

30/600

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

✓
O.A/T.A No 255/96

R.A/C.P No

E.P/M.A No

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SECTION OFFICER (Judl.)

A No. 2 B 1

S. Rao Applicant(s)

-Versus-

Union Respondent(s)

Dr. P. Advocates for Applicant(s)

Mr. S. Ali Advocates for Respondent(s)

Office Notes 8 Date Courts' Orders

for and
C. of R.
dt 19.11.96
Cheque # 1111
to K. S. Ali

13.11.96 Applicant present in person.
leave note of Mr. S. Ali,
Sr. C.G.S.C.
List for consideration of
admission on 19.11.1996.

trd
on
13/11

26.11.96
Notice issued to
the concerned
parties vide D.No 3901
Dt 2.12.96

Boon

1) Notice duly served on,
Respt. No - 3

11.12.96

19-11-96 Mr. S.R. Krishnan per
person. Mr. S. Ali, Sr. C.
for the respondent.
He filed an application
Admission of the writ
of the writ of habeas
corpus. The writ of
Issu notice of writ
by registered post
men with the writ
order on 19-11-96.

Im
on
19/11

Statement is not in hand

Mr S.R. Krishnan, the applicant,
in person. Learned Sr. C.G.S.C. Mr S.
Ali for the respondent. Written
statement has not been submitted by any
of the respondents.

List for writer statement.

1.8.97

Seen the order dated 30.7.97.

List this case for hearing on
11.9.97 before Division Bench.

21-8-97

Memo of appearance
filed by Mr. S. A. W. Sr.
C.G.S.C.

Member

Vice-Chairman

pg

11.9.97

Advised to 17-11-97

370

17.11.97

Advised to 30.1.98.

made

29.1.98

due to non availability
Holiday list, this can now
be on 30.1.98 (Holiday)
placed before in Hall
to hearing a date of

5.2.98

Let the case be listed for hearing
on 18.2.98.

Member

Vice-Chairman

pg

W/s as above filed

18.2.98.

There is no representation on
behalf of the applicant. The case
stands dismissed for default.

Member

Vice-Chairman

nkm

3.4.97

Adm. W/S received on
6/11/97 R. no 3.

23.4.97

Applicant is present in person.
Mr S.Ali, learned Sr.C.G.S.C for the
respondents present.

Written statement has been submit-
ted. Case is ready for hearing.

List for hearing on 21.5.97.

Member

pg

21.5.97

Mr S.R.Krishnan in person. Mr S.A.
learned Sr.C.G.S.C for the respondent.

The application has been submit-
ted by the applicant relying on the deci-
sion of this Tribunal dated 22.11.95 in
No.64/95 and 65/95. Mr Ali submits
that the hearing may be adjourned to get
instruction as regards the position of
the application filed before the Hon'ble Supreme
Court and result thereof in respect of
Nos. 64/95 and 65/95.

Hearing adjourned to 30.7.97.

Member

pg

30.7.97

Sri S.R.Krishnan in person. Mr
learned Sr.C.G.S.C for the respondent.

This O.A relates to Stepping
pay. According to the latest judgment
the subject matter is to be heard by
Division Bench. Therefore by
order of the Division Bench. Therefore by
order of the Division Bench. Therefore by
order of the Division Bench.

Accordingly place the O.A.
before the Division Bench for order.

pg

1.8.97

Seen the order dated 30.7.97.
List this case for hearing on
11.9.97 before Division Bench.

21-8-97

Memo of appearance
filed by Mr. S. Ali, Sr.
C.G.Sic.

Member

Vice-Chairman

pg
23
1/3

11-9-97 Adj and to 12-11-97.
By Mr.

13-11-97

- 1) Written statement
has been filed.
- 2) Memo of appearance
has been filed.

17-11-97 Adj and to 30-1-98.
By Mr.

5.2.98

Let the case be listed for hearing
on 18.2.98.

29-1-98

Due to non-availability of
counsel list, this case was
fixed on 30-1-98 (Holiday).
Hence, placed before the Hon'ble
court by fixing a date of
hearing.

Member

Vice-Chairman

pg
23
6/2

18.2.98

There is no representation on
behalf of the applicant. The case
stands dismissed for default.

Member

Vice-Chairman

nkml

12/3/98

Copy of the order
has been sent to the
D/C for filing.
The case to the applicant
of the respondents.
Record vide 3.10.98.
667 d. 12.3.98.

23.4.97

Applicant is present in person.
Mr S.Ali, learned Sr.C.G.S.C for the
respondents present.

Written statement has been submi-
tted. Case is ready for hearing.

List for hearing on 21.5.97.

Member

pg

q
14A

21.5.97

Mr S.R.Krishnan in person. Mr S.Ali,
learned Sr.C.G.S.C for the respondents.

The application has been submitted
by the applicant relying on the decision
of this Tribunal dated 22.11.95 in O.A.
No.64/95 and 65/95. Mr Ali submits that
the hearing may be adjourned to get ins-
truction as regards the position of SLP
filed before the Hon'ble Supreme Court
and result thereof in respect of O.A.
64/95 and 65/95.

