

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

Date of Decision: 17/4/2002

1. OA 432/96

Girish Kumar Sharma, Sr. TOA O/o Chief General Manager
Telecom., Rajasthan Telecom Circle, Jaipur.

...Applicant

v e r s u s

1. Union of India through Secretary,
Ministry of Telecom., Sanchar Bhawan,
New Delhi.
2. Chief General Manager Telecom.,
Rajasthan Telecom Circle,
Sardar Patel Marg, Jaipur
3. Sh. R. K. Chawla, Sr. TOA O/o Chief General
Manager Telecom, Rajasthan Telecom Circle,
Sardar Patel Marg, Jaipur

...Respondents

2. OA 619/96

Hari Narain Naraniya, Sr. TOA, O/o Chief General
Manager Telecom, Rajasthan Telecom Circle, Jaipur.

...Applicant

v e r s u s

1. Union of India through Secretary,
Min. of Telecom, Sanchar Bhawan,
New Delhi.
2. Chief General Manager,
Rajasthan Telecom Circle,
Sardar Patel Marg, Jaipur
3. Sh. V.D. Gupta, Sr. TOA,
O/o Chief General Manager
Telecom, Rajasthan Telecom Circle,
Sardar Patel Marg, Jaipur

...Respondents


.. 2 ..

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

Mr. Bhanwar Bagri, counsel for the respondents.

CORAM:

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

HON'BLE MR. A.P. NAGRATH, ADM. MEMBER

O R D E R

(PER HON'BLE MR. A.P. NAGRATH, ADM. MEMBER)

The controversy involved in these two cases is same and the relief sought by the two applicants is similar. Therefore, these are being decided by this common order.

2. The applicants are working as Sr. TOAs, who are seeking pay protection with reference to the pay of their next junior. In the case of applicant Girish Kumar Sharma of OA 432/96, his next junior is R.K. Chawla, respondent No. 3 in that OA. In the case of Hari Narain Naraniya, applicant of OA 619/96, the next junior is V.D. Gupta. It is not in dispute that the private respondents of these two OAs are junior to the applicants and that they are drawing more pay on their promotion from TOA to Sr. TOA. While Girish Kumar Sharma and private respondent R.K. Chawla were promoted as Sr. TOA on the same date i.e. 4.3.96, Hari Narain Naraniya was promoted on 5.2.96 as against 12.2.96 in case of V.D. Gupta. On regular promotion to the post of Sr. TOA, pay of the private respondents has come to be fixed higher than the pay of the applicants.

3. We have perused the records of these cases and also heard the learned counsel.

4. The learned counsel for the respondents, while conceding that the applicants are senior to the private respondents, justified the pay fixation on the ground that juniors had the occasion to officiate in higher grades prior to their regular promotion. While fixing their pay under the rules their service rendered in higher scale, even though on ad hoc basis, is required to be considered while fixing their pay on regular promotion. The seniors did not officiate in the higher grade prior to their regular promotion and thus by application of ER-22(I) (a)(1) their pay came to be fixed lower than their juniors. The learned counsel stated that this, by itself, cannot be treated as an anomaly which may give a cause of action for stepping up the pay of the seniors. For this view, the learned counsel placed reliance on the case of Union of India & Anr. v. R. Swaminathan & Ors., 1997 SCC (L&S) 1852. His plea was that basically the facts of the instant case are similar to the facts considered by the Apex Court in R. Swaminathan's case. In the facts and circumstances of that case, it was held by Hon'ble the Supreme Court that seniors were not entitled to pay protection with respect to their juniors.

5. While tracing out the sequence of events leading to ad hoc appointment of the private respondents, though junior, to officiate in higher



scale earlier than their seniors, it was mentioned by the respondents that the cadres of Group-C and Group-D staff were restructured in the year 1993. Vide letter dated 23.7.93 (Ann.R/3 in OA 619/96) it was decided that pending appointment of officials to the restructured posts of Senior TOAs, which vacancies were required to be filled up after due selection and training, the existing officials in the basic grade, who knew operation of computers were ordered ~~xxxx~~^{to} be promoted on local officiating arrangement against these vacancies. The learned counsel stated that the private respondents had the requisite computer background and hence they were allowed to officiate as Senior TOAs, while the applicants could not be given this opportunity.

6. The learned counsel for the applicants vehemently countered this justification provided by the respondents in respect of local officiating arrangement by stating that the action of the respondents was totally whimsical and arbitrary. He said that while picking up persons for officiating arrangement, no procedure or norms were followed. There was no notification indicating the requirement and the respondents picked up some persons at their own discretion and without ascertaining whether the others similarly placed had the necessary computer background or knowledge of working on computers.



