

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

O.A.NO. 637/1994

: Date of Order: 9 May '95

M.L.Goyal

: Applicant

Versus

Union of India & Ors

: Respondents

Mr. S.K.Jain

: For the applicant

Mr. M. Rafiq

: For the respondents

CORAM:

Hon'ble Mr. Rattan Prakash, Member (Judicial)

O R D E R

(PER HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL))

The applicant Shri M.L.Goyal has filed this application under Section 19 of the Administrative Tribunal's Act, 1985 to claim the following reliefs:-

- i) to direct the respondents to fix the pay of the applicant at par with that of the pay of Shri Niranjana S.Shah, his junior w.e.f. 11.2.1991 and pay arrear thereon accordingly;
- ii) to quash the impugned order dated 15.6.1994 (Annexure A-1) by which the representation of the applicant dated 22.6.1994 (Annexure A-2) was rejected;
- iii) to direct the respondents No.1 and 2 to pay all benefits enjoyed by Shri Niranjana S. Shah including pay and allowances during his officiating period as TTS Group B to the applicant.

2. The undisputed facts of this case in brief are that the applicant is a TTS Group B officer of the Telecom Department having an All India Seniority and All India transfer liability. He was promoted to TTS Group B cadre from TTS Group C (now designated as Assistant) vide Memo dated 26.10.1990 (Annexure A-3).

It is an admitted case of the parties that the applicant is senior to Shri Niranjana S. Shah, Superintendent I/C CTO, Rajkot.

3. It is the case of the applicant that he has been senior to Shri Niranjana S. Shah in the gradation list issued by the respondents vide letter dated 7.7.1978 (Annexure A-4) and that the applicant and Shri Shah were promoted to TTS Group B cadre by the DPC in the year 1990. In the blue-book, the extract of which has been produced as Annexure A-5, the applicant's name is at serial No.70288, whereas, that of Shri Shah is at Sl.No.70298. It is further the case of the applicant that as evident from the comparative statement prepared by the Chief Superintendent Central, Telegraph Office, Jaipur-1 and annexed as Annexure A-6 in respect of stepping up of pay of the applicant with that of Shri Shah, the applicant always ranks senior to Shri Shah as Shri Shah was recruited and appointed on 29.1.1966, whereas applicant was appointed on 3.7.1965 as T.S.Clerk. It is the grievance of the applicant that Shri Niranjana S. Shah who is junior to the applicant was afforded officiating chance to work in the cadre of TTS Group B for a longer period without the knowledge of the applicant and his pay was fixed at Rs.2675/- as on 11.2.1991, whereas, the applicant was allowed to draw only Rs.2240/- on that date. It has therefore been claimed by the applicant that he fulfils all the three conditions of the Government of India order No.8 below FR 22(c) old

for stepping up of pay and that he being senior to Shri Shah is entitled for stepping up of his pay w.e.f. 11.2.1991. His representation dated 26.2.1994 (Ann.A-2) having been rejected by the respondents vide their order dated 4/5-7-1994 (Annexure A-1), he has been constrained to file this application to claim the aforesaid reliefs.

4. The respondents have opposed this application by filing a written reply to which the applicant has not filed any rejoinder. The stand of the respondents has been that the fixation of the applicant and that of Shri Niranjana S. Shah has been made in accordance with the rules on the subject. Shri Shah having worked on a higher post for a longer period than the applicant was rightly fixed at Rs.2675/-. The respondents have denied that the applicant had no knowledge about the officiating working of Shri Niranjana S. Shah. It is stated that the applicant does not fulfil all the conditions laid down under Department of Personnel & Training New Delhi's circular No.4/7/92 dated 4.11.1993 (Annexure R/1) as also of the clarification issued by the Department of Telecom, Ministry of Communication, New Delhi vide their letter dated 31.5.1993 (Annexure R/2). It has been denied that the action of the respondents has been illegal, arbitrary, capricious, unreasonable, unconstitutional and violative of the provisions of Articles 14 and 16 of the Constitution of India. Accordingly it has been stated that the application deserves rejection.

5. We have heard the learned counsel for the applicant Shri S.K.Jain as also Shri M. Rafiq for the respondents and have carefully examined the record in great detail. The only point for consideration in this OA is whether the applicant who is admittedly senior to Shri Niranjana S. Shah is entitled for fixation of his pay at par with his junior Shri Shah w.e.f. 11.2.1991?

6. We have given anxious thought to the arguments advanced on behalf of both the sides.

7. It has been vehemently contended by the learned counsel for the applicant relying upon the judgment in the case of N. Lalitha's (Smt.) Vs. Union of India 1992(19)ATC 569(Hyderabad) and Baidyanath Bandopadhyay Vs. Union of India and others, 1994(3)SLJ(CAT) 378 (Calcutta) that the applicant being a similarly situated individual and admittedly being senior to Shri Niranjana S. Shah is entitled for the fixation of his pay at par with his junior Shri Shah w.e.f. 11.2.1991. The learned counsel for the applicant has also cited another judgment of Hon'ble the Supreme Court in the case of Shri Narayan Yeshwant Gore Vs. Union of India and others, 1995 II Apex Decisions(AD)S.C.(L)1 to support his argument that the applicant being similarly situated individual, he should be accorded the same benefit.

8. On the contrary, the argument of the learned counsel for the respondents has been that officiating working on higher post by Shri Niranjana S. Shah was

within the knowledge of the applicant and that the pay of Shri Shah as also of the applicant has been rightly fixed according to the rules. The learned counsel for the respondents has drawn attention to clause 1, sub-clause (c) of the circular dated 4.11.1993 (Annexure R-1) as also to para 2, clause (c) of it to support the argument that there has been no disparity or arbitrariness in the fixation of pay of the applicant and his representation Annexure A-2 has been rightly rejected by the respondents.