Hearing adjourned to 30.7.97.

Member

pg

13/5

30.7.97

Sri S.R.Krishnan in person. Mr S.Ali,
learned Sr.C.G.S.C for the respondents.

This O.A relates to Scale up of
pay. According to the latest jurisdiction,
the subject matter is to be heard by
Division Bench. Therefore consent of all
concerned the O.A. is to be placed before
Division Bench.

Accordingly place the O.A. before
Division Bench for order.

Member

pg
30/7

30.12.96

Mr S.R. Krishnan, the applicant is present in person. Learned Sr. C.G.S.C. Mr S. Ali for the respondents.

List for written statement and further orders on 22.1.1997.

Member

nkm

21/1/97
Written statement has not been filed by the Union of India, till to-day.

21/1/97

22.1.97

Mr. S.R. Krishnan applicant in person, present.

Mr. S.Ali, Sr.C.G.S.C. for the respondents submits that he has not received any instruction from the respondents. However he prays for 3 weeks time to file the written statement. Allowed.

List for written statement and further orders on 17.2.1997.

Member

trd

22/1

19.2.97

Mr S.R. Krisnan, applicant in person. Leave note of Mr S. Ali, learned Sr. C.G.S.C.. Written statement has not been submitted.

List for written statement and further orders on 12.3.97.

Member

nkm

22/2

12.3.97

Applicant in person present. List for ~~hearing~~ ^{order} on 23.4.1997.

Member

6.3.97

DS filed on 6/3/97
R.no. 1, 2 & 3.

No appearance by
Notice duly served on pg
Rspds no. 1 & 3.

No appearance by
13/3

BEFORE THE CENTRAL ADMINISTRATIVE
TRIBUNAL- GAUHATI BENCH.

852

4 NOV 1996

Gauhati Bench
গুৱাহাটী বেঞ্চ

(An Application under sections 19
relevant in the Administrative
Tribunal Act-1985)

Title of the Case O.A.No. 255 of 1996

Sri.S.Radha Krishnan,
Sr.A.O.Office of the
Chief General Manager,
Assam Telecom Circle,
Gauhati-7 Applicant

VERSUS

- (1) The Union of India,
Represented by the Secretary,
to the Govt of India,
Ministry of Communication,
New Delhi-1
- (2) The Asst.Director General(TE)
Department of Telecommunication,
Sanchar Bhavan,
New Delhi-1
- (3) The Chief General Manager,Telecom
Assam Telecom Circle
Gauhati-7 Respondents

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For use in Tribunal's Office

Date of Filing... 4/11/96

Registration No... 255/96

Registrar

Received copy

Sal: CGSC
4/11/96

Filed by Sri S Radha Krishnan 4/11/96
Applicant

①

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GAUHATI BENCH

O.A.NO...255... OF 1996.

BETWEEN

Sri.S.Radha Krishnan,
Sr.A.O.Office of the Chief General
Manager, Assam Telecom Circle,
Gauhati-7

..... Applicant

AND

(1) The Union of India
Represented by the Secretary
to the Govt of India,
Ministry of Communication,
New Delhi-1

(2) The Asst. Director General (TE)
Department of Telecommunication,
Sanchar Bhavan,
New Delhi-1.

(3) The Chief General Manager,
Telecommunication,
Assam Telecom Circle,
Gauhati-7

..... Respondents

.....
DETAILS OF APPLICATION

(1) PARTICULARS OF ORDER AGAINST WHICH THE APPLICATION IS MADE:

That the instant Application is directed against the reply issued by the Chief General Manager, Assam Telecom Circle Office in connection with the stepping up of the basic pay of the Applicant with reference to the basic pay of his junior Sri.R.C. Chakraborty, A.O. working in West Bengal Telecom Region as was done already to a group of Accounts officers based on the order issued by the Hon'ble Central Administrative Tribunal, Gauhati Bench in O.A.No.64 of 1995 dated 22-11-95 in respect of Shri. Haran Chandra Chakraborty A.O. & others.

. (Annexure-1 (Page..8...) accompanying the Application)

(2) JURISDICTION OF THE TRIBUNAL:

12/4/96

The Applicant declares that the subject matter of the instant Application is within the jurisdiction of the Hon'ble Tribunal, Gauhati Bench.

(3) LIMITATION:

The Applicant further declares that the instant Application is filed within the limitation period of one year as prescribed under relevant section of the Administrative Tribunal Act-1985.

(4) FACTS OF THE CASE:

(4)(1): That the Applicant is a citizen of India and as such he is entitled to all the right, protection and privileges as guaranteed by the Constitution of India.

(4)(2): The Applicant belongs to JAO Batch - November.1980. He was promoted to the cadre of JAO with effect from 7-4-81, to the cadre of Dy.A.O.w.e.f.1-4-87, to the cadre of AAO w.e.f.2-9-88. to the cadre of A.O.w.e.f.12-8-92 and to the cadre of Sr.A.O.(Officiating) w.e.f.27-11-95.

