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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

23.05.2012

OA No. 412/2009 with MA 288/2009

Mr. Anupam Agarwal, Counsel for applicant.
Mr. Neeraj Batra, Counsel for respondents.

On the request of the learned counsel for the applicant,
list it on 13.07.2012.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S. Rathore)
Member (J)

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13/07/2012

OA No. 412/2009 with MA No. 288/2009

Mr. Anupam Agarwal, Counsel for applicant
Mr. Neeraj Batra, Counsel for respondents
Heard.

O-A and M.A. are disposed
of by a separate order on the
separate sheets for the reasons
recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K. S. Rathore
[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 13th day of July, 2012

ORIGINAL APPLICATION No. 412/2009

With

MISC. APPLICATION NO. 288/2009

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

R.C. Verma son of Shri Kannomal Verma aged about 62 years, resident of B-57, Krishi Nagar, Taron Ki Koont, Tonk Road, Jaipur. Now retired from the post of Divisional Engineer (Phones), Office of PGM Telecom, BSNL, District Jaipur.

... Applicant

(By Advocate : Mr. Anupam Agarwal)

Versus

1. Bharat Sanchar Nigam Ltd through the Chairman & Managing Director, Corporate Office, Bharat Sanchar Bhawan, H.C. Mathur Lane, Janpath, New Delhi.
2. The Chief General Manager (Telecom), Rajasthan Telecom Circle, Bharat Sanchar Nigam Ltd., Jaipur.
3. The Account Officer (Cash), Rajasthan Telecom Circle, BSNL, Jaipur.
4. Shri V.K. Seth, Retd. ADG. Resident of 508, Royal Block, Super Tech Estate, Vaishali, Sector -9, Ghaziabad (U.P.).

... Respondents

(By Advocate : Mr. Neeraj Batra)

ORDER (ORAL)

The applicant has filed this OA claiming for the following reliefs:-

"It is, therefore, prayed that the original application may kindly be accepted and by appropriate order or direction, the order Annexure A/1 may kindly be quashed and set aside. The respondents should be directed to step up the pay of applicant at par with respondent no. 4 w.e.f. 01.05.1990/19.11.90 from which the applicant started drawing lesser pay than that of respondent no.4 with all consequential benefits. The pension and pensionary benefits of the applicant should also be directed to be revised accordingly. The respondents should further be directed to pay arrears of pay, pension and pensionary benefits and other

Anil Kumar

allowances with interest @ 19% from the date it became due till the date of actual payment.

Any other relief which this Hon'ble Tribunal deems fit in the facts and circumstances be also passed in favour of the applicant. Cost of original application may kindly be awarded to the applicant."

2. The applicant has filed an MA No. 288/2009 for condonation of delay.

3. Heard the learned counsel for the parties on the OA as well as MA. Having considered the averments made by the applicant in MA No. 288/2009 for condonation of delay, we are inclined to condone the delay for filing the OA. Accordingly, the MA is allowed and delay is condoned.

4. The OA was heard on merit. Learned counsel for the applicant has stated that the applicant (Shri R.C. Verma) is senior to private respondent no. 4 (Shri V.K. Seth). He drew our attention to Scheduled 'A' of the OA, which is a comparative statement of the applicant and respondent no. 4. According to this Schedule 'A', the applicant was appointed on 12.07.1972 on the post of EST while Shri V.K. Seth, respondent no. 4, was appointed on 19.06.1973 on the same post of EST. The applicant was promoted as SDE on 02.11.1989 while Shri V.K. Seth was promoted as SDE on 19.11.1990. Both the applicant as well as respondent no. 4 were drawing pay of Rs.2375/- as on 01.01.1990 in the pay scale of Rs.2000-3500/- but the pay of respondent no. 4, Shri V.K. Seth was revised to Rs.2450/- as on 01.05.1990 whereas the pay of the applicant remained at Rs.2375/-.

