

CENTRAL ADMINISTRATIVE TRIBUNAL
GUJARATI SECTION ::::::::::: GUJARATI

ORIGINAL APPLICATION NO. _____

MISC. PETITION / CONTENT PETITION / REVIEW APPLICATION NO. 2/96

in (O.A.) 64/95

H. O. I. 90ms APPLICANT (-)

vs.

H. C. Chakravarty BARBER (S)

Mr. S. Ali, Sr (Att) Advocate for Applicant(s)

Mr. B.K. Sharma Advocate for Respondent(s)

OFFICE MTE

DATE

Mr. S. Ali, Sr C.C.C. 28-2-96

has filed an application on 29.1.96 w/c 17 of CAT (Procedure) Rules, 1989 with a prayer to review the order dated 22.11.95 passed by this Honble Tribunal in O.A. 64/95.

The order was communicated to Sr. C.C.C. on 1.1.96 vide despatch No. 14 and the same has received by the Office on 9.1.96 and the Review Petition has been filed on 29.1.96. Hence the application is within time.

Laid before the Bench in form of order.

16/2/96
Section Officer
Central Administrative Tribunal
Gujarati Bench
Gandhinagar

Mr. S. Ali, Sr. C.C.C. for the applicant. (Original respondents).

The ground raised for review relate to merits of the case and if the applicants feel aggrieved by the view taken by us their remedy does not lie by way of Review Application.

R.A. rejected.

Member

Vice

17.3.96
copy of order dtd. 28.2.96
issued to the counsel for
the parties vide No. 270,
S.O. 204 dtd. 28.3.96

Filed by
Shankar
29/11/96
Central Govt. Standing Committee
Central Administrative Tribunal,
Guwahati Bench, Gauhati.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH AT GUWAHATI:

R.A. NO. 2 OF/1996

(O.A. No. 64/95).

In the matter of :-

Review Application under section
22(3)(f) of the Central Administrative
Tribunal Act, 1985.

-And-

In the matter of :-

Judgment and order dated.22.11.95
passed by the Hon'ble Tribunal in
O.A. No. 64/95.

-And-

In the matter of :-

1. The Union of India,
represented by the Secretary to
the Govt. of India, Ministry of
Communication, New Delhi.
2. The Asstt. Director, General (TEL),
Department Telecommunication,
New Delhi.
3. The Chief General Manager, Telecom.,
Assam Circle, Guwahati.
4. The Chief General Manager, Telecom,
Task Force, Guwahati.

5. The Chief General Manager,
Eastern Telecom Region, Calcutta.

... Petitioners;

- Vs -

1. Shri Haran Chandra Chakravarty.
2. Shri Bidur Bhusan Mukherjee.
3. Shri T. S. Nagarajan.
4. Shri J. Chenchaiiah
5. Shri G. Thalamuthu
6. Shri Biswajit Deb.
7. Shri K. S. Monoharan.
8. Shri V. K. Hariharan.
9. Shri Seshadri.
10. Shri P. Sundara Rajan.
11. Shri Balakrishnan
12. Shri C. Rajendran.

- All are working as Accounts
in the Department Telecommunica-
tion.

... Opposite parties

Applicants:

The humble petition of the above named
petitioners Most Respectfully Sheweth :-

1. That the opposite parties as applicants filed
the O.A. No. 64/95 before the Hon'ble Tribunal praying
for stepping up their pay with effect from 27.6.94 at
par with one R.C. Chakravarty who was junior to them.

2. That the petitioners as Respondents contested the case by filing written statements and making oral submissions. The Hon'ble CAT after hearing on both sides allowed the O.A. and gave direction to the Respondents-Petitioners to step up the pay of the opposite parties at par with Sri R.C. Chakravarty vide judgment and order dated 22.11.95 and to pay their arrears.

Thus being highly aggrieved by and dis-satisfied with the judgment and orders dated 22.11.95, the humble petitioners beg to prefer this Review application on the following amongst other grounds.

- G R O U N D S -

1. For that there has been error apparent on the face of the record and as such the impugned judgment is liable to be reviewed.

