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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
J A I P U R.

O.A. No. 386/1994

: Date of order: 15-11-1994

Jagdish Prasad Yadav vs. Union of India & Ors.

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O.A. No. 387/1994

Kewal Ram Israni vs. Union of India & Ors.

Mr. K.L.Thawani, counsel for the applicants
Mr. U.D.Sharma, counsel for the respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER(ADMINISTRATIVE)
HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATTAN PRAKASH, MEMBER(JUDICIAL))

These two original applications are being disposed of by a common order as they arise out of similar facts and the question involved in both of them is similar.

2. Both the applicants S/Shri Jagdish Prasad Yadav and Kewal Ram Israni, working at present as Senior Accounts Officer (Internal Check) in the office of Chief General Manager Telecommunications, Rajasthan Telecom Circle, Jaipur, have approached this Tribunal for quashing the impugned orders dated 1.7.94 (Annex A-1) and 5.7.1994 (Annexure A-1) issued by the Chief General Manager Telecommunications, Rajasthan Telecom Circle, Jaipur whereby the applicants have been denied the stepping up of their pay with reference to their juniors S/Shri G. Rangnathan and Shri Jagatnarin Mishra respectively (Accounts Officers) working in the

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office of Chief General Manager, Telecom Circle,
Gujarat, Ahmedabad.

3. The grievance of the applicants has been that both Shri G. Rangnathan and Jagatnaraian Mishra have at all stages been juniors to the applicants and they have been allowed to draw higher pay on the basis of their working as Accounts Officer on an adhoc basis for a period of about 4 years and five months in the case of G. Rangnathan and five years in the case of Jagatnaraian Mishra. The applicant Shri Jagdish Prasad Yadav was initially appointed as Postal Clerk on 3.10.1966; promoted as Junior Accountant w.e.f. 1.6.1976; further promoted as Junior Accounts Officer w.e.f. 10.6.1978 and was promoted as Accounts Officer on regular basis w.e.f.

4.10.1989. It is the grievance of the applicant Jagdish Prasad Yadav that even though his junior Shri G. Rangnathan was given promotion as Accounts Officer on regular basis on 12.4.1990 i.e. much after the applicant was given this promotion, the respondents have fixed the pay of Shri G. Ramgnathan at Rs.2825/- on promotion as Accounts Officer, whereas, the applicant pay has been fixed at Rs.2375/- on 4.10.1989 and Rs.2450/- as on 1.9.1990. Similarly, the other applicant Shri Kewal Ram Israni was appointed as Postal Clerk on 17.9.1962; promoted as Junior Accounts Officer w.e.f.2.11.1976 and further promoted as Accounts Officer on regular basis w.e.f. 24.4.87. It is the grievance of this applicant Shri Israni

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that even though his Junior Shri Jagatnaraain has been promoted as Accounts Officer much later than the applicant i.e. on 12.6.1989 but his junior's pay has been fixed much higher than that of the applicant and that as on 12.6.1989 his junior Shri Jagatnaraain was fixed at Rs.2900/- and his own pay has been fixed at Rs.2600/-. It has accordingly been claimed by both the applicants that as soon as this disparity and discrimination came to their notice sometimes in the month of October, 1993 they started collecting datas about the pay fixation of their juniors S/Shri G. Rangnathan and Jagatnaraain Mishra and they made a representation for claiming the stepping up of their pay equal to their juniors. The respondents having disallowed/rejected their claims vide the impugned orders Annexures A-1 dated 1.7.1994 and 6.7.94 respectively, they have been constrained to file these applications for a direction to the respondents to step-up the pay of the applicants at par with their juniors S/Shri G. Rangnathan and Shri Jagatnaraain w.e.f. 12.4.1990 in the case of Jagdish Prasad and at par with Shri Jagatnaraain Mishra w.e.f. 12.6.1989 in the case of Shri Kewal Ram Israni.

4. The respondents have contested the applications by filing written replies to which the applicants have not filed any rejoinder. The stand of the respondents in both the applications has been that firstly the applications are time barred and secondly the adhoc promotion was given to the

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private respondents i.e. S/Shri G. Rangnathan and Jagatnaraian Mishra in the Gujarat Telecom Circle, Ahmedabad only as a local officiating arrangement which has been within the competence of the Chief General Manager, Gujarat Telecom Circle. It has accordingly been averred that there is no discrimination in the matter of fixation of pay of the applicants vis-a-vis the private respondents i.e. S/Shri G. Rangnathan and Shri J.N. Mishra and that the applications deserve rejection.

5. We heard the learned counsel for the applicants as also the respondents at great length and have carefully examined the record in great detail.

6. In these applications the only point for being seniors determination is whether the applicants are entitled ^{-up} for stepping of their pay with reference to their juniors whose pay has been fixed at a higher stage due to adhoc officiation on a promotional post.