Anil Kumar

Similarly, the pay of the applicant as on 19.11.1990 was Rs.2450/- whereas the pay of Shri V.K. Seth, respondent no.4, was fixed at Rs.2525/-. The pay of the applicant as on 01.01.1991 was Rs.2450/- whereas the pay of Shri V.K. Seth, respondent no. 4 was fixed at Rs.2675/-. He further argued that as per seniority list dated 22.03.2001, the name of the applicant appears at sr. no. 5821 while the name of respondent no. 4 appeared at sr. no. 6810. The copy of the seniority list dated 22.03.2001 is enclosed as Annexure A/2. He further argued that respondent no. 4 remained junior to the applicant till the age of superannuation of the applicant.

5. He further argued that both the applicant and respondent no. 4 were working in the same scale of Rs.2000-3500/-. However, respondent no. 4 vide order dated 26.04.1995 was granted stepping up of his pay with his junior, Shri S. Jayaraman, w.e.f. 01.05.1990 and accordingly, his pay was fixed at Rs.2450/- instead of Rs.2375/-. It led to pay anomaly with the applicant. When he represented for stepping up of his pay, the same was rejected by the respondents vide order dated 27.09.2001 (Annexure A/1). This rejection order is against the rules and is arbitrary. Therefore, it should be quashed and the applicant be allowed stepping up of his pay with his junior i.e. respondent no. 4.

6. The learned counsel for the applicant further argued that as per the orders of Department of Telecommunication, New Delhi, the persons appointed on the post of EST holding the qualification of Engineering (BE) was entitled for grant of six advance increments. As

Anil Kumar

such, the applicant was granted six advance increments at the time of his initial appointment in 1972. The same was granted to the respondent no. 4 in 1973. However, due to change in pay scale and thus change in annual increments, it created pay anomaly among the old and new entrants. Accordingly, it was reduced to two advance increments vide order dated 11.07.1990 (Annexure A/6). But subsequently when such grant led to pay anomaly among the senior and junior employees, it was directed vide order dated 14.07.1994 (Annexure A/7) to remove such anomaly so as to bring all such employees at par with each other.

7. He further submitted that in an identical case (OA No. 488/95 Laxman Singh vs. Union of India & Others), this learned Tribunal vide order dated 21.09.2001 had directed stepping up of pay of the applicant, which was implemented by the respondent as well. The copy of the order dated 21.09.2001 is enclosed as Annexure A/8.

8. He further argued that averments made by the respondents in their reply that the applicant was working in Rajasthan Circle while respondent no. 4 was working in Delhi circle, therefore, no comparison can be drawn, is not correct. He further argued that one Shri R.K. Malik, who is junior to the applicant and is of the Rajasthan Circle, is drawing more pay than the applicant. The name of Shri R.K. Malik is at sr. no. 759 while the name of the applicant is at sr. no. 750 in the seniority list of JTO. Thus Shri R.K. Malik is junior to the applicant. Therefore, he requested that the pay of the applicant may be stepped up with the pay of Shri R.K. Malik in case his request for stepping up

Anil Kumar

of his with respondent no. 4 is not found according to the rules. He further drew our attention to letter No. 4-24/90-PAT dated 01.06.1994 (Annexure R/10), more particularly, to Para No. 6, which is quoted below:-

"6. Considering the quantum of work, the CGMs, Telecom. Circles/Regions/Projects/Other Administrative Officers are delegated with powers to step up the pay of Gr. 'B' and Gr. 'A' Officers drawing less pay than their juniors as a result of the anomaly arising out of grant of two advance increments w.e.f. 1.5.1990 as a special case, in consultation with their I.F.A. However, this power shall not be deleted further to the subordinate Officers."

Thus, according to the learned counsel for the applicant, stepping up of pay is permissible even according to letter dated 01.06.1994 (Annexure R/10).

9. Therefore, he argued that the OA be allowed and the pay of the applicant be stepped up at par with respondent no. 4 w.e.f. 01.05.1990 and he should be allowed all consequential benefits including revision of pay and the pensionary benefits.

