....Applicants.
Vs.

1. The Telecom District Manager, Guntur, A.P.
2. Chief General Manager Telecom, Sanchar Bhavan, Nampally Abids, Hyderabad.
3. The Director General, Department of Telecom, Sanchar Bhavan, 20, Ashok Road, New Delhi.

...Respondents.

O.A.1459/93.

Between

1. G.S.R. Mohan Rao
2. Ch.Suryan Subha Rao

...Applicants.
Vs.

1. The Telecom District Manager, Rajahmundry, East Godavari Dist.
2. The General Manager, A.P.Southern Area, Visakhapatnam.
3. The Chief General Manager Telecom, A.P.Circle, Sanchar Bhavan, Nampally road, Abids, Hyderabad.
4. The Director General, Department of Posts, Sanchar Bhavan, 20, Ashok road, New Delhi.

...Respondents.

O.A.1460/93.

Between

1. K.L.V.Prasada Rao
2. T.Satyanarayana
3. V.Nagaraju
4. K.Sangeetha Rao

...Applicants
Vs.

1. The Director of Maintenance, Southern Telecom, Sub Region, Vijayawada.

Contd.....3/-

9

2. General Manager, Maintenance, Southern Telecom Region, Bangalore.
3. The Chief General Manager, (Maintenance) Southern Telecom Region, Madras.
4. The Chief General Manager, Telecom, A.P. Hyderabad.
5. The Director General, Department of Telecom, Sanchar Bhavan, 20, Ashok Road, New Delhi.

....Respondents.

O.A.1461/93.

Between

Ch. Masthan

...Applicant
Vs.

1. The Telecom District Engineer, Ongole.
2. The Chief General Manager, Sanchar Bhavan, Nampally road, Abids, Hyderabad.
3. The Director General, Department of Telecom, Sanchar Bhavan, 20, Ashok road, New Delhi

...Respondents.

O.A.1462/93
Between

G. Sambhi Reddy

....Applicant
Vs.

1. The General Manager (Telecom) Vijayawada
2. Chief General Manager, Telecom, Sanchar Bhavan, Nampally road, Abids, Hyderabad.
3. The Director General, Department of Telecom, Sanchar Bhavan, 20, Ashok road, New Delhi.

...Respondents.

O.A.1463/93.

Between:

K. Laxminarayana

...Applicant
Vs.

1. The Telecom District Manager, Eluru (W.G.) Dist A.P.
2. The General Manager, Telecom, Warangal.
3. The Chief General Manager Telecom, Sanchar Bhavan, Nampally road, Abids, Hyderabad.
4. The Director General, Department of Telecom, Sanchar Bhavan, 20, Ashok road, New Delhi.

...Respondents.

O.A.1464/93.

Between

T. Chandra Sekhar

...Applicant
Vs.

1. The Director of Maintenance, Southern Telecom Sub Region, Ramachandra nagar, Opp. Mary Stela College, Vijayawada.

(16)

2. The General Manager(Maintenance) (STR) Southern Telecom Region, Bangalore.
 3. Chief General Manager(Maintenance) (STR) southern Telecom Region, Madras.
 4. The Chief General Manager, Telecom, Nampally road, Abids, Hyderabad, A.P.
 5. The Director General, Department of Telecom, Sanchar Bhavan, 20, Ashok road, New Delhi.
- Respondents

O.A.1465/93

Between

- E.Pullaiiah Chetty Applicant
Vs.
1. The Telecom District Manager, Kurnool.
 2. The Chief General Manager, Telecom, A.P.Circle, Sanchar Bhavan, Nampally road, Abids, Hyderabad.
 3. The Director General Manager, Department of Telecom Sanchar Bhavan, 20, Ashok Road, New Delhi.
- Respondents.

O.A.1466/93.

Between

- K.V. Ramana Murthy Applicant.
Vs.
1. The Director of Maintenance, Southern Telecom Sub Region, Ramachandranagar, Opposite Mary Stela College, Vijayawada.
 2. The Chief General Manager, Maintenance, Southern Telecom, Madras.
 3. The Chief General Manager, Telecom A.P.Circle, Sanchar Bhavan, Nampally road, Abids, Hyderabad.
 4. The Director General, Dept. of Telecom, 20, Ashoka road, Sanchar Bhavan, New Delhi.
- Respondents.