(4)(3): On promotion to the cadre of A.O. the basic pay of the Applicant was fixed at Rs 2450/- on 12-8-92 with the date of the next increment on 1-8-93 in the A.O.'s pay scale of Rs 2375-75-3200-EB-100-3500.

(4)(4): In this connection, the Applicant wants to refer a case of his junior Sri.R.C, Chakraborty, A.O. working in West Bengal Telecom Region, whose basic pay was fixed at Rs 2750/- on 27-6-94 on his promotion to the cadre of A.O.

(4)(5): Given below a comparative statement of anomaly of basic pay between the Applicant and his junior Sri.R.C.Chakraborty A.O.

Contd.....(3)

12/11/96
A.M.

Sri.S.Radha Krishnan,Sr.A.OSl.No.in the Blue Book-Gradation
List Published by DOT,New Delhi

..... 81849

Batch-JAO-1980

Basic pay in A.O.'s cadre as on
27-6-94.....Rs 2525Basic pay as on 1-8-94 in
A.O.'s cadre..Rs 2600/-Basic pay as on 1-8-95 in A.O.'s
Cadre.....Rs 2675/-Basic pay as on 27-11-95 on
on promotion to Sr.A.O.
(Officiating)..Rs 2800/-Basic pay as on 1-11-96 in Sr.
A.O.'s cadre...Rs 2900/-Sri.R.C.Chakraborty,A.O.Sl.No.in the Blue Book-
Gradation List Published by

DOT-New Delhi....82209.

Batch-JAO-1981

Basic pay as on 27-6-94 on
promotion to A.O.'s cadre
..... Rs 2750/-Basic pay as on 1-8-94 in A.O.'s
cadre ... Rs 2825/-Basic pay as on 1-8-95 in A.O.'s
Cadre.... Rs 2900/-Basic pay as on 27-11-95 in
A.O.'s cadre....Rs 2900/-Basic pay as on 1-8-96 in A.O.'s
Cadre Rs 2975/-(Annexures (2) & (3) accompanying the Appli-
cation regarding Blue Book seniority)

(4)(6): In view of the above anomaly in basic pay of the Applicant and his junior, a Representation was made to the Chief General Manager, Assam Telecom Circle, Gauhati by the Applicant for stepping up of the basic pay to Rs 2825/- as on 1-8-94 with reference to his junior Sri.R.C.Chakraborty, A.O.

(Annexure-(4) accompanying the Application)(5) GROUND FOR RELIEF WITH LEGAL PROVISIONS:

(5)(1): The Applicant is also senior to Shri.R.C.Chakraborty, A.O. as stated in para (4)(5) above like other group of 12 Accounts Officers as mentioned in Order dated 22-11-95 issued by the Hon'ble Central Administrative Tribunal, Gauhati Bench in favour of Shri. Haran Chandra Chakraborty, A.O. & others working in the office of the Assam Telecom Circle and other offices.

(5)(2): The Applicant's case is exactly similar to that of O.A.No.

Contd....(4)

12/11/96

64 of 1995 filed in this Hon'ble Gauhati Tribunal Bench in respect of Shri.Haran Chandra Chakraborty A.O.&others.

(5)(3): All the points mentioned in order dated 22-11-95 issued by the Hon'ble Gauhati Tribunal Bench in respect of Shri.Haran Chandra Chakraborty & others vide O.A.No.64 of 1995 will exactly applicable for stepping up of the basic pay of the Applicant as he is also senior to R.C.Chakraborty,A.O.and drawing less pay than his junior even after getting his Sr.A.O.promotion.

(Annexure-(5) accompanying the Application)

(5)(4):The Applicant in his Representation addressed to the Chief General Manager,Assam Telecom Circle,Gauhati has therefore quoted the recent order dated 22-11-95 issued by this Hon'ble Bench in O.A.No.64 of 1995 in respect of Sri.Haran Chandra Chakraborty & others for stepping up of the basic pay of the Applicant as per orders contained therein.

(5)(5): In para (7) of the order dated 22-11-95 in O.A.No.64 of 1995 in respect of Sri.Haran Chandra Chakraborty & others,the Hon'ble Judge of this Bench has not appreciated the Policy of the Telecom Department for non respecting the decisions of the various benches of the Tribunal in respect of this type of stepping up of pay cases of seniors with reference to the juniors.

(5)(6): But even after quoting the recent order of this Hon'ble Bench issued on 22-11-95 in O.A.No.64 of 1995 in respect of Shri. Haran chandra Chakraborty,A.O.& others working in the same office, the Applicant's stepping up of the basic pay case with reference to his junior Sri.R.C.Chakraborty,A.O.has not been considered favourably by the Office of the Chief General Manager,Assam Telecom Circle,Gauhati.

