

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 17.09.02

OA No.478/2000

Sanjay Sharma s/o P.P.Sharma (Staff No.104287) r/o Plot No. 1/19, Malviya Nagar, Jaipur working as Sub-Divisional Engineer (Information Technology) O/o the CGMT, Rajasthan Telecom Circle, Jaipur (Raj.).

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Communications, Department of Telecommunications, Sanchar Bhawan, New Delhi.
2. The Chief General Manager Telecom, Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur
3. Shri K.K.Barsar (Staff No.104643) working as S.D.E. (Planning) Office of the T.D.M., Barmer (Raj)

.. Respondents

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

Mr. Mohd. Farooq, proxy counsel to Mr. Bhanwar Bagri, counsel for the respondents.

CORAM:

Hon'ble Mr. H.O.Gupta, Member (Administrative)

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

O R D E R

PER HON'BLE MR. H.O.GUPTA, MEMBER (ADMINISTRATIVE)

In this OA, the applicant has prayed for appropriate directions to the respondents to order fixation of pay by stepping up his pay, equal to his junior i.e. respondent No.3 on the corresponding date as

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and when pay anomaly arose, on various grounds stated in the application.

2. The case of the applicant as made out, in brief is that:-

2.1 He alongwith the respondent No.3 was selected as Junior Telecom Officer (JTO) in the year 1983. The respondent No.3 was getting higher salary than him, accordingly, he represented vide his representation dated 16.12.98 (Ann.A1). He was informed vide letter dated 3.2.99 (Ann.A2) by respondent No.2 that his case with regard to seniority is under consideration and the pay fixation shall be considered after fixation of seniority. Vide letter dated 13.11.99 (Ann.A4), the respondents published a seniority list of JTOs whereby the applicant's name appears at Sl.No.400 and that of the respondent No.3 at Sl.No.471. In the eligibility list published by the respondents for the purpose of promotion in the cadre of TES Group-B, his name is placed higher than the respondent No.3, as may be seen from the the eligibility list dated 3.1.2000 (Ann.A5). Vide memo dated 5.5.2000 (Ann.A6) he alongwith the respondent No.3 were appointed on promotion to the TES Group-B. In the said memo, the name of the applicant was also shown higher than the respondent No.3. Vide his representation dated 28.1.2000 (Ann.A7), he requested for fixation of pay equal to that of the respondent No.3 which was followed by reminder dated 9.6.2000 (Ann.A8), but no response was received and hence this OA.

3. The official respondents have contested this

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application. While admitting that the applicant is senior to the respondent No.3, the official respondents have submitted that the higher pay drawn by the respondent No.3 is not a result of any anomaly. The Government of India issued instructions for removal of anomaly by stepping up of pay of a senior on promotion vide memorandum dated 4.11.93 (Ann.R2). In para 2(d) of the said letter, it has been stated that if a senior is appointed later than the junior in the lower post itself whereby he is in receipt of lesser pay than the junior, in such cases also the senior cannot claim pay parity in the higher post though the senior has been promoted earlier to the higher post.

3.1 The applicant was initially recruited for the vacancies of the year 1983 and his name was included in the select panel. However, due to the ban orders, the recruitment of 56 juniormost outsiders of 1983 including the applicant was cancelled and notices were served upon them asking to seek employment elsewhere since Rajasthan Telecom Circle was not in a position to offer them appointment, because of shortage of vacancies. Aggrieved by the aforesaid cancellation, the applicant approached this Hon'ble Tribunal by filing OA No. 583/88. The Hon'ble Tribunal decided the said application vide order dated 17.12.92 (Ann.R3) with the direction that the applicant shall be deputed for training and offered subsequent appointment against any vacancy which may exist at present in the quota to be filled by direct recruitment. In compliance to the said order, the applicant was deputed for training in 1993 and on completion of the training he was posted as JTO w.e.f. 26.4.93 in the pay scale of Rs. 1640-2900 at the initial pay of Rs. 1640/-. On the other

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hand, the respondent No.3 was also in the select panel of direct recruitment of 1983, but he was above the applicant, took training earlier than the applicant and was posted as JTO w.e.f. 1.8.87 in the pay scale of Rs. 1640-2900 at the basic pay of Rs. 1640/-. The pay of the applicant on his appointment in the year 1993 was less than the respondent No.3, because the respondent No.3 was appointed earlier to the applicant.

4. The applicant has filed rejoinder controverting the contention of the respondents.

5. Heard the learned counsel for the parties and perused the record.

5.1 The applicant is seeking relief of re-fixation of his pay by stepping up his pay equal to his junior i.e. respondent No.3. In case of stepping up of pay, the Office Memorandum dated 4.11.93 (Ann.R2) issued by the DOPT is relevant. In the case of stepping of pay of senior, the said memorandum contains 3 conditions, which are required to be satisfied. In condition (c), it has been stated that the anomaly should be directly as a result of the application of FR-22-C [now FR 22 (I) (a)(1)]. Through an example, it has been stated in the said Memo that if even in the lower post, the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments or on any other account, the above provisions will not be invoked to step up the pay of senior officer (emphasis supplied). Further, it has been specifically stated in para 2 (d) of the said memorandum that:-

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"If a senior is appointed later than the junior in the lower post itself whereby he is in receipt of lesser pay than the junior, in such cases also the senior cannot claim pay parity in the higher post though he may have been promoted earlier to the higher post."

5.2 The fact remains that the applicant was appointed in 1993 and the respondent No.3 in 1987 both on the initial basic pay of Rs. 1640/- in the pay scale of Rs. 1640-2900. Obviously, when the respondent No.3 was appointed earlier in 1987, he would be drawing higher pay than the applicant, who was appointed in 1993 in the same grade. Therefore, on promotion to TES Group-B, the anomaly cannot be said direct result of application of FR-22-C. The applicant was drawing less pay because he was appointed later. Keeping in view the specific relief sought by the applicant for stepping up of his pay and the DOPT memorandum dated 4.11.93 relevant to the relief, the applicant cannot claim stepping up of his pay according to his junior.

5.3 During the course of arguments, the learned counsel for the applicant relied on the following judgments:-

1. C.R.Samajpati v. State of Gujrat [(1990) 12 ATC 471]
2. V.G.Shreedharan Nair v. P.M.G.Kerala Circle and Ors. (Ernakulam) [(1991) 16 ATC 232]
3. Narendra Dev Asija vs. Union of India [(1992) 20 ATC 863]
4. A.B.Krishnaswamy v. Officer In Charge, C.M.P.Records, Defence Department, Bangalore

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[(1993) 24 ATC 178]


5. State of Mysore vs. C.R.Seshadri and ors. [AIR 1974 SC 460] 25 ^B

The judgments at Sl.Nos.1 to 3 do not support the case of the applicant since they do not relate to the stepping of pay with regard to the junior, as specifically sought in the relief by the applicant. The judgment at Sl.No.4 is also not applicable being different in facts and circumstances.

6. In view of above discussions, this OA is devoid of any merit and, therefore, dismissed with no order as to costs.


(M.L.CHAUHAN)

Member (Judicial)


(H.O.GUPIA)

Member (Administrative)