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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 577/95, 574/95, 86/96, 199
T.A. No. 576/95 and 575/95

DATE OF DECISION 3.12.1995

Ladu Lal, K.C.Pardasani, H.L.Awasthi, Pooran Mal Sharma & Radha Kishan Soni — **Petitioner**

Mr. K.L.Thawani — **Advocate for the Petitioner (s)**

Versus

Union of India and Ors. — **Respondent**

Mr. Asgar Khan, Proxy counsel to Mr. M.Rafiq — **Advocate for the Respondent (s)**

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(N.P.NAWANI)
Administrative Member

(S.K.AGARWAL)
Judicial Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

(10)

OA No.577/95 Date of order: 3-12-99

Ladu Lal S/o Shri Keshar Lal, working as Accounts Officer, Office of the Chief General Manager Telecommunications, Rajasthan Circle, Jaipur.

OA No.574/95

K.C. Pardasani S/o Shri Thakurdas working as Sr. Accounts Officer, Office of the General Manager Telecom, Distt., Jaipur.

OA No.86/96

H.L.Awasthi S/o Shri Shiv Deen working as Senior Accounts Officer, Office of the Chief General Manager Telecommunications, Rajasthan Circle, Jaipur.

OA No.576/95

Pooran Mal Sharma S/o Shri Onkarmal working as Sr. Accounts Officer, Office of the General Manager, Telecom, Distt., Jaipur.

OA No.575/95

Radha Kishan Soni S/o Bhonrilal working as Sr. Accounts Officer, Office of the Chief General Manager Telecommunications, Telecommunication Circle, Jaipur.

.. Applicants

Versus

1. Union of India through the Secretary to the Govt. of India, Department of Telecommunications, Ministry of Communications, Sanchar Bhawan, Sansad Marg, New Delhi
2. Director General, Department of Telecommunications, Sanchar Bhawan, New Delhi.
3. Chief General Manager Telcommunications, Rajasthan Telecommunications Circle, Jaipur.
4. Chief General Manager Telecommunications, West Bengal Telecommunications Circle, Calcutta.
5. Shri Ratan Chand Chakraborty, Accounts Officer (SBP), Krishnagar Telecom Distt., Distt. Nadia (West Bengal).

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.. Respondents

Mr. K.L.Thawani, counsel for the applicants

Mr. Asgar Khan, Proxy counsel to Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

It is proposed to dispose of all the above mentioned Original Applications through a common order in view of the fact that all the applications are of similar nature, all the applicants are aggrieved by the same impugned order dated 31.10.1995 (Ann.A1) and are seeking the same relief. For the sake of convenience the pleadings as contained in OA No.577 of 1995 are being considered.

2. The applicants have made a prayer that the impugned order dated 31.10.1995 (Ann.A1) be quashed and the respondents be directed to step up the pay of the humble applicants at par with their junior Shri Ratan Chand Chakraborty (respondent No.5) w.e.f. 27.6.1994 i.e. the date from which his pay was fixed on regular promotion to the post of Accounts Officer with date of next increment as 1.8.1994 as in the case of their junior.

3. The facts of the case as stated by the applicants are that they were appointed as Postal Clerks and thereafter on passing the P&T Accountants Service Examination Part I and II were promoted as Junior Accounts Officer on regular basis w.e.f. 1.4.1987; that they were subsequently promoted to the post of Accounts Officer (for short AO) in ad hoc/regular capacity on various dates ranging from 3.4.1990 to 17.6.1994; that one Shri Ratan Chand Chakraborty who is junior to

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them was given promotion as Accounts Officer on regular basis on 27.6.1994 much later than them but his pay has been fixed much higher than the applicants w.e.f. 27.6.1994; that the applicants came to know of this discrimination in May, 1995 and thereafter made a representation to the Chief General Manager (Telecommunications) Rajasthan Circle for stepping up of their pay to that of their junior Shri Ratan Chand Chakraborty and that the said representation has been rejected vide impugned order dated 31.10.1995 (Ann.A1), inter alia, making a reference to the Department of Telecommunications letter No. 4-31/92/PAT dated 31.5.1993.