(6) DETAILS OF REMEDIES EXHAUSTED:

As the final order rejecting the Applicant's case for stepping up of his pay with reference to the same junior sri.R.C.Chakraborty, A.O.as mentioned in this Hon'ble Bench order dated 22-11-95 in O.A.No.64 of 1995 has been issued by the Office of the Chief General

Contd...(5)

12/11/96

Manager, Assam Telecom Circle, the Applicant declares that he has no other alternative remedy than to come under the protection of this Hon'ble Tribunal for settlement of his case.

(7) MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

The Applicant further declares that he has not filed any Application, writ petition or suit in respect of the subject matter of this Application before any authority and or Court or any other Bench of this Hon'ble Tribunal nor such Application, writ petition or suit is pending before any of them.

(8) RELIEFS PRAYED FOR:

Under the facts and circumstances stated above, the Applicant most respectfully prays that the instant Application is admitted and this Hon'ble Tribunal Bench be pleased to grant the following reliefs as the instant Application comes as a "COVERED CASE" because of the Order dated 22-11-95 issued by this Hon'ble Bench in O.A.No.64 of 1995 favouring Sri. Haran chandra Chakraborty & others working in the same Assam Telecom Circle office & other offices.

- (1) To direct the third respondent viz. the Chief General Manager, Assam Telecom Circle, Gauhati for immediate stepping up of the basic pay of the Applicant with reference to his junior sri. R.C. Chakraborty A.O. on the date of the anomaly based on the order dated 22-11-95 issued by this Hon'ble Bench in O.A.No.64 of 1995 favouring Sri. Haran Chandra Chakraborty A.O. and others as the Applicant's case is exactly similar to that of O.A.No.64 of 1995 filed in this Bench.

- (2) Also to direct the 3rd respondent as mentioned above to pay all the arrears of pay and allowances up to date consequent on the stepping up of the basic pay of the Applicant with reference to his junior sri. R.C. Chakraborty A.O. from the date of the anomaly arisen.

Contd...(6)

4/11/96

(3) Cost of this Application.

(4) Any other relief or reliefs to which the Applicant is entitled or as may be deemed fit and proper by this Hon'ble Tribunal.

(9) INTERIM ORDER PRAYED FOR:

Pending disposal of the Application, the Hon'ble Tribunal may be pleased to direct the 3rd respondent as stated above i.e. the Chief General Manager, Assam Telecom Circle, Gauhati for immediate stepping up of the basic pay of the Applicant to Rs 3100/- as on 1-11-96 with reference to his junior Sri.R.C.Chakraborty A.O as the Applicant is eligible for the same and also due to the fact that the Applicant's case comes as a "COVERED CASE" in view of the order dated 22-11-95 issued by this Hon'ble Bench in O.A.No.64 of 1995 in respect of Sri.Haran Chandra Chakraborty & others. and further to avoid recurring monetary loss to the Applicant.

(10) The Application is filed by the Applicant him self.

(11) Particulars of the D.D.

(i) D.D.No.888653

(ii) Dated 1-11-96

(iii) Payable at Gauhati.

(12) LIST OF THE ENCLOSURES: As stated in the Index

(Verification)

4/11/96

VERIFICATION

I, Sri.S.Radha Krishnan, son of the late N.Srinivasan, aged about 44 years, Sr.Accounts officer, Office of the Chief General Manager, Assam Telecom Circle, Gauhati, solemnly affirm and verify that the statements made in the accompanying Application are true to my knowledge and based on the Annexures 1 to 5 attached herewith as the supporting documents.

And I sign the verification on this 4th day of Nov'1996
at Guwahati

S.Radha Krishnan

4/11/96

Annexure-1

Page No (8)

GOVT. OF INDIA
DEPARTMENT OF TELECOMMUNICATIONS
O/o THE CH. GENERAL MANAGER, ASSAM TELECOM. CIRCLE:
GUWAHATI. 781007.

16

No. ESTQ- 2/368/9

Dated at Guhy. the 2nd Sept. 96.

To
Shri S. Radha Krishnan,
Sr. Accounts Officer (Computer)
Circle office, Guwahati-781007.

Sub:- Stopping up of basic pay.

With reference to your representation dated 28-06-96 on the above subject, I am directed to inform you that there are no orders from the D.O.T. New-Delhi for stopping up pay, as represented by you. The pay of those officers who had gone to the Honorable CAT were stopped up in accordance with the judgement of the CAT. Moreover the D.O.T. has already filed an SLP in the Hon'ble Supreme Court in reference to the judgement of the CAT.

Hence your case cannot be decided unless general instructions are received from the D.O.T.

(Signature)
(G.C. Sarma) 2/9/96
Asstt. Director Telecom (SLP/IT)
O/o the Ch. General Manager,
Assam Telecom. Circle, Guwahati.