O.A.1467/93

Between

1. C.K.Shama Rao
 2. P.R.Aswadha Narayana.
 3. V.L.Rama Murthy Applicants.
Vs.
1. The Telecom District Manager, Anantapur.
 2. The Chief General Manager, Telecom, A.P.Circle, Sanchar Bhavan, Nampally road, Abids, Hyderabad.
 3. The Director General, Department of Telecom, Sanchar Bhavan. 20, Ashok road, New Delhi.
- Respondents.

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O.A.1468/93.

M. Chinna Obaiah ... Applicant
Vs.

1. The Telecom District Engineer, Cuddapah.
 2. The Chief General Manager, A.P. Telecom, Circle, Sanchar Bhavan, Nampally road, Abids, Hyderabad.
 3. The Director General, Department of Telecom, Sanchar Bhavan, 20, Ashok road, New Delhi.
- Respondents.

O.A.1469/93.

Between
E.Venkata Ratnam ... Applicant
Vs.

1. The Telecom District Manager, Telephone Exchange, Ongole.
2. The Chief General Manager, Telecom, Hyderabad.
3. The Director General, Department of Telecom, Sanchar Bhavan, 20, Ashoka Road, New Delhi. ... respondents.

O.A.1470/93.

Between ... Applicant
Vs.

1. The Telecom District Manager, Guntur.
2. The Chief General Manager, A.P. Telecom, Circle, Sanchar Bhavan, Nampally road, Abids, Hyderabad.
3. The Director General, Department of Telecom, Sanchar Bhavan, 20, Ashoka road, New Delhi. ... Respondents.

Counsel for the Applicants : Sri.Krishna Devan, Advocate in all the O.A.'s.

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

CORAM:

HON'BLE MR.A.B. GORTHI, ADMINISTRATIVE MEMBER
(JUDGEMENT AS PER HON'BLE MR.A.B. GORTHI, ADMINISTRATIVE MEMBER)

* * *

In all the above O.A.s the claim of the applicants is that their pay on promotion from the post of Transmission Assistant (T.A. for short) to Selection Grade Transmission Assistant(S.G.T.A. for short) should be fixed by giving them the benefit if fixation of pay under F.R. 22(c). As the facts in all these cases and the issues raised for our consideration are the same, all the O.A.s are being disposed of by this common order.

Contd....6/-

2. For a proper appreciation of the issues involved, it would be sufficient if the facts averred in O.A.22/93 are briefly stated here.

3. The applicant while working as Transmission Assistant in the scale of pay of Rs.380-560 (pre-revised) was promoted to the post of Selection Grade Transmission Assistant on 19.11.82. The post of S.G.T.A. carried the scale of pay of Rs.425-640(pre-revised). On the date of promotion the basic pay of the applicant in the post of T.A. was Rs.500/- His pay on promotion to the post of S.G.T.A. should have been fixed at Rs.530/- under F.R.22(c). However, the respondents fixed his pay at Rs.500/- only in the scale of pay of Rs. 425-640 without giving him the benefit of fixation of pay under F.R.22(c).

4. The short ground on which the respondents declined to give the applicant the benefit of pay fixation under FR22(c) and carried with it no higher responsibility and that it was only a beneficial scheme introduced to bring a limited percentage of T.A.s into the grade of S.G.T.A.

5. Heard learned counsel for the parties. Sri. Krishna Devan learned counsel for the applicants at the very outset submitted that a few similarly situated T.As promoted to S.G.T.A. cadre prior to 1972 were extended the benefits of F.R. 22 (c). The respondents without denying the same asserted that pay fixation in respect of the applicants has been done correctly. In other words, their contention is that even if similarly situated individuals were erroneously given the benefit of F.R.22 (c), prior to 1972 it would not be a sufficient ground to fix the pay of the applicants under FR.22 (c). It will therefore be necessary to examine whether in the case of the applicants, their pay fixation has been done correctly or not, irrespective of what the respondents did prior to 1972.

6. It will be appropriate to examine the contents of F.R. 22(c) as it existed at the relevant time (i.e. prior to 1989). It reads as under:-

13

"F.R.22(c). Notwithstanding anything contained in

these rules, where a Govt. servant holding a post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued". (underlined for emphasis).

7. A careful reading of the above rule would clearly indicate to that pay fixation as situated therein would apply only in case where a Govt. servant is promoted or appointed to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him. The rule is thus applicable not only to a case of "promotion" but also where an employee is "appointed" to a post carrying higher responsibility. Further it makes it clear that pay fixation under this rule is not automatic in every case of promotion or appointment but is restricted only to such a promotion or appointment to a post carrying higher responsibility of greater importance. It is the contention of the applicants counsel that those given promotion under the one promotion scheme and the biennial cadre revised were given the benefit of pay fixation under F.R. 22(c). The details of the said scheme are not on record nor is it said for the applicants that promotions under such scheme did not involve assignment of higher responsibilities. Irrespective of what is the position under these two schemes, what has to be examined in the present case is the legality or otherwise of denying the benefit of F.R. 22(c) in respect of T.As promoted to S.G. posts in the same cadre.

