

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 793/1998
MA NO.1334/02 (In OA No. 793/1998)
Jabalpur: this the 24th day of July, 2003.

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HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

HON'BLE MR. ANAND KUMAR BHATT, ADMINISTRATIVE MEMBER

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1. Shri C.R. Makhiyani
S/o Late Shri Trilok Chand,
aged 51 years,
R/o H.No. 480, Hanumantal
Jabalpur 482 002
Presently working as SDE,
O/o CGM, BRBR, AITT,
Ridge Road, Jabalpur-1.
2. Shri Madhav Khatri,
S/o Late Shri Raman Das,
Aged 49 years,
R/o H.No.312, Shantinagar,
Near Damoh Naka,
Jabalpur 482 002.
Presently working as SDE,
O/o CGM, BRBR, AITT,
Ridge Road, Jabalpur 1.
3. Shri D.K. Beohar,
S/o Late Shri B.L. Beohar,
Aged 49 years,
R/o LIG 43, Govind Bhawan Colony,
South Civil Lines,
Jabalpur 482 001.
Presently working as SDE, BRBRAITT
Ridge Road, Jabalpur 482 001.
4. Shri Harish Chandra Shukla,
S/o Shri Mukut Dhari Shukla,
aged 53 years,
R/o III/80, BRBRAITT (TTC) Colony,
Ridge Road, Jabalpur (MP)
Presently working as SDE,
O/o BRBRAITT, Ridge Road,
Jabalpur - 482 001.

..... Applicants.

versus

1. Union of India
Through : The Secretary,
Ministry of Communications,
Department of Telecommunications,
'Sanchar Bhawan', Parliament Street,
New Delhi 110 001.
2. The Director (TE),
Department of Telecommunications,
'Sanchar Bhawan' Parliament Street,
New Delhi - 110 001.

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3. Chief General Manager,
Bharat Ratna Bhim Rao Ambedkar
Institute of Telecom Training,,
Ridge Road, Jabalpur, (M).
4. Shri S. Jayaraman,
SDE(EWSD), O/o DGM Varasova
Telephone Exchange,
Telephone Exchange Building,
1st Floor, Mhada Complex, SVP Nagar,
Andheri (West),
Mumbai 400 053.

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..... Respondents.

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Mr. S.P. Rao, brief holder for Mr. Smt. S. Menon, Advocate,
for the applicants.

Mr. P. Shankaran, brief holder for Mr. B. Dasilva, Advocate,
for the respondents.

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ORDER (ORAL)

By Mr. J.K. Kaushik, Judicial Member :

This Application has been filed by the applicants under
Section 19 of the Administrative Tribunals Act, 1985, praying
for the following reliefs :-

- (A) remove the anomaly and fix the pay of the applicants
at par with their junior/respondent No.4 by stepping up
their pay from the date their junior, Shri S. Jayaraman
drew higher pay, with all consequential benefits of
arrears alongwith interest on the aforesaid amount.
- (B) Any other relief/direction/order be passed in favour
of the applicant and against the respondents, which
this Hon'ble Tribunal may deem just and proper under
the circumstances of the case and to which the applicants
may be found entitled to at the time of final disposal
of this application.
- (C) Award cost of this application to the applicants and
against the respondents."

2. The in-debtable facts of this case are that all the
applicants are senior to private respondent Shri Marikx Chandra
S. Jayaraman and were drawing their pay prior to 1.5.1990 as
Rs. 2,300/-. The respondent No. 4 was also getting the same pay

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and was holding the same post. There was an incentive scheme for granting two advance increments in case one acquires degree examination in Engineering. All the applicants had already passed the BE Examination much earlier. Respondent No.4 who was junior to the applicants, passed the IETE Examination and was granted two advance increments as per the incentive scheme. This has resulted in pay anomaly inasmuch as the said respondent started getting basic pay of Rs.2,450/- as on 1.5.1990 whereas applicants were continuing with the basic pay of Rs. 2,300/-. The reason for pay anomaly was clearly due to the grant of advance increments.