Attested
KM
लेखा अधिकारी/अ.मं.जि.न.
कामरूप दर मंडार जिला
A. Units Officer / TR
Kamrup Tel: on District
Guwahati 781007

2/11/96

Annexure - 2

PET A/C & FINANCE					61	
Staff No.	Name	Sen. No.	Date of Birth	Date of Entry	BLUE BOOK Date of DPC/PR	
81816	DAS SAMARENDRA NATH	1299	050950	030677	180891	
81817	RAMNATHAN R M	1300	231151	280777	210691	
81818	BISWAL BASUDEB	1301	090152	020877	210691	
81819	ARUMUGAM S	1302	050554	031077	191091	
81820	SWAMINATHAN R	1303	111248	130577	191091	
81821	NAGARAJAN P	1304			191091	
81822	AGARWAL SURESH CHANDRA	1305			141091	
81823	JHA VIJAY NATH	1306	200146	111265		
81824	DEB TARA MOHAN	1307	090745	310866		
81825	TRIPATHY DURGAMADHAR	1308	030451	090773	180492	
81826	MANJUNATHA HOLLA K N	1309	061051	301274	180392	
81827	MANMOHANA B L	1310	060548	240369		
81828	VERMA DARSHAN KUMAR	1311				
81829	KASHYAP H P	1312	010450	070873	180891	
81830	KEMPEGOMDA B	1313	150146	160965	180891	
81831	SUNDARAM V	1314	270256	030974	180891	
81833	ANNURAR B S	1315	010746	091068	180891	
81834	MISRA BIBHU PRASAD	1316	010653	030374	180891	
81835	GOSAIN SOHAN SINGH	1317	020356	100574	180891	
81836	JENA SATRUGHNA	1318	160250	260372	290492	
81837	THIMAPUR M C	1319	040547	030569	290492	
81838	ANAPURANAMA K	1320	170851	010475	131191	
81839	BHATTACHARJEE MITIK KR	1321	260149	121170	131191	
81840	SHESHA H K	1322	200151	190773	090492	
81841	LIMAYE A N	1323	150140	010963	161291	

PET A/C & FINANCE					62	
Staff No.	Name	Sen. No.	Date of Birth	Date of Entry	BLUE BOOK Date of DPC/PR	
81842	MARIAPPAN M	1324	070655	081173		
81843	MADAN HARISH CHANDER	1325			291091	
81844	SONYIA	1326				
81845	VISHWANATHAN N	1327	151050	030974	160492	
81846	BHADJAN LAL	1328	050752	201073	140192	
81847	DUBEY G S	1329	300548	150369		
81848	SURYA PRAKASH RAO P	1330				
81849	RADHAKRISHNAN S	1331	050152	141175	120892	

81850	SHARMA BADRI VISHAL	1332				
81851	KRISHNAMURTHY C K	1333	060536	030455		
81853	DAS BIRENDRA NATH	1334	190643	011166	300392	
81854	RAMAIAH G	1335	151048	230773	070592	
81855	SANKARAN B	1336	120647	190567	060492	
81856	SRIYASTAVA KASHI PRASAD	1337	160745	011065		
81857	JAGAN NATH	1338	200138	111157		
81858	RACHNA RAM	1339				
81859	SUBBA RAO A	1340	100651	291071	060692	
81860	VISHWANATHAN A V	1341	040452	070573	010492	
81861	SINGH GURCHARAN	1342				
81862	BASU ASHIM KUMAR	1343	020941	010565		
81864	BANKAR R D	1344	021246	090671		
81866	PALANIAPPAN B	1345	040553	110972	280492	
81867	SRINIVAS SURENDRA NATH	1346	120351	080272	070492	
81868	OJA RAVESH CHANDRA	1347			130592	
81859	NEELMEGAM A A	1348	100149	071069	060792	

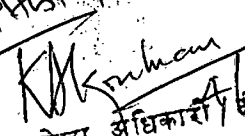
AHAM

लेखा अधिकारी / लेखा
कामरूप दूर मंचार
गुवाहाटी-781001
Accuus Officer / TR
Kamrup Tel: 0361 281 007
Guwahati 781 007

9/6/16

PCT A/C & FINANCE				BLUE BOOK			
Staff No.	Name	Sen. No.	Date of Birth	Date of Entry	Date of	DPC/PR	
82197	YADAV MATAMANI	245	040250		010487		
82198	JAGAN BABU S	250	260152	200575	010487		
82199	SATYA PRAKASH G.	251	100155	291076	010487		
82200	SMT NIRMALA M.	252	200954	231073	010487		
82201	KAUL SURINDER KUMAR	253	010453	020574	010487		
82202	PANDWAL KARACHAND	254	180353	150374	010487		
82203	BHATT B G	255	280839	250861	010487		
82204	RAJASEKARAPPA P C	256	020351	290675	010487		
82205	SATYA PRAKASH	257	100154	150175	010487		
82206	UPASHI P B	258	150644	300165	010487		
82207	VENUGOPALAN V	259	201156	161176	010487		
82208	KHURANA SOM NATH	260	130539	161256	010487		
82209	CHAKRABORTY RATAN CH	261	181051	160873	010487		
82210	CHAMAN LAL	262	010748	180768	010487		
82211	GEORGE KUTTY K T	263	120250	131072	010487		
82212	RAVINDRAN K	264	210449	171273	010487		
82213	AGARWAL ANAND PRAKASH	265	030947	280467	010487		
82215	VISHNUDASAN NAIR K	266	101046	221265			
82216	SRI KUMAR R	267	041252	070773	010487		
82218	VIMALA D	268	200546	101165	010487		
82219	VEDAVANICKOM C	269	131254	170576	010487		
82220	KANNAN S	270	150852	151272	010487		
82221	VERGHESE M T	271	020649	241073	010487		
82222	RAMANATHAN P	272	080749	310571	010487		
82223	NAGABHUSHANAM M	273	010949	301270	010487		