8. The applicants counsel elaborately urged that promotion to a post carrying higher scale of pay would imply that the higher post carried with it a higher responsibility of greater importance and as such it is imperative that in every case of promotion of pay of the Govt. servant should be fixed in terms of F.R.22(c). In support of his contention, the applicants counsel has drawn my attention to some judgements in similar matter which are dismissed in

14

9. In B.D.Varma Vs. Union of India, (1987) 4 ATC 499 the Principal Bench of the Tribunal held that F.R.22(c) would be attracted even when pay scales of the post held by a Govt. employee and the promotional post are identical. That was a case of a Senior Computer promoted to the post of Research Assistant. The pay scale of both the senior Computer and Research assistant was Rs.425-700. In that case, the Tribunal had the occasion to record a finding that "it is crystal clear that the nature of the duties of the Research Assistant are of a higher degree both qualitatively and quantitatively". In the conclusion that F.R.22(c) would be attracted notwithstanding the fact that they pay scale of the pre-promotional and promotional post is one and the same. This case will be of no assistance to the case of the applicants before me for the reason that it is the contention of the respondents that S.G. posts in the cadre of T.As are non-functional and do not involve assumption of higher responsibility.

10. In O.A.No.730/92 on the file of this Bench of the Tribunal, decided on 19.11.92, it was held that an Asst. Telegraph Master(A.T.M. for short) on promotion to the post of Lower Selection Grade Telegraph Master (L.S.G.T.M? for short) would be entitled to pay fixation under F.R. 22(c). In coming to the said conclusion reliance was placed on an identical case decided by the Principal Bench of the Tribunal in Regn.No. I.336/86(C.W.P.No.703/77) Tilak Raj Khanna Vs.U.O.I. & others. In that case, the Principal Bench observed that the respondents sought options from the employees for the General Promotion Line in accordance with their seniority as Telegraphists. The petitioners therein gave the option on the condition that in the intervening period they would continue to work as A.T.Ms. The Tribunal noted that nowhere the term "General Line" had been defined nor had it been made clear at this stage that appointment of A.T.Ms as L.S.G.T.Ms did not involve higher duties and responsibilities or that their pay on appointment as L.S.G.T.Ms would not be fixed under F.R.22(c). Such a situation did not arise in the case of the applicants before me.

14

11. The respondents refer to the recruitment rules and standards (of the P&T Department) relating to promotion to Selection Grade under the chapter titled "Recruitment". The scope and extent of promotion to S.G. posts is sufficiently clarified. The same reads as under:-

"Promotion to Selection Grade:

(i) Selection Grade posts in the cadre of Repeater station Assistants (now designated as Transmission Assistants), Auto Exchange Assistants, Telephone Inspectors and wireless Operators shall be created by conversion of 20% of the total number of permanent and temporary posts that were in existence on the 1st April of each year. The leave reserve posts and purely temporary posts if any will be excluded. In arriving at the number of posts under 20% formula, fraction of more than 0.5 will be rounded off to the next integer.

(ii) A review will be made in the first quarter of each financial year to ensure that the prescribed percentage of selection grade is maintained.

(iii) All the Selection Grade posts will be non-functional and will not involve assumption of higher responsibility.

(iv) Promotion of RSAs, AEAs, TIs and WOs to Selection Grade in their respective cadres shall be considered by a D.P.C. consisting of (i) Director, Telecom, or an equivalent officer nominated by the Head of Circle / Telephone District concerned as Chairman, (ii) one T.E.S Group 'A' Officer (Senior scale) nominated by the Head of Circle/Telephone District concerned as Member, and (iii) one Group 'A' officer (Senior scale) of the ~~neighbouring~~ neighbouring Postal Circle nominated by the Head of the Postal Circle as Member.

(v) Promotion shall be made on the basis of seniority - cum-fitness from amongst those officials who have completed 7 years service in their respective grade on the 1st July of the year of consideration".

12. The aforesaid instructions were in existence even prior to the date when the applicants were promoted to S.C. posts. Therefore, the decision of the Principal Bench in the case of Tilak Raj Khanna Vs. U.O.I. & others will be of no avail to them.

