

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
O.A.No.374/96

Date of order: 6/7/2001

Niranjan Kumar Dixit, S/o Sh.Yagya Dutt Sharma, R/14
Madhuvan Colony, Tonk Phatak, Jaipur, working as
Asst. Director (Rural Planning), O/o CGMT, Jaipur.

...Applicant.

Vs.

1. Union of India through Secretary to the Govt of India, Mini.of Communication, Deptt. of Telecom, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecom Rajasthan Circle, Jaipur.
3. S.K.Sharma, SDE, Indore C/o GMT, Indore

...Respondents.

Mr.K.S.Sharma : Counsel for applicant

Mr.Bhanwar Bagri) : for respondents.

Mr.R.G.Choudhary)

CORAM:

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

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

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 2.11.95 (Annx.A1), the pay of respondent No.3, Sh.S.K.Sharma, who was junior to the applicant was fixed at Rs.2975 + 150 = 3125 on 5.7.94 whereas the applicant was getting Rs.2825 per month on 5.7.94 which caused anomaly, therefore, the applicant filed this O.A praying to remove the anomaly by stepping up of his pay at par with his junior Sh.S.K.Sharma, from the relevant date with all consequential benefits.

2. Reply was filed. In the reply, it is stated that the

order dated 2.11.95 did not cause pay anomaly to the applicant. It is also stated that respondent No.3 worked on officiating basis on account of his local ad hoc promotion, hence the applicant is not entitled to stepping up of his pay at par with his junior, Sh.S.K.Sharma, in view of letter No.4/7/92-Estt.(Pay) dated 4.11.93 issued by the Department of Personnel & Trng, New Delhi. It is further stated that the order under challenge is based on departmental rules/instructions, therefore, the same is not violative of Articles 14 & 16 of the Constitution. It is further stated that respondent No.3, was allowed six advance increments in view of higher technical qualification. It is also stated that the Apex Court in Union of India Vs. R.Swaminathan, (1997) 7 SCC 690 set the controversy at rest. Therefore, the applicant has no case for stepping up.

3. No rejoinder has been filed by the applicant.

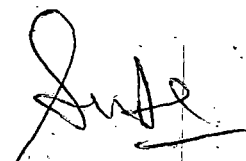
4. It is a settled principle of law that stepping up can be allowed only when the anomaly is due to the application of FR 22(I)(a)(1). In the instant case, respondent No.3 had the advantage of working on officiating basis on promotion post on account of his local ad hoc promotion and earned increments whereas seniors did not officiate before their regular promotion. 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, the prayer of the applicant for stepping up of his pay vis-a-vis his junior, respondent No.3, has no force and hence not sustainable in law.

5. Hon'ble Supreme Court in Union of India Vs.

R.Swaminathan (supra) held as under:

"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(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 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 promotion 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.

Govt of India, OM dated 4.11.93, 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 Govt 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(I)."



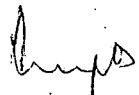
6. In Union of India & Ors Vs. M.Suryanarayana Rao, (1998) 6 SCC 400, the Apex Court relying on the law laid down in R.Swaminathan's case held that the benefit of stepping up is not admissible to the senior even though juniors ad hoc officiation is for a long period. Plea for reconsideration of Swaminathan's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

7. A similar controversy came up before this Tribunal in O.A No.577/95, Ladu Lal & Ors. Vs. Union of India & Ors , 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 direct application of FR 22(I)(a)(1) and in such circumstances, no stepping up can be allowed.

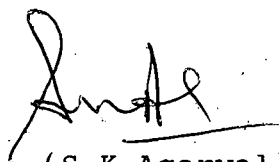
8. In O.A No.373/96, R.C.Verma Vs. UOI & Ors, decided on 25.5.2001, this Tribunal took similar view.

9. In view of above, we are of the considered opinion that the applicant has no case of stepping up of his pay vis a vis respondent No.3, Sh.S.K.Sharma and this O.A is liable to be dismissed.

10. We, therefore, dismiss this O.A having no merit with no order as to costs.


(A.P.Nagrath)

Member (A).


(S.K.Agarwal)

Member (J).