PCT A/C & FINANCE				BLUE BOOK			
Staff No.	Name	Sen. No.	Date of Birth	Date of Entry	Date of	DPC/PR	
82224	RAMACHANDRAN NAIR N	274	010650	150670	010487		
82225	CHAUDHAN B B	275	160547	030569	010487		
82226	JOSEPH XAVIER G	276	200453	040573	010487		
82227	KALIK RAM MEHAR	277	150652	200771	010487		
82228	DARJI R S	278	010654	120673	010487		
82229	SATYANARAYANA D	279	300446	180668	010487		
82230	NARHARI B	280	251145	100666	010487		
82231	SINGH SHAMSHER	281	010255	160576	010487		
82232	DUHAN SATYANARAJIN	282	101252	051275	010487		
82241	BRANDOPADHYAY KALYAN KR	283	031052	170174	010487		
82242	SARDANA MANOHARILAL	284	200552	200771	010487		
82243	ROYCHANDHURY SANJIB	285	070155	310876	010487		
82244	SRIJAMA MURTHY Y	286	020453	010574	010487		
82245	SANKARAN V V	287			010487		
82246	SATTA KUMARESH CH	288	310154	070676	010487		
82247	LAKSHMI P	289	061150	250972	010487		
82248	DEY MAJUMDAR BHASKARTI	290	140550	270872	010487		
82249	MITRA SUBASH CHANDRA	291	140151	100576	010487		
82250	RAJENDRAN V	292	150454	280773	010487		
82251	MUKHERJEE TAPAS	293	181251	240776	010487		
82252	MADAN JAI DEO	294	311255	161074	010487		
82253	MANVI N V	295	010654	200773	010487		
82254	PAL CHOUDHURY BIMAL KR	296	020743	021264	010487		
82255	RAJARAM K S	297	201251	150573	010487		
82256	RAGHAVENDRA M S	298	251249	300774	010487		


 लेखा अधिकारी/टी.ओ.
 कामरूप दूर मंचार जिला
 गुवाहाटी-781001
 Accounts Officer / TR
 Kamrup Tel: om District
 Guwahati 781 007

To
The Chief General Manager,
Assam Telecom Circle,
Ulubari,
Gauhati-7.

Respected sir,

Sub:- Stepping up of basic pay.

This is to submit for your kind information that I was promoted to the cadre of JAO w.e.f. 7-4-81 vide DOT, New Delhi order No. 13-5/81-SEA dated 7-4-81. I belong to JAO Batch-Nov'80.

I was promoted to the cadre of Deputy Accounts officer w.e.f. 1-4-87 vide DOT, New Delhi order No. 39-1/88-SEA dated 19-2-88.

Again, I was promoted to the cadre of Accounts officer, w.e.f. 12-8-92 vide DOT, ND order No. 9-1/92-SEA dated 17-7-92. My basic pay was fixed at Rs 2450/- with the date of next increment on 1-8-93 in the scale of pay of Rs 2375-75-3200-EB-100-3500.

In this connection, I want to refer a case of my junior i.e. Shri R.C. Chakraborty, A.O. working in West Bengal Telecom Region. His basic pay to the cadre of A.O. was fixed at Rs 2825/- as on 1-8-94.

I am giving a comparative statement of anomaly of basic pay between me and my junior Shri R.C. Chakraborty, A.O.

<u>Shri S. Radha Krishnan, Sr. A.O.</u>	<u>Shri R.C. Chakraborty, A.O.</u>
Sl. No. in Blue Book. 81849	82209
Batch--- 1980	1981
Basic pay as on 1-8-94-Rs 2600/-	Basic pay as on 1-8-94. Rs 2825/-
Basic pay as on 1-8-95-Rs 2675/-	Basic pay as on 1-8-95 Rs 2900/-
Basic pay as on 27-11-95 Rs 2800/- to the cadre of Sr. A.O. (Officiating)	Basic pay as on 27-11-95 Rs 2900/-
Basic pay as on 1-11-96.. Rs 2900/-	Basic pay as on 1-8-96. Rs 2975/-

From the above, it may kindly be seen that Shri R.C. Chakraborty, A.O. who is far junior to me is drawing more basic pay than me even after my promotion to the cadre of Sr. A.O. (officiating).

