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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 416/97
T.A. No.

199

DATE OF DECISION 12.01.2000

_____ **M.C.Yadav** _____ **Petitioner**

_____ **Mr. U.D.Sharma** _____ **Advocate for the Petitioner (s)**

Versus

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

_____ **Mr. V.S.Gurjar, proxy of** _____ **Advocate for the Respondent (s)**
Mr. M.Rafiq

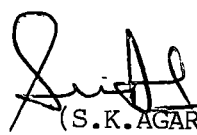
CORAM :

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 ?
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)
Adm.Member


(S.K.AGARWAL)
Judl.Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 12.1.2000

OA No.416/97

M.C.Yadav S/o Shri Nathu Ram Yadav, aged 58 years, resident of 6/46, Malviya Nagar, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Communications, Sanchar Bhawan, New Delhi.
2. The Director General, Telecommunications, Sanchar Bhawan, Ashoka Marg, New Delhi.
3. The Chief General Manager Telecommunications, Rajasthan Circle, Jaipur.

.. Respondents

Mr. U.D.Sharma, counsel for the applicant

Mr. V.S.Gurjar, proxy of 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

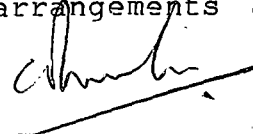
Per Hon'ble Mr. N.P.Nawani, Administrative Member

This is yet another case in which the applicant has sought parity of pay with his junior. There is no dispute that the applicant was senior to two of his juniors S/Shri O.P.Vohra and P.Panjiyara and yet on getting promotion to the cadre of Telegraph Traffic Supervisor Group 'B' (for short TTS 'B'), his pay was fixed at Rs. 650/- per month in the pre-revised pay scale of Rs. 650-1200 and at Rs. 2375/- per month as on 1.9.1989 whereas the pay of his junior Shri O.P.Vohra has been fixed at Rs. 2675/- w.e.f. 1.9.1989 following an order of the Allahabad Bench of this Tribunal dated 3.8.1995

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which allowed his pay to be stepped up to the level of pay of Shri Panjiyara, his junior. The applicant has also sought a relief that he may be given promotion to the cadre of TTS 'B' w.e.f. 22.5.1980 on which date his junior Shri Panjiyara had been given such promotion. However, the respondents took a preliminary objection to this particular relief stating that it was hopelessly time barred and it was a case of mis-joinder of different causes of action and barred by provisions of Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. In any case, this relief was not pressed during the arguments and the learned counsel for the applicant strongly argued for stepping up of the pay of the applicant as this was not simply a case of parity of pay because of fortuitous promotion of the junior but a case of raising the pay of the senior to the level of the junior Shri Vohra. He also argued that the case of Union of India Vs. R. Swaminathan reported in 1997 SCC (L&S) 1852 was distinguishable and sought support from the judgment of the Apex Court in Calcutta Municipal Corporation and Anr. Vs. Sujit Baran Mukherjee and Ors., 1998 SCC (L&S) 219. We, however, find that this particular case is not only distinguishable but the law regarding stepping up pay of seniors vis-a-vis their juniors has now been crystalised through some recent judgments of the Apex Court.

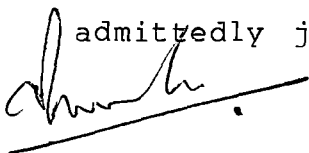
2. Respondents have strongly contested the case and apart from raising the preliminary objection on account of the relief regarding claim for promotion being time barred and there also being mis-joinder of reliefs, stated that the judgment of the Apex Court in Swaminathan's case (supra) is directly applicable in this case also since the promotion given to Shri Vohra was purely by way of officiating and local arrangements and the applicant, therefore, cannot claim any



parity in pay on account of such promotions in view of the fact that the Hon'ble the Supreme Court in Swaminathan's case held that when a junior is drawing higher pay than his senior on account of his getting fortuitous promotions, it will not constitute an anomaly and, therefore, stepping up will also not be admissible. It has also been stated on behalf of the respondents that the case of Shri M.L.Goyal, from which support has been sought by the applicant, has since been reversed by the Apex Court in Swaminathan's case (supra) and the number of SLPs filed against the said judgment has found place at serial No.23 in the list appended to the judgment. They have also contended that the letter of the Department of Telecom dated 31.5.1993, which has been issued after consultation with the Department of Personnel and Training, has clearly brought out that higher pay scale given to junior on account of such fortuitous promotion cannot be termed as an anomaly and stepping up of pay cannot be allowed.

3. We have dealt with similar matter in OA No.577/95 and OA No.315/96 decided by this Bench on 3.12.1999 and 22.12.1999 respectively. We feel that the principle enunciated on which the orders in these OAs were passed do apply squarely in the current case also. The law in this regard as laid down by the Apex Court in D.G.Employees' State Corporation and Anr. Vs. B.Raghava Shetty and Ors., reported in (1995) 30 ATC 313, Union of India Vs. R.Swaminathan and Ors, 1997 SCC (L&S) 1852 and Union of India Vs. M.Suryanarana Rao, (1988) 6 SCC 400 is fully applicable in the present case also.

4. We would, however, like to make an observation. We noticed that in the present case Shri Panjiyara, an officer

admittedly junior to the applicant had officiated for a long


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period, albeit in Bihar Circle. In fact, the first spell of officiation alleged to be from 25.5.1980 to 13.12.1987, a period of almost 6 and a half years and the second spell was from 25.1.1988 to 15.8.1989 which is almost one and a half years. The applicant in this application has contended that if his option was asked, he would have like to go to Bihar Circle and availed of the so called fortuitous promotion. We appreciate that it will not be possible to shift senior people from one circle to another frequently as and when short time local/officiating vacancies arise. However, we would like respondent No.1 to consider devising a mechanism whereby in case of local/officiating vacancies occurring in a particular circle and anticipated to last for a sufficiently long period, these are circulated to seniors in other circles, so that if they wish they could opt for availing the officiating promotion. In the absence of any such mechanism, for local/officiating vacancies which are likely to be available for a reasonably long period, there would be resentment among seniors specially when the pay of juniors is likely to be fixed on a higher level for long periods and may remain so even after revision of pay scales.

5. In view of the legal position and the facts and circumstances of the case, the Original Application does not succeed and is accordingly dismissed with no order as to costs.



(N.P.NAWANI)

Adm. Member



(S.K.AGARWAL)

Judl.Member