2. For that in a similarly situated case the ~~CAT~~ Bombay Bench while allowing the O.A. ordered that the pay of the applicants would be notionally fixed without giving the benefit of arrears and as such the present case being situated and/^{on}similar footing the application would have been allowed ~~even~~ notional fixation of pay to the applicants and as such the impugned judgment is liable to be reviewed.

3. For that the same Hon'ble Bombay Bench held in a case of Shri M.P. Kulkarni and others -Vs- Union of India and ors. reported in SLJ, 1989 (4 at page 425) held

that the disparity do not due to direct application of FR 22C and directed not to pay their Arrears salary and as such, it is a fit case to review the impugned judgment and order.

4. For that to avoid conflict ~~of~~ of decisions between the Calcutta Bench, Ernakulam Bench/^{Bombay Bench} and Hyderabad Bench, it is necessary to review the impugned judgment and give fare and just decision on merit. *file*

5. For that Sri R.C. Chakravarty's pay was fixed on higher side on the basis of his earlier adhoc promotion and the applicant's pay have been given at lower scale than the R.C. Chakravarty as they were promoted later on and as such it is a fit case to review the impugned judgment and order.

6. For that at any rate the impugned judgment and order is liable to be reviewed.

It is, therefore, respectfully prayed that the Hon'ble Tribunal may be pleased to admit the Review application, call for the records and after hearing the parties set aside the impugned judgment and order dated 22.11.95 and decide the O.A. No.64/95 on merit in accordance with Law.

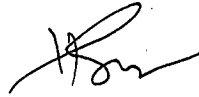
And for this act of kindness, the petitioners as in duty bound shall ever pray.

- Verification -

I, Shri M. Sinha, Asstt. Director Telecom(HRD).
Office of the C.G.M.T., Assam Circle, Ulubari, Guwahati-7.
being authorised do hereby solemnly declare that the
statements made above are true to my knowledge, belief
and information.

And I sign this verification on this 29th day
~~of~~ JANUARY, 1996 at Guwahati.

DECLARENT:



सहायक निदेशक दूरसंचार (एच. आर. डी.)
Asstt. Director Telecom (H. R. D.)
क्रा. लि. मुख्य महाप्रबन्धक दूरसंचार
C/o The Chief General Manager
असम दूरसंचार परिषद्, गुवाहाटी-7
Assam Telecom Circle, Guwahati-7

(15)

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Order
for Receipts.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : : GUWAHATI

DESPATCH NO. 14

DATED GUWAHATI, THE 1/12/96

ORIGINAL APPLICATION NO. : 64/95
MISC. APPLICATION NO. :
CONTEMPT PETITION NO. :
REVIEW APPLICATION NO. :
TRANSFER APPLICATION NO. :



Shri H. C. Chakraborty & Ors.

APPLICANT (S)
PETITIONER (S)

VERSUS

Union of India & Ors.

RESPONDENT (S)

To,

Mrs. S. Ali, Sr. C.G.S.C.,
Central Admn. Tribunal,
Guwahati Bench,
Guwahati.

Sir,

I am directed to forward herewith a copy of Judgement/Order dtd. 22.11.95 passed by the Bench of this Tribunal comprising of Hon'ble Judice Shri M. G. Chaudhary Vice-Chairman and Hon'ble Member, Administrative in the above noted case, for information and necessary action, if any.

Please acknowledge receipt.

Yours faithfully,

Encls. : As above.

(Six pages)

SECTION OFFICER (J)

GKC/281195

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.64 of 1995

Date of decision: This the 22nd day of November 1995

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

1. Shri Haran Chandra Chakraborty
2. Shri Bidur Bhusan Mukherje
3. Shri T.S. Nagarajan
4. Shri J. Chenchaiiah
5. Shri G. Thalamuthu
6. Shri Biswajit Deb
7. Shri K.S. Manoharan
8. Shri V.K. Hariharan
9. Shri S. Seshadri
10. Shri P. Sundara Rajan
11. Shri Balakrishnan
12. Shri C. Rajendran.

All the applicants are working as Accounts Officer
in the Department of Telecommunications and are
posted at different stations.

.....Applicants

By Advocate Shri B.K. Sharma with Shri B. Mehta.
- versus -

1. The Union of India,
Represented by the Secretary to the Government of India,
Ministry of Communications,
New Delhi.
2. The Asstt. Director General (TE),
Department of Telecommunications,
New Delhi.
3. The Chief General Manager (Telecom),
Assam Telecom Circle,
Guwahati.
4. The Chief General Manager, Telecom Task Force,
Guwahati.
5. The Chief General Manager,
Eastern Telecom Region,
Calcutta.

