

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 25/5/2001

OA No.373/1996

R.C.Verma s/o Shri K.M.Verma r/o B-57, Krishi Nagar, Taron Ki Koont,
Sanganer working as Sub-Divisional Engineer O/o CGMT., Jaipur.

... Applicant

Versus

1. Union of India through the Secretary Telecommunication,
Department of Telecommunications, Sanchar Bhawan, New
Delhi.
2. The Chief General Manager, Telecommunication, Rajasthan
Telecom Circle, Sardar Patel Marg, Jaipur.
3. Shri R.K.Malik, Assistant Director (TEC), Telecom
Engineering Centre, K.L.Bhawan, Janpath, New Delhi O/o
Deputy Director General, Telecom Engineer Centre,
Janpath, New Delhi.

.. Respondents

Mr.K.S.Sharma, counsel for the applicant

Mr. Vijay Singh, counsel for the respondents

CORAM:

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

Hon'ble Mr. A.P.Nagrath, Administrative Member

ORDER

PER HON'BLE MR. S.K.AGARWAL, JUDICIAL MEMBER

In brief, the case of the applicant, as stated by him,
is that vide order dated 2.6.95 (Ann.A1) the pay of respondent No.3,
who was junior to the applicant, was fixed at Rs. 3050/- on 1.2.1995
which caused anomaly. Therefore, applicant vide this OA prays to
remove the anomaly by stepping up of his pay at par with his junior
from the very date, with all consequential benefits.

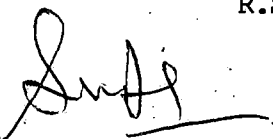


2. Reply was filed. In the reply it is stated that the order dated 2.6.95 did not cause pay anomaly to the applicant. It is also stated that respondent No.3 worked on officiating basis in TES Group 'B' w.e.f. 16.9.82 to 31.7.89 in different spells in another Telecom Circle, hence applicant is not entitled to stepping up of his pay at par with his junior in view of the letter No. 4/7/92-Estt. (Pay) dated 4.11.93 issued by the Department of Personnel and Training, New Delhi. It is further stated that order under challenge is based on departmental rules/instructions, therefore, the same is not violative of Articles 14 and 16 of the Constitution of India. It is also stated that the Apex Court in Union of India v. R.Swaminathan, (1997) 7 SCC 690 set the controversy at rest. Therefore, applicant has no case for stepping up.

3. No rejoinder has been filed by the applicant.

4. It is a settled principle of law that stepping up can be allowed only when the anomaly is due to the application of FR 22 (I)(a)(1). In the instant case, respondent No.3, Shri R.K.Malik, had the advantage of working on officiating basis in TES Group 'B' for the period w.e.f. 16.2.82 to 31.7.1989 i.e. near about 6 years and 10 months in different spells and this fact has not been controverted by the applicant by filing any rejoinder and due to this promotion on officiating basis, respondent No.3 earned increments and his pay was fixed at a level higher than that of the applicant. Therefore, prayer of the applicant for stepping up of his pay vis-a-vis his junior respondent No.3, Shri R.K.Malik, has no force and hence not sustainable in law.

5. Hon'ble the Supreme Court in Union of India vs. R.Swaminathan (cited supra) held that:-



"The difference in the pay of a junior and a senior in the present case is not as a result of application of FR 22(1)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotion. He may, because of the proviso to FR 22(I), have earned increments in the higher pay scale of the post of 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.

Government of India, OM dated 4.11.1993 also negatives the respondents claim. The increased pay drawn by a junior because of ad hoc officiating on regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority along a criterion for stepping up of pay. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the proviso to FR 22(I). The employees in question are therefore not entitled to have their pay stepped up under the said Government order because the difference in the pay drawn by them and the higher pay drawn by their juniors is not as a result of any anomaly; nor is it a result of the application of FR 21(1)."

reported in (1998) 6 SCC 400, the Apex Court relying on the law laid down in R.Swaminathan's case held that the benefit of stepping up is not admissible to the senior even though juniors ad-hoc officiation is for a long period. Plea for reconsideration of Swaminathan's case was also rejected.

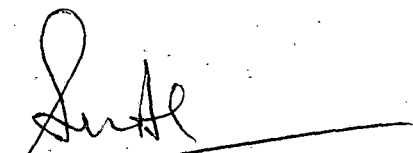
7. A similar controversy came up before this Tribunal in OA No. OA No.577/95 Ladu Lal and ors. vs. Union of India and ors. which was decided on 3.12.99 and this Tribunal held that if the respondent was fixed at a higher stage taking into consideration his officiating ad-hoc promotion, the anomaly is not due to direction application of FR 22(1)(a)(1) and in such circumstances no stepping up can be allowed.

8. In view of above all, we are of the considered opinion that applicant has no case of stepping up of his pay vis-a-vis respondents No.3, Shri R.K.Malik, and this Original Application is liable to be dismissed having no merits.

9. We, therefore, dismiss this Original Application having no merits with no order as to costs.


(A.P.NAGRATH)

Adm. Member


(S.K.AGARWAL)

Judl.Member