4. The case of the applicants is based on the facts that they are senior to Shri Chakraborty from the cadre of JAO/AAO to the cadre of AO. However, w.e.f. 26.7.1994 the pay of Shri Chakraborty has been fixed at Rs. 2750/-, on date of next increment 1.8.1994 raising it to Rs. 2825/- whereas the pay of the applicants has been fixed at Rs. 2525/-, on date of next increment i.e. 1.8.1994 at Rs. 2525. It has also been stated on behalf of the applicants that on verifying the reasons for such higher pay fixation in respect of Shri Chakraborty, it was revealed that he was officiating as Accounts Officer on ad hoc basis, due to fortituous ad hoc promotion on local basis, his pay was fixed at higher stage on regular promotion w.e.f. 27.6.1994. In view of the fact that seniority of AAOs/ AOs was reckoned on All India basis and that applicants are senior to Shri Chakraborty, applicants are also entitled to stepping up of pay equal to that of their junior vide FR 22(I)(a)(1). It has also been contended that the executive instructions contained in Department of Telecommunications letter No.4/7/92/PAT dated 31.5.1993 are arbitrary and ultra vires in view of the decisions of this Tribunal in Smt. N.Lalitha and Ors. Vs. Union of India and Ors., (1992) 19 ATC 569 (Hyderabad Bench) and Amichanderdas and Anr. Vs. Union of India and Ors,(1988) 7 ATC 224 (Calcutta Bench), both also upheld by Hon'ble the Supreme Court. It

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has also been stated that the Jaipur Bench of this Tribunal has also decided identical cases in OA No.386/94 and 387/94 on 15.11.1995.

5. The respondents have contested the case and have in their reply stated that though Shri Chakraborty is junior to the applicants but he is drawing more pay than the applicants because of local officiating promotions as Accounts Officer on many occasions, ~~which~~ totalling upto 5 years and 8 months. In view of this, his pay was fixed at Rs. 2750/- w.e.f. 27.6.1994 after giving the benefit of local officiating period with DRI w.e.f. 1.8.1994. The request of the applicants for stepping up of their pay was considered and was rightly rejected vide communication dated 31.10.95 in view of the express provisions in the instructions contained in the Department of Telecommunications dated 31.5.1993 and in view of the fact that the subject anomaly is not created by direct application of FR 22(I)(a)(1) and as such is not remedial as per FR/SR. It has been contended that the anomalies created by direct application of FR 22 (I)(a)(1) can only be rectified by provisions contained in FR/SR. It has also been stated that various judgments referred to by the applicants passed by this Hon'ble Tribunal as also by Hon'ble the Supreme Court are in personnem and not in rem and, therefore, the benefit allowed to the applicants therein could not be extended to the present applicants. The respondents have also denied that the instructions contained in letter dated 31.5.1993 are arbitrary and ultra vires. Finally, it has been contended that the applicants are not entitled for grant of any relief whatsoever, and the Original Applications, therefore is liable to be dismissed.

6. We have heard the learned counsel for the parties and have carefully gone through the records of the case.

7. The basic issue on which we have to take a decision is

whether the case of the applicants for stepping up of their pay to the level which is being drawn by their junior Shri Chakraborty w.e.f. 27.6.1994 is permisslbe under FR 22 (I)(a)(1) ?

8. At the first instance, we have carefully examined the provisions of FR 22, specially FR 22(I)(a)(1) and proviso to FR 22(I)(b). It will be clear from a plain reading of these provisions that the case of applicants does not fall within the four corners of the said provisions. The respondent No.5 had the advantage of ad hoc promotions from time to time, totalling to 5 years and 8 months (a fact not controverted by the applicants by filing a rejoinder) and it is because of earning annual increments during such ad hoc promotion to the post of Accounts Officer that his pay got to be fixed at a level higher than that of the applicants when they were regularly promoted as Accounts Officer. We have also looked into decision No.(26) under FR 22 incorporated at pages 65 and 66 of Swamy's Compilation of FR/SR (Part.I), 14th Edition-1999 incorporated through DOPT OM No.4/7/92-Estt.(Pay-I) dated 4.11.1993 with the heading "Instances which do not constitute an anomaly for stepping up of pay with reference to juniors", para 2 and 3 of which are reproduced below for the sake of convenience:-

> "2.Instances have come to the notice of this Department requesting for stepping up of pay due to the following reasons:-
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> (a) where a senior proceeds on Extraordinary Leave which results is postponement of Date of Next Increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade;
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> (b) if a senior forgoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier,

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junior draws higher pay than the senior. The senior may be on deputation while juniors avails of the ad hoc promotion in the cadre. The increased pay drawn by a junior either due to ad hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term;

(c) if a senior joins the higher post later than the junior, for whatsoever reasons, whereby he draws less pay than the junior in such cases senior cannot claim stepping up of pay at par with the junior;

(d) if a senior is appointed later than the junior in the lower post itself whereby he is in receipt of lesser pay than the junior, in such cases also the senior cannot claim pay parity in the higher post though he may have been promoted earlier to the higher post;

(e) where a person is promoted from lower to a higher post, his pay is fixed with reference to the pay drawn by him in the lower post under FR 22-C and he is likely to get more pay than a direct appointee whose pay is fixed under different set of rules. For example, an UDC on promotion to the post of Assistant gets his pay fixed under FR 22-C with reference to the pay drawn in the post of UDC, whereas the pay of Assistant (DR) is fixed normally at the minimum under FR 22-B(2). In such cases, the senior direct recruit cannot claim pay parity with the junior promoted from a lower post to higher post as seniority alone is not a criteria for allowing stepping up;

(f) where a junior gets more pay due to additional increments earned on acquiring higher qualifications.