.....Respondents

By Advocate Shri S. Ali, Sr. C.G.S.C.

.....



O R D E R

CHAUDHARI J. V.C.

Mr B.K. Sharma for the applicants.

Mr S. Ali, Sr. C.G.S.C., for the respondents.

This is an application filed by a group of 12 Accounts Officers serving in the Department of Telecommunications. They are posted at different stations. Their common grievance is that the pay of R.C. Chakraborty who is junior to them has been fixed at Rs.2750/- on 27.6.1994, whereas their own pay has been fixed lower than R.C. Chakraborty and thus there arises an anomaly which is required to be removed. They, therefore, pray that the respondents be directed to step up their pay at par with the pay of R.C. Chakraborty with effect from the date on which the anomaly arose and pay to them the arrears.

The respondents have not disputed the various dates on which the respective applicants were appointed as Junior Accounts Officers and thereafter as Assistant Accounts Officers and later on as Accounts Officers from the respective dates shown by the applicants. All the applicants were promoted as Accounts Officers on regular basis ^{and their pay has been fixed between} Rs.2375 and Rs.2600 respectively, whereas the pay of R.C. Chakraborty has been fixed as Rs.2750.

2. The applicants submitted a representation on 6.2.1995 to the Chief General Manager, Assam Telecom Circle to remove the anomaly. The applicants have stated that they got the knowledge that their pay was fixed at a lesser level and after the knowledge was derived they filed the representations from 25.11.1994 onwards to 6.2.1995. The applicants aver that the pay of R.C. Chakraborty has been fixed higher than their pay because of the fortuitous adhoc promotions which he was able to get because of his posting in the West Bengal Telecom Region and they had no opportunity of getting such a promotion in the Assam Telecom Circle and that circumstance should not result in they being deprived of pay equal to his pay on their regular promotion

here

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to the post of Accounts Officers. In the representations the applicants drew attention of the Chief General Manager to the fact that various Benches of the Central Administrative Tribunal have, in cases of similar nature, decided that such an anomaly should be removed and the same course should be followed in respect of them.

3. The respondents inter alia contend that the pay of R.C. Chakraborty has been fixed on the basis of his pay in the earlier cadre before promotion correctly applying the rule in FR 22(i)a(i) and there does not arise any anomaly. They have further stated that R.C. Chakraborty was drawing more pay than the applicants when all of them were working together in the previous cadre and on promotion everybody's pay was fixed taking their existing pay on the previous cadre as the basis under FR 22(i)a(i) and that R.C. Chakraborty's pay was fixed at a higher level than that of the applicants' pay by virtue of his pay in the previous cadre. The respondents further contend that the decisions of the various Benches of the Central Administrative Tribunal cannot be applied to the applicants in view of the observations of the Department of Personnel and Training vide letter No.4-31/92-PAT dated 31.5.1993.

4. Having regard to the fact that all the applicants and R.C. Chakraborty were Assistant Accounts Officers before regular promotion as Accounts Officers and that R.C. Chakraborty was junior to the applicants in accordance with their inter se seniority the mere circumstance that R.C. Chakraborty could get the benefit of fortuitous adhoc promotion as Accounts Officer from time to time cannot deprive the applicants ^{the benefit} of getting the pay equal to his pay on their promotion as Accounts Officers merely because R.C. Chakraborty may have drawn higher pay by virtue of his adhoc promotion. The pay earned by him during his adhoc promotion benefit of which is given to him cannot thus be a ground to deny the applicants the benefit of equal pay merely because they had no opportunity to gain fortuitous adhoc promotion prior to him or like him.