In fact, the applicants represented against this action of the department on 17.4.95 (Ann.A/7 in OA 619/96 & Ann.A/8 in OA 432/96) and this arrangement was discontinued vide order dated 18.10.95 (Ann.A/9 in both the OAs). The private respondents alongwith 12 others were reverted w.e.f. September, 1995. Regular promotions came to be ordered only in February and March, 1996. The learned counsel vehemently stressed that it is not the case that the applicants were not available for the local officiating promotions but they were simply ignored and ~~as~~ their juniors were picked up in totally arbitrary manner. In this background, he vehemently stressed that no parallel can be drawn between the case of the applicants and the facts in the case of 'R. Swaminathan'.

7. To resolve this controversy, we have to first determine whether ratio in the case of 'R. Swaminathan' is applicable to the facts before us in these OAs. Pay fixation of the Central Government employees is governed by Fundamental Rules. Pay of an employee, on his promotion to the next higher grade, is determined under the provisions of FR-22(I)(a)(i). It is not in doubt that pay of the applicants on their regular promotion as TOAs has been fixed by following the steps as prescribed in this rule. In the case of private respondents, while fixing their pay as Senior TOAs the provisions

of ER-26(a) have also been applied which lays down that service rendered on ad hoc promotion is taken into account while fixing the pay on regular promotion. It is not in dispute that in the lower grades, the applicants were drawing more pay than the private respondents as on the date of regular promotion, but because of application of ER-26(a) pay of the juniors i.e. private respondents came to be fixed higher than the applicants.

8. The question which arises is that could the seniors claim the stepping up of their pay in such a situation as described above. In DR Swaminathan case, the Apex Court observed that pay of the juniors got fixed higher than the seniors, not because of direct application of ER-22(I)(a)(i) but because of applicability of ER-26 to the case of the juniors. This has not been considered as an anomaly under the rules as per Government of India's OM dated 4.11.93. This OM has set out various instances where stepping up of pay is not permissible.

9. The respondents have obviously relied upon these rules and instructions contained in OM dated 4.11.93 for their action. We now proceed to examine whether the respondents have fixed the pay of the juniors, who were afforded an opportunity to

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officiate in higher grades earlier, correctly and legally within the framework of rules, ⁱⁿ the circumstances of these cases before us. We have carefully perused the records. We find the additional posts were created in 1993 and vide letter dated 23.7.93 it had been decided to permit purely temporary local officiating arrangement from amongst the eligible persons who had the knowledge of computer working. There is nothing on record to ~~to~~ show and nothing was produced before us by the learned counsel for the respondents to indicate that before launching of this local officiating arrangement any procedure was followed to ascertain as to which of the available staff had the necessary acumen or knowledge to be considered for ad hoc promotion. This arrangement was ordered on 5.4.95 and this was resented ^{by} a number of people who submitted representation on 7.4.95. The respondents are silent as to why no action was taken on this representation. However, we do find that by order dated 18.10.95 this arrangement was ^{dis.} ~~continued~~ and 14 officials, who were earlier officiating as Senior TOAs, were reverted to their substantive post of TOAs. On perusal of this order dated 18.10.95, we find that the same has been issued in pursuance of Telecom Directorate's letter No.15-22/92-TE-II(Pt.) dated 25.7.94. Copy of the letter dated 25.7.94 has not been brought on record.



However, it is clear that the ad hoc officiating arrangement was made in a purely arbitrary manner and in such a situation the ratio in the case of 'R Swaminathan' cannot be relied upon by the respondents to defend their action. In that case, it was specifically observed by Hon'ble the Supreme Court that the juniors by virtue of ad hoc promotion got pay more than their seniors in All India seniority. This happened because Department of Telecommunications is divided into a number of circles within the country. The regular promotions from the junior post to the higher post were made on the basis of All India seniority. The Heads of Circles have, however, been delegated powers for making local officiating arrangements based on Circle seniority to the higher posts against short term vacancies upto 180 days in the event of regular empanelled officers not being available ~~and~~ in that circle.