10. On the contrary, learned counsel for the respondents argued that the case of the applicant for stepping up of his pay under TES Group 'B' has not been received duly recommended by the Principal General Manager Telecom, Jaipur and by the General Manager (Finance) being Internal Financial Advisor of that office. The request of stepping up was examined and his case was rejected vide order dated 27.09.2001 (Annexure R/1), He further argued that the pay of respondent no. 4, Shri V.K. Seth, was stepped up with his junior, Shri S. Jayaraman, w.e.f. 01.05.1990, who was granted two advance increments after acquiring of higher qualification in Engineering and

Anil Kumar

his pay was fixed from Rs.2375/- to Rs.2450/- as per Annexure R/7. He further argued that Shri S. Jayaraman and Shri V.K. Seth both were working in Delhi circle. The pay of Shri V.K. Seth was not revised on the basis of All India seniority, which is not admissible with the JTO, who had been appointed initially of another circle (State). Therefore, the pay of the applicant, who was working in Rajasthan Circle, was not stepped up with the pay of Shri V.K. Sethi, who was working in Delhi Circle. The applicant also does not fulfill the conditions as per Para No. 3 of the DOT, New Delhi's letter No. 4-24/90-PAT dated 01.06.1994 (Annexure R/10). Therefore, there is no merit in this OA and the claim of the applicant has been rightly rejected by the respondents. Therefore, the OA be dismissed being devoid of merit.

11. Heard the rival submission of the parties and perused the documents on record. It is not disputed between the parties that the applicant (Shri R.C. Verma) is senior to Shri V.K. Seth, respondent no. 4. It is also not disputed between the parties that both the applicant and respondent no. 4 were drawing the same pay as on 01.01.1990 i.e. Rs.2375/-. It is also admitted that the pay of respondent no. 4, Shri V.K. Seth, was stepped up at par with his junior, Shri S. Jayaraman, w.e.f. 01.05.1990 vide order dated 28.04.1995. Learned counsel for the respondents did not dispute that in the similarly situated case, Laxman Singh has been given advantage of stepping up of his pay with his junior in compliance of the order of CAT dated 21.09.2001 in OA No. 488/1995 (Annexure A/8). In this order, this Tribunal had observed that one Shri Gurubir Singh Bagga has been granted similar relief on his representation dated 17.10.1994, which

Anil Kumar

fact was not controverted by the respondents in their reply in so many words. The CAT also observed that it is a settled principle of law that a junior cannot draw more pay than the senior unless rules so permit. In that OA, the respondents failed to show any rule (FR & SR) to permit the junior, respondent no. 4, to draw more pay than a senior (applicant). Therefore, the applicant was permitted to step up of his pay at par with his junior, respondent no. 4. Learned counsel for the respondent did not dispute that Shri R.K. Malik, who is working in Rajasthan Circle, is junior in the seniority list and that he is drawing more pay than the applicant. Therefore, if the principle that stepping up of on All India Seniority will not count is taken into consideration then the applicant is entitled to be placed at par with Shri R.K. Malik in fixing up of his pay.

12. Learned counsel for the respondents could not show us any rule which permits the junior, respondent no. 4, to draw higher pay than the senior (applicant). In our opinion, reliance cannot be placed on Annexure R/9 because the same has not been applied in the case of other employees. The respondent department has extended the benefit of stepping up of pay in the case of similarly situated persons like Laxman Singh and Gurubir Singh Bagga. Therefore, in our view, the applicant is also entitled to stepping up of his pay with his junior i.e. respondent no. 4, Shri V.K. Seth w.e.f. 01.05.1990. The applicant is entitled to all consequential benefits including revision of pension and pensionary benefits, if any. It is expected that respondents shall complete the exercise of stepping up of pay of the applicant

Anil Kumar

expeditiously but in any case not later than the period of three months from the date of receipt of a copy of this order.

13. Consequently, the OA is allowed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)
AHQ

K. S. Rathore
(Justice K.S.Rathore)
Member (J)