3. In the instance referred to in Para.2 above, a junior drawing more pay than the senior will not constitute an anomaly. In such cases, stepping up of pay will not,

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therefore, be admissible."

It is, therefore, quite clear that the prayer of the applicants for stepping up of their pay w.e.f. 27.6.1994 at par with their junior has no force and cannot be accepted.

9. The learned counsel for the applicants cited certain cases in support of his contentions. In all those three cases various Benches of this Tribunal had allowed stepping up of the pay of seniors vis-a-vis higher pay having been fixed for their juniors. We, however, find that the case law has progressed much since these decisions were given as can be seen from the following judgments of Hon'ble the Supreme Court of India:

(i) In D.G., Employees' State Insurance Corporation and Anr. Vs. B.Raghava Shetty and Ors., reported in (1995) 30 ATC 313, options for being posted as UDC incharge of local offices were invited from all UDCs but was given only by respondent No.2, who happened to be junior to contesting respondents. In course of time, respondent No.2 also worked as Head Clerk at that place on ad hoc basis for more than three years. On promotion 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 Rs. 1640/-. The Apex Court held that FR 22(C) [new rule FR 22(I)(a)(1)] could not enable the contesting respondents to seek parity with respondent No.2 for the post of Head Clerk.

(ii) In Union of India and Anr. Vs. R.Swaminathan and Ors., 1997 SCC (L&S) 1852, the Apex Court had an occasion to examine the matter in greater length and lay the law finally in this regard. The question of parity in fixation of pay of Assistant Accounts Officer to Accounts Officer on getting promotion was, inter alia, also involved in this case. The case was decided on 12th September, 1997 by a three Judges

Bench including Hon'ble the Chief Justice of India. In para 9 of its judgment the Apex Court observed as under:

"9.We are, however, in the present case, concerned basically with Fundamental Rule 22(I)(a)(1) and the proviso to Fundamental Rule 22 because, in all these appeals, the junior employees who have got higher pay on promotion than their seniors, had officiated in the promotional post for different periods on account of local ad hoc promotions granted to them. This is because the Department of Telecommunications is divided into a number of circles within the country. The regular promotions from the junior posts in question to the higher posts are on the basis of all-India seniority. The Heads of Circles have, however, been delegated powers of making local officiating arrangements based on Circle seniority to the higher posts in question against short-term vacancies up to 120 days in the event of the regular panelled officers not being available in that Circle. The period of 120 days was subsequently revised to 180 days. Under this provision for local officiation, the seniormost official in the Circle is allowed to hold the charge of the higher post for a limited duration.....The juniors, therefore, in each of these cases who have received a higher pay on their regular promotion than the seniors, have received this higher pay on accounts of the application of the proviso to Fundamental Rule 22."

As regards the prayer of the seniors that such fixation has resulted in anomaly was also considered by the Apex Court against the background of Government's order bearing No.F.2(78)-E.III (A)/66 dated 4.2.1966 and it was held that-

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"The difference in the pay of a junior and a senior in the cases before us is not as a result of the application of Fundamental Rule 22(I)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past. Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping up of the pay of the seniors".

(iii) In Union of India and Ors. Vs. M.Suryanarayana Rao, reported in (1998) 6 SCC 400, the Apex Court relying on a law laid down in R.Swaminathan's case (supra) held that the benefit of stepping up is not admissible to the senior even if junior's ad hoc officiation is for a long period. The plea for reconsideration of Swaminathan's case was also rejected.

10. In view of the above legal position as transpires from the preceding paragraph and the facts and circumstances of the case, we are of the considered view that the applicants' prayer for stepping up of their pay at par with juniors, who happened to have got chance for ad hoc officiation in the post of Accounts Officer, has no force and the OA is accordingly dismissed. A copy of this order may be placed in each of the Original Application file.

11. No order as to costs.

(N.P.NAWANI)
Adm.Member

(S.K.AGARWAL)
Judl.Member