I was promoted to the cadre of Sr. A.O. (Officiating) w.e.f. 27-11-95 vide COMT, Assam Telecom Circle, order No. STES/6/11/R/32 dated 27-11-95.

In this connection a court case was already made by the A.O.s/Sr. A.O.s as mentioned in the enclosed court order at CAT-Gauhati for stepping up of their pay to the level of Rs 2825/- as on 1-8-94 w.r. to the basic pay of Shri R.C. Chakraborty, A.O. as on 1-8-94. As the above mentioned officer is junior to all the A.O.s/Sr. A.O.s mentioned in the Court order. Their case was favourably decided by CAT-Gauhati as per the copy of the Court order enclosed and the stepping up was done w.e.f. 1-8-94.

In view of the above, I request you sir to kindly order for stepping up of my basic pay also to the level of Rs 2825/- w.e.f. 1-8-94 due to the following reasons:-

(a) I am also senior to Shri R.C. Chakraborty, A.O. w.r. to whose case the stepping up was done for the A.O.s/Sr. A.O.s as per the court order enclosed herewith.

(b) Further I am also senior to the A.O.s mentioned against Sl. No. (7) to (12) in the enclosed order of the Court and drawing less basic pay than that of my juniors.

2 (c) After getting promotion to the cadre of SR.A.O.(Officiating) also I am drawing less basic pay not only to Shri-R.C.Chakraborty, A.O.working in West Bengal Telecom Region but also to 4 A.O.s who are junior to me and working in this office as per the enclosed court order.

Necessary order may therefore kindly be issued for stepping up of my basic pay to the level of Rs 2825/- w.e.f.1-8-94 and also for further fixation of basic pay on the DNI dates including the Sr.A.O.promotion and arrears of pay and allowances paid accordingly up to date.

Thanking you,

Gauhati-7
Dated 28-6-96.
Enclo: As stated above

Yours faithfully,

S. Radha Krishnan
(S.Radha Krishnan)
Sr.A.O.(Computer)
Office of the C G M T
Assam Telecom Circle,
Ulubari, Gauhati-7

Attest

K. Krishnan
4/4/96

लेखा अधिकारी/टी आर
कामरूप दूर संचार जिला
गुवाहाटी-781001

Accounts Officer / TR
Kamrup Telecom District
Guwahati 781 007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

DESPATCH NO.

DATED GUWAHATI, THE

✓ ORIGINAL APPLICATION NO. : 65/95
MISC. APPLICATION NO. :
CONTEMPT PETITION NO. :
REVIEW APPLICATION NO. :
TRANSFER APPLICATION NO. :



Shri Monomohan Dey & Ors...... APPLICANT (S)/
PETITIONER (S)
VERSUS
Union of India & Ors...... RESPONDENT (S)

To,

Shri Monomohan Dey,.....
Accounts Officer,.....
Deptt. of Telecommunications,.....
Under C.G. M.T.,.....
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
Judge 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,

Enclo. : As above.

(Two Pages)
(With OA. 64/95)
= Six Pages

Shri 29/11/95
SECTION OFFICER (J)

GKC/281195

Attest
K. K. Choudhary
लेखा अधिकारी
कांग्रेस दूर मंत्रालय
गुवाहाटी-781 001
Accounts Off
Kamrup Tel
Guwahati 781 007

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 Bhushan Mukherje
3. Shri T.S. Nagarajan
4. Shri J. Chenchiah
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.

.....



Attested

KM Sankar
लेखा अधिकारी / डिप्टी जिला
कामरूप दूर मंचार जिला
गुवाहाटी-781001
Accounts Officer / TR
Kamrup Telecom Distri
Guwahati 781 007

ORDER

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} Rs.2375 and Rs.2600 respectively, whereas the pay of R.C. Chakraborty ^{been fixed between} 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

K.K. Choudhary
लेखा अधिकारी
कांग्रुप टेलीकॉम
मुम्बई-781001
Accounts Officer / TR
Kamrup Telecom District
Guwahati 781007

here

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 promotions prior to him or like him.

Attested
K. K. Konhan
का. अ. अधिकारी
का. अ. दूर मंत्रालय
गुवाहाटी-781001
Accounts Officer / TR
Kamrup Tel: 0361 007
Guwahati 781 007

: 3 :

5. The position has been settled by the decision of the Ernakulam Bench of the Central Administrative Tribunal in the case of C.M. Jacob, 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 D.G 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. Jacob, Accounts Officer and others) ^{referred above} the view taken in above decisions

was.....

लेखा अधिकारी / टी आर
कामरूप दूर संचार विभाग
गुवाहाटी 781001
Accounts Officer / TR
Kamrup Telecom Division
Guwahati 781001

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 ^{appreciated} 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 adhoc 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.....