13. The Bangalore Bench of the Tribunal had the occasion to examine the applicability of F.R.22(c) in the case of A.R. Padmanabha Sarma Vs. U.O.I. & Ors 1992(2) SLO(CAT) 520. In that case, the Tribunal had to examine whether the duties and responsibilities of Stores Assistant are of greater importance than that of Store Keeper Grade-II and whether FR.22(c) would apply on promotion from Stores Assistant to Store Keeper Grade-II although the pay scale of both was identical. Having examined the case on merits, the Tribunal came to the conclusion (para 7)" that the post of Stores Assistant involved duties and responsibilities of greater importance than the post of Store Keeper".

The Tribunal further observed as under:-

"A part from this, we are aware that Government in the recent past has approved a large number of restructuring schemes in various Departments by allocating posts on percentage basis in the different grade and cadres and in all such cases, persons who were getting promotions to the higher grades, even though they were doing the same to the higher grades, even though they were doing the same work with no change in importance of duties and responsibilities have been given fixation under F.R.22(c)".

14. It is well settled that such an observation which was not necessary for a decision in the case would not constitute a precedent, more so when the relevant rule, namely F.R. 22(c), was not held to be invalid to the extent that it stipulates that the benefit of fixation under the said rule would apply only to promotion or appointment to a post carrying responsibilities of greater importance.

15. In V. John Job Vs. Director, National Malaria Eradication Programme, New Delhi & others (1993) 25 ATC 385, the grievance of the applicant was against his non consideration for promotion to the Selection Grade in the cadre Technician in accordance with the policy of reservation. In that case, the Tribunal was not concerned with the benefits of F.R.22(c), which, according to the observations made by the Bench, "are restricted to promotion which must include not only higher pay scales but also higher responsibilities". The Tribunal thus reiterated what has been categorically stipulated in F.R.22(c).

16. Sri.N.R.Devaraj, learned counsel for the respondents states that from the very inception of the scheme providing for Selection Grade in the cadre of T.As it was made clear that such S.G.Posts would be on functional and would not involve assumption of higher responsibilities. In fact, there can be no dispute in this regard. This question was examined by the Department as can be seen from the DG P&T New Delhi letter No.3-78/80-PAT dt.11.11.90 addressed to all Heads of Telecom Circles and others. It was once again clarified therein that the Selection Grade in the P&T cadre was created on liberal terms and conditions and as such the appointees to the selection Grade would not be entitled to pay fixation under F.R.22(c) as it existed then.

17. Finally, F.R.22(c) is clear and it unambitiously lays down that the benefit of fixation of pay under the said rule would apply only to cases of promotion or appointment to a post carrying with it duties and responsibilities of greater importance.

when the language of the statutory provision is clear and when there is no challenge to its validity, it has to be applied as such. It is also settled law that a direction of the nature of writ mandamus cannot issue directing the Department to act contrary to what has been laid down statutorily.

18. For the aforesaid reasons, all the O.As are liable to be dismissed and are hereby dismissed but there shall be no order as to costs.

Sd/-
Deputy Registrar (Judl).

Copy to:-

1. The Telecom District Manager, Kurnool
2. The General Manager, Telecom, C.T.O.Compound, Secunderabad.
4. The Director General, Telecom, Hyderabad.
6-1-85/10, Second floor, Saifabad, Hyderabad. Sub Region
5. The General Manager (Maintenance), Southern Telecom Region, Infantry road, Bangalore.
6. The Chief General Manager (Maintenance), Southern Telecom Region, Carrier Annexure Building, Madras.
7. The Director, Southern Telecom Sub Region, Vijayawada.
8. The Director General, Department of Telecom, Sanchar Bhavan, 20, Ashok Road, New Delhi.
9. The General Manager, Telecom, 7 Star Building Labipet, Vijayawada.
10. The Telecom District Manager, Ongole.
11. The Telecom District Manager, Guntur, A.P.
12. The Telecom District Manager, Rajahmundry, East Godavari Dist.
13. The General Manager, A.P. Southern Area, Visakhapatnam.
14. The Telecom District Manager, Eluru (W.G.) A.P.
15. The General Manager, Telecom, Warangal.
16. The Telecom District Manager, Kurnool.
17. The Telecom District Manager, Anantapur.
18. The Telecom District Manager, Cuddapah.
19. 18 copies to Sri. Krishna Devan, advocate, CAT, Hyd.
20. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
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22. One copy to Deputy Registrar (Judl). CAT, Hyd.
23. One spare copy.
24. Copy to Reporters and All Benches as per standard list of C.A.T., Hyderabad Bench.

T.C
R.R

TC
[Signature]