6. The main argument of the learned counsel for the applicants has been that the applicants have admittedly been senior to the private respondents S/Shri G. Rangnathan and Shri J.N. Mishra and that a senior official cannot be put to an dis-advantageous position in the matter of pay fixation merely on the basis that they cannot have the benefit of fortuitous adhoc promotions as has been the case

in the matter of S/Shri G. Rangnathan ~~and~~ Shri Jagat Narain Mishra. The learned counsel in support of his argument has mainly relied upon the judgment of Hyderabad bench in the case of N. Lalitha's (Smt.) vs. Union of India, (1992) 19 ATC 569 and of Calcutta Bench of the Tribunal in the case of Anil Chandra Das, (1993) 7 A.T.C. 224. The learned counsel has also argued that both applications are within the limitation firstly because the discrimination came to their notice in the month of October 1993 and secondly because the respondents rejected their claim vide the impugned orders dated 1.7.1994 and 6.7.1994 (Annexure A-1). It has accordingly been urged that the applicants' pay should be stepped up at par with their juniors S/Shri G. Rangnathan and Jagat Narain Mishra.

7. On the contrary, it has been vehemently argued by the learned counsel for the respondents Shri U.D.Sharma that not only the applications are time barred but that the applicants are not entitled to claim any stepping up of their pay equivalent to their juniors S/Shri G. Rangnathan and Jagat Narain mainly because their juniors were given adhoc promotion at the Ahmedabad Telecommunication Circle by a competent authority i.e. Chief General Manager, Ahmedabad and as such they cannot raise any grudge about the alleged discrimination which in fact has no basis. The learned counsel for the respondents has also cited a judgment of Hon'ble the Supreme Court in the case of D.G. Employees' State Insurance Corporation and another vs. B.Raghava Shetty and

others, (1995) 30 ATC 313. On the basis of this judgment it has been urged that the applicants are not entitled to seek parity of pay with their juniors i.e. S/Shri G. Rangnathan and Jagatnaraain Mishra.

arguments of

8. We have given anxious thought to the learned counsel for both the sides and have carefully gone through the judgments relied upon by the learned counsels in support of their arguments besides the judgments of the Principal Bench, New Delhi in OA No.782/92 R.K.Bhardwaj vs. Union of India, of Calcutta Bench in OA No.393/94 Baidya Nath Bandhopadhyay v. Union of India, decided on 18.8.1994 and a judgment of Chandigarh bench of the Tribunal decided on 15.12.1994 O.P.Gupta and others vs. Union of India and others, (1995)31 ATC 84.

9. It may be stated at the out-set that there is no dispute between the parties that the private respondents viz., G. Rangnathan (respondent No.5) in OA No.386/94 and Shri Jagatnaraain Mishra (respondent No.5 in OA No.387/94) are juniors to the applicants in the respective original applications. The argument of the learned counsel for the respondents, that the respondents pay has been rightly fixed as each of them i.e. S/Shri G. Rangnathan and Shri Jagatnaraain had worked on a promotion post for a period of about 4½ years in the case of G. Rangnathan and a period of five years in the case of Jagatnaraain Mishra and applicants cannot insist for stepping up

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of their pay at par with them. Learned counsel for the respondents/ unsuccessfully tried to impress that in view of the respondents' circular dated 4.11.1993 Annexure R-2 the applicants are not entitled for stepping up of their pay equal to that of their juniors. Since the learned counsel for the respondents has mainly stressed his arguments on the basis of a judgment of Supreme Court in the case of E.S.I. Corporation vs. B. Raghav Shetty (supra), it is necessary to refer to it in some detail. In the case of E.S.I. Corporation the contesting respondents in the case who were working in the Regional Offices of the Appellant (E.S.I. Corporation) as U.D.Cs, on being invited options for being posted as U.D.C. Incharge at local offices; expressed their unwillingness for being posted as UDC Incharge at local offices. Since no official senior to respondent No.2 was willing to be posted at one of such local office at Shahbad, respondent No.2 was posted and worked as UDC Incharge from 21.9.1984 to 4.10.1985. He further worked as Head Clerk at Shahbad on an adhoc basis from 5.10.1985 till he became Head Clerk on regular promotion on 26.7.1989 and his pay was fixed at Rs.1680/- w.e.f. 1.6.1989. The contesting respondents also came to be promoted as Head Clerks and their pay was fixed at a lower rate. They made representations for parity of their pay with respondent No.2. Bangalore bench of the Tribunal gave a direction to the Appellant Corporation to step up the pay of the contesting respondents under F.R. 22C.

10. On a challenge by the Corporation, Hon'ble the Supreme Court observing that :

"(i) it is not in dispute that the contesting respondents had expressed their unwillingness to be posted as UDC Incharge of local office;

(ii) it is also not in dispute that posting as UDC Incharge is not a promotion from the cadre of UDC to a higher cadre. Such postings were made only temporarily and adhoc basis;

(iii) the contesting respondents had no grievance to make when respondent No.2 was posted as UDC Incharge at Shahbad local office;

(iv) after having expressed their unwillingness to be posted at local offices as UDC Incharge, the contesting respondents had not shown their willingness for being considered for their posting as UDC Incharge if there was going to be a possibility of such UDC Incharge being posted as Head Clerk by way of local arrangement.

