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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

HYDERABAD

O.A.No.47 of 1999.

DATE OF ORDER:24-4-2000.

Between:

S.Bhushanam.

...Applicant

a n d

1. The Union of India, rep. by the
Chairman, Telecom Commission,
New Delhi-110 001.
2. The General Manager, Telecom District,
West Godavari, Eluru-534 050.
3. The Chief General Manager,
Telecom A.P.Circle, Hyderabad-500 001.

...Respondents

COUNSEL FOR THE APPLICANT :: Mr.TVVS.Murthy

COUNSEL FOR THE RESPONDENTS : Mr.V.Rajeshwar Rao

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

THE HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

: O R D E R :

(PER HON'BLE SRI R.RANGARAJAN, MEMBER (A))

Heard Mr.TVVS.Murthy, learned Counsel for the Applicant
and Mr.V.Rajeshwar Rao, learned Standing Counsel for the
Respondents.

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2. The applicant in this OA was promoted and posted as Telephone Supervisor(Operative) with effect from 21-8-1982. Later on 1-10-1986 he was promoted as Telephone Supervisor(Supervisory). The case of the applicant is that when he was promoted as Telephone Supervisor(Supervisory), his pay should have been fixed under FR-22(C) as he discharged higher responsibilities than that of Telephone Supervisor (Operative). That was not done.

3. Hence, the applicant has filed this OA to fix his pay under FR-22(C) when he was promoted as Telephone Supervisor (Supervisory) with all consequential benefits.

4. This OA was filed on 28-10-1998 i.e., about 12 years after the applicant was posted as Telephone Supervisor(Supervisory). It is not understood why he waited for about 12 years for approaching this Tribunal. The applicant submits that he has filed an MA for condoning the delay, and the same has been condoned, and hence, the OA has to be disposed of on merits. Mere allowing of MA for condonation of delay does not give any right for the applicant to state that his OA has to be disposed of as per his request. The delay is condoned to file OA belatedly and it has got no further meaning other than that.

5. The applicant was posted as Telephone Supervisor (Supervisory) in the same scale of pay as that of Telephone Supervisor(Operative). In this connection, we relied on the Judgment of the Supreme Court in the case of UNION OF INDIA & OTHERS v. ASHOK KUMAR BANERJEE (reported in 1998(5) SCC 242),

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wherein two conditions were laid down for grant of fixation under FR.22(C)/FR.22(1)(a)(i). The two conditions are:-

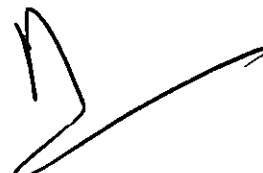
- (1) The employee should shoulder higher responsibilities; and
- (2) The promotion cadre shall be in the higher scale compared to the lower scale from where the employee was promoted.

In the present case, the ^{same} ~~two~~ conditions ^{is} are not fulfilled.

6. The applicant submits that the Judgment in ASHOK KUMAR BANERJEE's case will be applicable only prospectively and as the applicant was promoted as Telephone Supervisor (Supervisory) earlier to the issue of the Judgment in Banerjee's case, that Judgment cannot be applied in the present case.

7. We do not agree with the submission of the learned Counsel for the Applicant. The Apex Court had laid down the policy for fixation of pay as referred to above. Hence, it cannot be said that it is applicable only prospectively and not retrospectively. Further the applicant failed to come to this Tribunal well in time immediately after he suffered fixation of pay without following the rules quoted by him. In that view also, we find no merit in the submission of the applicant.

8. The applicant relies on the Judgment of the High Court of Andhra Pradesh in Writ Petition No.9582 of 1999 enclosed to the rejoinder. That, in our opinion, has got no relevance in the present case as it was decided on the basis of the facts and circumstances of the case.

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9. The applicant also relies on the Judgment of the Supreme Court in Civil Appeal No.3821 of 1990, enclosed as Annexure.RJ.II. to the rejoinder. ^{That judgment was passed} ~~After passing of the~~ ^{Earlier to} Judgment in 1997, ~~the Judgment in~~ ^{which} Banerjee's case came into existence. ^{earlier to} As both the Judgments were delivered by a Division Bench, the later one will be in force and not the earlier one. Hence, Banerjee's case will hold the key for disposal of this case.

10. In view of what is stated above, we find no merit in this OA. Hence, the OA is dismissed. No costs.



(R.RANGARAJAN)
MEMBER (ADMN.)



(D.H.NASIR)
VICE CHAIRMAN

DATED: this the 24th day of April, 2000

Dictated in the Open Court

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