3. An order came to be passed on 11.7.90 which is reproduced in para 4.10 of O.A. which prescribed for grant of advance increments as a cut off date of 1.5.1990. The said orders were revised vide order dated 1.6.1994 (Annex.A/2) and the relevant para is No.4, which is reproduced below :-

"4.The stepping up of pay will be done only if the anomaly has arisen as a result of grant of two advance increments for acquiring higher qualifications of Degree in Engg. and not due to other reasons enumerated in DOPT letter No.4/7/92-East (Pay,I) dated 4.11.93 (copy enclosed). Stepping up is not permissible, if the senior's pay is reduced due to any reasons enumerated therein. The anomaly arising as on 1.5.90 due to advance increments be removed by granting not more than two increments only."

A perusal of aforesaid para makes the position clear and applicants are fully entitled for grant of stepping up of their pay as has been prayed in the O.A.

4. A detailed reply has been filed in the matter and a comparative chart has also been placed on record indicating pay fixation of applicants vis-a-vis the private respondent. It has been averred in the reply that difference in pay did not arise as a result of grant of two advance increments but it was due to grant of selection grade to Shri S. Jayaraman (respondent

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No.4) that is why he started drawing higher pay of Rs.2,450/- and applicants are not entitled for any stepping up.

5. We have heard the learned counsel for the parties and have carefully perused the records of the case.

6. At the very outset, learned counsel for applicants has drawn our attention to a judgement dated 5.4.2002 delivered in OA 260/97 in K.K. Singh Vs UOI & Anr. by this very Bench wherein a similar controversy had been adjudged and the O.A. was allowed. The stepping up of pay as per the Instructions of the D.O.T. dated 1.6.1994, is admissible to applicants also and O.A. may be decided on similar lines.

On the contrary respondents' counsel has reiterated the defence of respondents in the O.A. and has tried to distinguish the relied upon judgement.

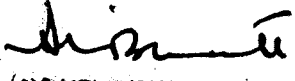
7. We have considered the rival contentions raised by the parties.

8. A perusal of comparative chart clearly indicates that prior to 1.5.90, applicants as well as the respondent No.4 were drawing the pay at the stage of Rs. 2,300/- and it is only from 1.5.1990 the respondent No.4 had been fixed at Rs. 2,450/- and it is due to grant of two advance increments. There seems to be some contradiction between the records which have been placed by the respondents and their pleadings. The case is fully covered by the judgement delivered by this Bench in K.K. Singh's case (supra). At this stage, we can only assert that we have no hesitation in following the same and otherwise also, if we were to decide the matter even in absence of the judgement being relied upon by the learned counsel for applicants, we would have reached to the same conclusion.

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Thus, we find ample force in this Original Application. However, we will have to put certain restriction in the relief since applicants have approached this Tribunal only on 12.10.1998 and, their claim is from 1.5.1990. This is necessitated in view of the decision of Hon'ble the Supreme Court in Union of India Vs. M.R. Gupta (AIR 1996 SC 669), wherein, it has been provided that the matters relating to the pay fixation rise to continuous cause of action and they cannot be said to be delayed but, restriction has to be put on the payment of arrears.

9. In view of what has been said and discussed above, the Misc. Application for taking the relied upon judgement of K.K. Singh on record is allowed. The Original Application is also accepted in part and the official respondents are directed to step up the Pay of all the applicants at Rs. 2,450/- with effect from 1st May, 1990 at par with the respondent No. 4 Shri S. Jayaraman and ^{they} will be entitled to all consequential benefits. However, consequential benefits ^{would be} on notional basis and the actual arrears shall be payable from the date one year prior to the date of filing of the Original Application i.e. 12th of October, 1997. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. In this facts and circumstances of the case, parties are left to bear their own costs.


(ANAND KUMAR BHATT)
Administrative Member


(J.K. KAUSHIK)
Judicial Member

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Jrm

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पत्तिलिपि अर्बो दित:-

(1) सदिव, उच्च न्यायालय बार एडोकिमान, जबलपुर

(2) आलेखक श्री/श्रीमती/कु.....

(3) प्रत्यक्षी श्री/श्रीमती/कु.....

(4) कार्यपाल, केचअ, जबलपुर न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

उप सचिव

Smt. S. menon, Adm.
Bela Silva Adm.


1.8.03

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