Held in para 6 at page 315 that "It does not provide for the type of claim which they had made. They were not denied the benefit of working on a post carrying duties and responsibilities of greater importance. On the contrary they had declined to do so."

The Tribunal was, therefore, wrong in directing

(emphasis supplied)

the appellant-Corporation to step-up the pay of the contesting respondent under FR 22-C."

Thus in the aforesaid facts and circumstances available, in the case of E.S.I. Corporation(supra) Hon'ble the Supreme Court had allowed the appeals filed by the appellant E.S.I. Corporation.

11. In the instant case, the facts are entirely different and distinguishable as none of the applicants

herein was asked by the respondents to give any option to work on the promotional post on an adhoc basis, nor any of them declined to work on the promotional post at any time. Hence the respondents cannot take any benefit of the judgment rendered by Hon'ble the Supreme Court in the case of E.S.I. Corporation vs. B. Raghava Shetty (supra). On the contrary, it has been the consistent view of not only the Hyderabad Bench of the Tribunal in the case of N. Lalitha's (Smt.) vs. Union of India, (1992)19; of Calcutta Bench in the case of Anil Chandra Das vs. Union of India (1988)7 ATC 224; Ernakulam bench in K. Krishna Pillai Vs. Union of India (1994)26 ATC 641; of Principal Bench New Delhi in R.K.Bhardwaj vs. Union of India (supra), of Calcutta Bench in Baidya Nath Bandhopadhyaya vs. Union of India (supra); of Chandigarh Bench in the case of O.P.Gupta and others vs. Union of India and others (supra) as also of our bench in OA No.1025/92 and OA No.967/92 Marottam Singh and others and Brijendra Singh and others vs. Union of India and others; and the controversy of stepping up of the pay of the senior at par with the junior who earns higher pay fixation due to the adhoc promotion or fortuitous circumstances does not now remain to be determined again and again. It may be mentioned here that it is also not in dispute that the seniority of the contesting applicants and private respondents is maintained at all India basis. It has not been the case of the respondents that the circle gradation list was ever circulated to the applicants, hence, as soon as the applicants

came to know about the discrimination in the fixation of their pay vis-a-vis their juniors, they represented to the respondents and having not succeeded in getting their pay stepped up, they have approached the Tribunal at their right earnest.

12. The contention raised by the learned counsel for the respondents that the applications are time barred carry no force. The reasons are more than one. Firstly, the applicants came to know about the discrimination in late October 1993 and they made all efforts to collect the data of pay etc. of the private respondents from Ahmedabad Circle and as soon as their representations were finally rejected by the respondents vide impugned orders at Annexure A-1, they approached the Tribunal within time. The controversy of raising limitation in similar cases has been dealt with in great detail by the Chandigarh bench of the Tribunal in the case of O.P. Gupta and others Vs. Union of India and others, (1995)31 ATC 84 in which one of us (Hon'ble Shri Rattan Prakash) was a member of the bench and it has been held therein that:

"the judgment of N.Lalitha (Smt.) case cannot be termed as a judgment in personam, but a judgment in rem which has virtually conferred an absolute right not only to the applicants therein, but also on all other individuals enlisted in the All India Graduation List which could have been affected by virtue of giving fortuitous fixation of pay to N.S.Shah and P. Panjara in the above referred cases."

Aforesaid observations apply with full force in the instant applications and the plea to the

contrary raised by the respondents is rejected.

12. For all the aforesaid reasons we are of the considered opinion that the impugned orders dated 1.7.1994 (Annexure A-1) in the case of Shri Jagdish Prasad Yadav and order dated 6.7.1994 (Annexure A-1) in the case of Shri Kewal Ram Israni are not sustainable in the eye of law and are hereby quashed.

13. Consequently, while allowing both the applications of S/Shri Jagdish Prasad Yadav and Kewal Ram Israni, the issue framed in this O.A. is answered in the affirmative and the respondents are directed to step up the pay of Shri Jagdish Prasad Yadav at par with his junior Shri G. Rangnathan (respondent No.5) w.e.f. 12.4.1990 on regular promotion as Accounts Officer with the date of next increment as on 1.9.1990 as has been the case of his junior and in the case of Kewal Ram Israni to step up his pay at par with his junior Shri Jagatnarin w.e.f. 12.6.1989 i.e. the date from which the pay was fixed on regular promotion to the post of Accounts Officer with the date of next increment as 1.2.1990 as has been the case of his junior.

14. The respondents should comply with the aforesaid directions within three months of the receipt of copy of this order. In the facts and