9. At the outset, it may be stated that after the judgment of the Hyderabad bench of the Tribunal in N.Lalitha's (Smt.) case (supra), there has been a chain reaction by similarly situated officials to claim stepping up of their pay at par with their juniors which has resulted into the anomaly in their pay. A similar matter came before Ernakulam bench of the Tribunal in K.Krishna Pillai and others Vs. Union of India, (1994)26 ATC 641 as also before Calcutta bench of the Tribunal in Baidyanath Bandopadhyay Vs. Union of India and others (supra) . In OA No.510/94 Ved Prakash Vs. Union of India decided on 1.8.1995 this Tribunal has also taken the view laid down in the case of N. Lalitha's and Baidyanath Bandopadhyay's case. In all the aforesaid decisions, it has been consistently held that when a junior gets an adhoc promotion by way of local arrangements and by virtue of which his pay is fixed at an higher stage on his regular promotion to the same grade than his seniors, then the pay of the senior has to be stepped up with reference to the junior on the date of his regular promotion. It is undisputed in the instant case that

Shri Niranjana S. Shah got his officiating promotion earlier than that of the applicant and that Shri Shah officiated in TTS Group B for a period over ten years and 212 days, whereas, the applicant officiated only for 249 days (as per annexure A-6). It is further undisputed that the date of regular promotion of the applicant as TTS Group B has been 9.3.1991 whereas that of Shri Shah has been 11.2.1991 and thus on promotion to TTS Group B the pay of the applicant has been fixed at Rs.2240/- whereas that of Shri Niranjana S. Shah his junior at Rs.2675/-. It is thus because of the local arrangement made in favour of Shri Niranjana S. Shah that his pay has been fixed at a higher stage whereas the applicant despite being senior to him has not been granted the benefit of stepping up of his pay. The argument on behalf of the respondents that because of the local arrangement the services of Shri Niranjana S. Shah was only fortuitous one and as such the applicant cannot be granted the benefit of stepping up of pay and that note appearing below FR 22(C) is not attracted, is untenable. The reason is that in the Government of India instructions given below FR 22(C), it is nowhere indicated that benefit of stepping up of pay would not be applicable to a senior when his junior was getting higher pay due to his earlier adhoc promotion and consequential earning of fortitious increments. The argument therefore on this count has no substance. The other argument of the learned counsel for the respondents is based on the instructions contained in the circular issued by the

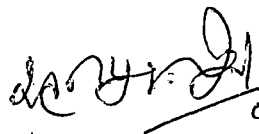
Department of Personnel and Training dated 4.11.1993 (Annexure R/3). On the basis of this circular, it has been argued that when increase in the pay of the junior is due to officiating/regular promotion in the higher post earlier than the senior, the same cannot be treated as an anomaly in the strict sense of the term to attract the provisions of stepping up of pay. In this regard it is suffice to mention that the aforesaid circular dated 4.11.1993 was duly considered by Calcutta bench of the Tribunal in the case of Baidyanath Bandopadhyay's case (supra) and it has been held therein that this circular cannot have retrospective effect as the cause of action to the applicant arose long before the issue of the said circular. Similar view has also been of this bench in the case of Ved Prakash Vs. Union of India (supra). Hence the plea raised on behalf of the respondents to the effect that the above circular dated 4.11.1993 (Annexure R-1) has retrospective effect and that the applicant is not entitled to get the benefit of it, cannot be accepted. In the instant case as well, the cause of action to the applicant arose much before the date of issuance of the aforesaid circular dated 4.11.1993. It is only after his knowledge of the judgment of Ernakulam bench referred to in his representation dated 26.2.1994 (Annexure A-2) that he made a representation to the respondents to step-up his pay to Rs.2675/- at par Shri Niranjan S. Shah, his junior w.e.f. 11.2.1991. This representation of

the applicant was dis-allowed by the respondents vide their letter dated 4/5-7-1994 (Annexure A-1). He has filed this OA on 9.12.1994 and that too within the period of limitation. Consequently, there is no force in the contention raised on behalf of the respondents that the applicant's application is barred by limitation or that he is not a similarly situated individual. The applicant having raised his grievance within time, is entitled to get his pay stepped up to that of his junior Shri Niranjana S. Shah.

10. Consequently on a consideration of all the facts and circumstances of this case as also consistency of the view taken by different benches of the Central Administrative Tribunal right from the case of Smt. N.Lalitha and others (supra) following the decision of Hyderabad bench, Ernakulam bench and our own bench and finding that the applicant Sh. M.L.Goyal here is decidedly senior to Shri Niranjana S.Shah, it is held that the applicant is also entitled to stepping up of his pay with reference to his junior Shri N.S.Shah w.e.f. the date Shri Shah was regularly promoted to TTS Group B i.e. w.e.f. 11.2.1991.

11. Therefore, while quashing the impugned order Annexure A-1 and allowing the application of the applicant, the respondents are directed to step-up the pay of the applicant Shri M.L.Goyal to the same level as that of Shri N.S.Shah who is admittedly

junior to the applicant, w.e.f. 11.2.1991
the date from which Shri Shah was regularly promoted
to TTS Group B grade. The respondents should comply
with this direction within three months from the
date of communication of the copy of this order and
to pay to the applicant all consequential arrears
on such stepping up of pay within two months
thereafter. No costs.


(RATTAN PRAKASH)
MEMBER (J)