5. The position has been settled by the decision of the Ernakulam Bench of the Central Administrative Tribunal in the case of C.M. Yacob, Accounts Officer and others relating to Kerala Telecom Circle, wherein the applicants had claimed that there was an anomaly arising owing to one of their juniors, K. Sankaranarayanan (O.A.No.1156/93 dated 20.10.1993) having gained fortuitous adhoc promotion on the basis of which his pay was fixed at a higher level than that of them. The Bench noted that by virtue of FR 22-C and DG P&T's instruction, Ministry of Finance O.M.No.F2(10)-E.III(A)/62 dated 20.6.1965 it was contemplated that the pay of a senior shall be stepped up to the level of the pay of his junior, drawing a higher pay and that is intended to obviate an anomaly that may not be wholesome in service. It was held that in all cases, (except case of disciplinary proceedings) where the senior draws a lesser pay, he is entitled to have his pay stepped up to the level of the pay of his junior subject to the condition that the senior and junior are in the same scale, same cadre and same unit. The claim of the applicants in that application for stepping up of pay was allowed.

6. In the decision in (O.A.816/89) N. Lalitha (Smt) and others -vs- Union of India and others, (1992) ATC 569 (Hyderabad), similar view was expressed after noticing the decision of the same Bench in the case of V. Vivekananda -vs- Secretary, Ministry of Water Resources, O.A.No.622/89, and the decision of the Calcutta Bench of the Tribunal in Anil Chandra Das -vs- Union of India, (1988) 7 ATC 234 (Cal). It was held that not having had the benefit of fortuitous adhoc promotions the senior should not be placed at a disadvantage in pay fixation. The respondents were directed to step up the pay of the applicant therein on par with his juniors. It was noticed that the earlier matter was carried to the Supreme Court in SLP No.13994 of 1991 which was dismissed on 22.8.1991 and the decision stood upheld. The case accordingly was decided in favour of the applicants. Similarly in O.A.No.1156/93 decided by the Ernakulam Bench of the Tribunal on 29.10.1993 (in the case C.M. Yacob, Accounts Officer and others) ^{referred above} the view taken in above decisions

was.....

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was followed. I do not see any good reason to take any different view than taken in the above cases and, with respect, follow them. It may be mentioned that I have discussed these decisions in my order on O.A.No.100 of 1991 dated 8.8.1995.

7. It is extremely unfortunate that the respondents did not want to respect the decisions of the various Benches of the Tribunal although they are bound by the law enunciated therein. The respondents took recourse to merely referring to the letter of the Ministry of Communications; Department of Telecommunications dated 31.5.1993 which is annexed to the written statement. In the aforesaid letter of the Telecom Department it is purported to be clarified that the benefit of the judgment of the Hyderabad Bench of the Central Administrative Tribunal in O.A. No.816/89 in Smt N. Lalitha's case cannot be extended to other similarly placed Government servants as these cases do not constitute an anomaly and stepping up of pay cannot be allowed under the existing orders. The defiance to the decisions of the Tribunal reflected in this letter need not be commented further except stating that such an attitude and policy of the Telecommunications Department cannot be ^{affirmed} ~~accepted~~. The dispute raised by the applicants being identical and the case of the Ernakulam Bench since had related to their own department to which the applicants had made reference in their representations, this clarification has no force to override the principle laid down by the Tribunal.

8. The contention of the respondents that the pay of R.C. Chakraborty was fixed by virtue of his pay in the previous cadre is misleading in the sense that although the higher pay earned by him during fortuitous ad hoc promotion appears to have been taken into account. That fact is tried to be glossed over by making a statement of general nature. Hence I reject that contention.

9. I am convinced that an anomaly arises in the pay of the applicants vis-a-vis R.C. Chakraborty as pointed out by the applicants

on.....

Will

on their promotion as Accounts Officers and the applicants are, therefore, entitled to be granted the relief as prayed.

10. In the result the respondents are directed to step up the pay of the applicants at par with R.C. Chakraborty with effect from the date on which the anomaly arose and further direct the respondents ~~and further directed~~ to pay to the respective applicants the arrears as may be found payable to them arising on account of refixation of their pay after removal of the anomaly.

The above exercise to be completed within a period of three months from the date of communication of this order to the respondents.

11. The original application is accordingly allowed. No order as to costs.

Sd/- VICE CHAIRMAN



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प्रतिनिधि

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Section Officer (J)
आयुक्त (अधिकांश) (न्यायिक शाखा)
Central Administrative Tribunal
केन्द्रीय प्रशासनिक उपाय
Guwahati Bench, Guwahati-8
गुवाहटी बेंच, गुवाहटी-8

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29/12