It was held :

"The aggrieved employees contended with some justification that local officiating promotions within a Circle have resulted in their being deprived of a chance to officiate in the higher post, if such chance of officiation arises in a different Circle. They have submitted that since there is an all-India seniority for regular promotions, this all-India seniority must prevail even while making local officiating appointments within any Circle. The question is basically of administrative exigency and the difficulty



that the administration may face if even short-term vacancies have to be filled on the basis of all-India seniority by calling a person who may be stationed in a different Circle in a region remote from the region where the vacancy arises, and that too for a short duration. This is essentially a matter of administrative policy. The only justification for local promotions is their short duration. If such vacancy is of a long duration, there is no administrative reason for not following the all-India seniority. Most of the grievances of the employees will be met if proper norms are laid down for making local officiating & promotions. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements.

Appeals allowed.*

10. In the case before us, the vacancies are certainly not short-term vacancies. It is not the case of the respondents that seniors were not locally available for being considered for ad hoc officiating arrangement. In fact, they took no steps to find out as to from amongst the locally available officials who had the ~~necessary~~ permitted officiating arrangements. As we have observed earlier, even during arguments there was nothing brought to our notice by the learned counsel for the respondents to suggest whether any procedure



was followed before resorting to ad hoc officiating arrangements or whether any rules and norms were laid down for the purpose. The only one single factor was that those who were working on computers were given the officiating opportunity. When it came to an officiating arrangement to higher grade, this in itself could not be enough justification as utilisation in a particular seat is not in the hands of the employee himself. But when it comes to extending benefit, even though on a short term basis, some semblance of procedure has to be brought on place. This cannot be left to the whims of the local authorities. The respondents have explained that they had asked the Group Officers to obtain options of those working on computers and the date was extended upto 24.3.95. It was only after that the officiating arrangements were made. We have seen their communications asking for options but these are all addressed to all the Group Officers and Sectional Heads, and it does not make it clear whether the requirement was notified for general information of the concerned staff. In fact, these ~~mass~~ representations submitted on 17.4.95, to which effect a clear submission has been made in para 4.2 of the OA. In reply to this averment, the respondents have merely stated that they had made efforts by issuing letters to the Group Officers to intimate the names of officials working on computers and have denied that policy of

pick and choose was adopted. There is no clarification given as to how the representation, protesting against local officiating arrangements, was addressed. In such a situation, we have no manner of hesitation in concluding that the respondents cannot take shelter of the ratio of the case of 'R. Swaminathan'.

11. Now we refer to DOPT's OM dated 4.11.93 which covers the instances which do not constitute an anomaly for stepping up of pay with reference to juniors. In para-2 of this letter instances (a) to (f) have been described. In para-3 it has been stated that in the instances referred to in para-2, a junior drawing more pay than the senior will not constitute an anomaly. In such cases, stepping up of pay will not, therefore, be admissible. We have carefully gone through these instances as prescribed in para-2 of the said OM. For the purpose of these OAs, it is only para (b) which is relevant, which reads as under :

"(b) if a senior forgoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior 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 period earlier than the senior, cannot, therefore, be an anomaly in strict sense of the term."



12. In the instant case, the seniors and juniors were both available at the same place. It is not the case that seniors refused promotion leading to his juniors being promoted. This case arises out of purely arbitrary action of local functionaries of the department. In such a situation, if the juniors continue to enjoy the benefits given to them illegally and ignoring their seniors, we cannot permit the same by affixing our seal of approval to such an action. A benefit arising out of an arbitrary and whimsical action cannot be allowed to be perpetuated. Of course, the seniors i.e. the applicants have no case in so far as their pay fixation is concerned. Their pay has been properly fixed under Rule ER-22(I)(a)(i) with respect to the pay they were drawing in the lower grade. It is only the pay of the juniors i.e. the private respondents which has been fixed wrongly. They did have the benefit of officiating in higher grade earlier but that benefit was extended to them erroneously ignoring the seniors. For the period they officiated, they enjoyed the benefit of higher pay but this cannot be permitted to be carried over to the higher grade. In fact, this is a case where respondent No.2 should fix responsibility on the authority resorting to such adhoc arrangements in an arbitrary manner. The pay of the applicants, on their regular promotion as Senior TOAS, is

required to be fixed with respect to the pay last drawn by them as TOAs ignoring the period of local officiating. This will also take away the cause of grievance of the seniors, which they presently rightly have.

13. In the facts and circumstances of these cases, as discussed above, we pass the following order :

"The OAs are dismissed as the applicants have no case for stepping up of their pay. The respondents are directed to revise and refix the pay of the private respondents by ignoring the period of local officiating while fixing their pay on regular promotion as Senior TOAs. The respondents shall implement these directions within two months from the date of this order. No costs."

hnpd

(A.P.NAGRATH)
MEMBER (A)

S.K. Agarwal
(S.K.AGARWAL)
MEMBER (J)