

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 29 .08.2000

OA No.202/97

R.K.Likhyani S/o K.C.Likhyani, at present employed on the post of Assistant Engineer in the Office of Superintending Engineer, Telecom Civil Circle, Jaipur.

.. Applicant

V e r s u s

1. Union of India through the Secretary to the Government of India , Ministry of Telecommunication, Sanchar Bhawan, New Delhi.
2. The Deputy Director General (BW), Department of Telecom, Sanchar Bhawan, New Delhi.
3. The Superintending Engineer, Telecom Civil Circle, 5 Jamuna Lal Bajaj Marg, C-Scheme, Jaipur.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

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

CORAM:

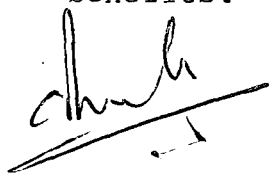
Hon'ble Mr. S.K.Agarwal, Judicial Member

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

ORDER

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

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant prays that the respondents may be directed to step up of the pay of the applicant at par with his junior Shri K.B.Vellayudhan and remove the pay anomaly and allow him all consequential benefits.



2. The facts of the case, as stated by the applicant, are that the applicant was initially appointed/recruited to the post of Junior Engineer (Civil) at Jaipur on 1.8.1973. A gradation List of Junior Engineer was promulgated vide letter dated 6.6.89 (Ann.A1). The applicant was promoted to the post of Assistant Engineer (Civil) vide order dated 21.12.1989 and his pay was fixed at the stage of Rs. 2200/- in the scale Rs. 2000-3500. The regularisation order was issued vide order dated 17.11.93 (Ann.A2) where the applicant's name find place at Sl.No.23 and K.P.Velayudhan's at Sl.No.29. It is stated that Shri K.P.Velayudhan is junior to the applicant in all respect. A comparative statement indicating the position of applicant vis-a-vis of his junior is also given in para 4(5) of the OA. The applicant made a representation dated 8.11.1991 for stepping up of pay at par with his junior. It is also stated that the applicant was not offered any officiating appointment on the promotional post of Assistant Engineer whereas his junior was allowed to officiate against a non-fortuitous vacancy without considering the case of the applicant despite the fact that All India seniority is maintained for the post of Jr. Engineer for promotion to the post of Asstt. Engineer. The action of the respondents in not stepping up his pay at par with his junior is illegal, arbitrary and violative of Article 14 of the Constitution of India.

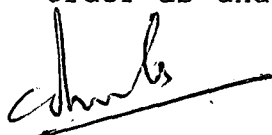
3. The respondents have filed their reply controverting the contentions made by the applicant. They have stated that Shri K.P.Vellayudhan was allowed to officiate on the post of Assistant Engineer from 1982 continuously on account of local adhoc promotion granted to him by the Head of Circle under the powers conferred upon him for making local officiation

*[Signature]*

arrangements based on circle seniority to the higher post and it was, therefore, that Shri K.P.Vellayudhan was allowed to draw higher pay than the applicant. It is also stated that representation submitted by the applicant was unworthy of acceptance and, therefore, his request could not be acceded to. The respondents have taken support of the judgment of the Hon'ble the Supreme Court dated 12.9.1997 in Civil Appeal No.8658/1996, Union of India and Anr. v. R.Swaminathan wherein it has been held that seniors whose juniors are drawing more pay because of the earlier local officiating promotion given to the juniors are not entitled to step up their pay since the difference in the pay drawn by them and the high pay drawn by their juniors is not as a result of any anomaly; not is it a result of application of FR 22(I)(a)(1). It has also been stated that in view of the judgment of Hon'ble the Supreme Court (supra), the prayer made by the applicant to step up his pay at par with the pay drawn by Shri K.P.Velāyudhan is not at all admissible now and the OA deserves to be dismissed.

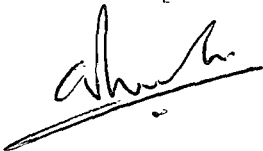
4. We have heard the learned counsel for the parties and have carefully perused the material on record.

5. We find that similar controversy was decided by this Bench of the Tribunal vide its decision dated 4.1.2000 in OA No.161/95, R.K.Gupta and ors. v. Union of India and ors. Since the controversy raised in the present OA is squarely covered by the decision rendered in OA No. 161/95 (supra), we feel that it is not necessary for us to go into the details of the pleadings and contentions raised by the rival parties. It will be suffice to extract the relevant portions from the said order as under:



" The law in respect of the issue of seniors claiming step-up in their pay simply on the ground of juniors getting a higher pay has moved ahead substantially in the last few years. Firstly, the OM No.4/7Estt.(Pay.I) dated 4.11.1993 issued by the Government of India and incorporated below FR 22 as decision No.(26) clarified the entire matter by laying down the three conditions which need to be satisfied before the pay of seniors can be stepped up and also mentions six situations which will not constitute an anomaly and stepping up of the pay of seniors will not be admissible. Secondly, Hon'ble the Supreme Court of India in D.G.Employees State Insurance Corporation and Anr. v. B.Raghava Shetty and ors, reported in (1995) 30 ATC 313, Union of India and Anrs. v. R.Swaminathan and ors., reported in 1997 SCC (L&S) 1852 and Union of India and ors. v. M.Suryanarayana Rao, reported in (1998) 6 SCC 400 has mandated the way the cases of stepping up of pay vis-a-vis their juniors have to be decided. In the Swaminathan's case, the three Judges Bench of the Apex Court has observed as under:

The difference of pay of a junior or 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 post. Because of 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 juniors."

6. We, however, would like to make an observation. The practice of giving local adhoc/officiating promotions to juniors when such promotions go on for periods as long as three-four years, generates quite a bit heart-burning amongst the seniors and a large number of OAs filed in various Benches of this Tribunal is only a manifestation of this. We would, therefore, like the respondents No.2 to consider issuing suitable guidelines to the effect that in case, such a local vacancy is likely to exceed a certain period, say one year, options should be asked from all the senior officials for being considered for local adhoc/officiating promotion at the place where such local vacancy occurs and only when the seniors do not opt to go to such place, the adhoc/officiating promotion should be given to a junior.

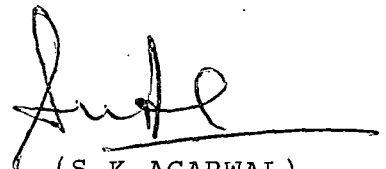
7. In view of the facts and circumstances of the case and the law laid down by Hon'ble the Supreme Court of India as discussed above, we find no force in the claim of the applicant and the Original Application is accordingly dismissed.

Parties to bear their own costs.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member