[Signature]
 Accounts Officer / TR
 Kamrup Telecom District
 Guwahati 781 007

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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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प्रतिलिपि

[Signature]

Section Officer (J)

अध्यक्ष अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक अदालत
Guwahati Bench, Guwahati-5
गुवाहाटी न्यायपीठ, गुवाहाटी-5

[Signature]

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ले. 37 अ. 1/96
कार्यालय द्वार संचार
गुवाहाटी-781001
Accounts Officer / TR
Kamrup District
Guwahati 781007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.65 of 1995

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

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

1. Shri Monomohan Dey
2. Shri Babul Kumar Das
3. Shri Manabendra Saha
4. Shri Khagendra Nath Sarma
5. Shri Islam Ahmed
6. Shri B. Tirupatalah

All the applicants are working as Accounts Officer
in the Department of Telecommunications and are
posted at different stations under the Chief General Manager,
Telecom, Guwahati.

.....Applicants

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

- versus -

1. Union of India,
represented by the Secretary to the Government of India,
Ministry of Communications,
New Delhi.
2. The Assistant Director General (TE),
Department of Telecommunications,
New Delhi.
3. The Chief General Manager (Telecom),
Assam Telecom Circle,
Guwahati.

.....Respondents

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

ORDER

CHAUDHARI, J. V.C.

Mr B.K. Sharma for the applicants.

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

The six applicants are working as Accounts Officers in the
Department of Telecommunications and are posted at different stations
under the Chief General Manager, Telecom, Guwahati. Their grievance
is that on their promotion as Accounts Officers they have realised that
the pay of K. Sankaranarayanan, who is junior to them and has been promoted
as Accounts Officer on regular basis after the applicants were promoted

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4/11/96
कासलपुर इर मंला जिला
गुवाहाटी-781001
Accounts Officer / TR
गुवाहाटी-781007

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: 2 :

to that cadre, has been fixed higher than that of the applicants taking into account his pay during his fortuitous adhoc promotion as Accounts Officer which opportunity was not available to them and thus there arose an anomaly in the fixation of pay. The pay of the applicants has been fixed between Rs.2375 and Rs.2450 respectively, whereas the pay of Sankaranarayanan has been fixed as Rs.2750 with effect from 25.4.1991.

2. The applicants had preferred representations, but they were rejected on the ground that there was no anomaly. The contentions urged by the applicants in the instant case are the same as are urged by the applicants in companion O.A.No.64 of 1995, which has been separately decided today. The contention of the respondents in the instant case are the same as urged by them in that case. The rival contentions have been examined and for the reasons recorded in the order in the companion O.A., I have held that the applicants in that case are entitled to be given the relief as prayed. The same reasons are adopted in support of this order and it is not necessary to repeat them. For the same reasons following order is passed:

The respondents are directed to step up the pay of the applicants at par with K. Sankaranarayanan with effect from the date on which the anomaly arose and the respondents are 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.

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

4. A copy of the order passed in O.A.No.64/95 may be placed in the record of this case.

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प्रतिलिपि

Section Officer (J)

राज्यपाल अधिकारी (न्यायिक शाखा)
Central Administrative Tribunal
गुवाहाटी बेंच, गुवाहाटी-5

Sd/- VICE CHAIRMAN

Accounts Officer / TR
Kamrup Telecom District
Guwahati-781007

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI-5.

R.A. 2/96 (O.A. 64/95)

Union of India & Ors. ... Petitioners
-VS-
H.C. Chakravarty & Ors. ... Respondents

P R E S E N T

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE CHAIRMAN
THE HON'BLE SHRI G. L. SANGLYINE, MEMBER (ADMN.)

For the Petitioners ... Mr. S. Ali, Sr.C.G.S.C.

For the Respondents ... Mr. B.K. Sharma,
Mr. B. Mahta.

D A T E

28-2-96

O R D E R

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

The grounds 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.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Certified to be true Copy

प्रमाणित प्रतिलिपि

COURT OFFICER

प्रमाणित प्रतिलिपि

Central Administrative Tribunal

Guwahati Bench

Guwahati-5

Attested

K.K. Choudhary
लेखा अधिकारी
कामरूप दर मंचार जिला
गुवाहाटी-781001

Accounts Officer / TR
Kamrup Tehsil District
Guwahati 781 007

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI-5.

R.A. 3/96 (O.A. 65/95)

Union of India & Ors. ... Petitioners
-VS-
Monomohan Dey & Ors. ... Respondents

P R E S E N T

THE HON'BLE JUSTICE SHRI M.G. CHAUDHARI, VICE CHAIRMAN
THE HON'BLE SHRI G. L. SANGLYME, MEMBER (ADMN.)

For the Petitioners ... Mr. S. Ali, Sr.C.G.S.C.

For the Respondents ... Mr. B.K. Sharma,
Mr. B. Mehta.

D A T E

28-2-96

O R D E R

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

The grounds 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.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

Certified to be true Copy

प्रमाणित प्रतिलिपि

COURT OFFICER

Central Administrative Tribunal

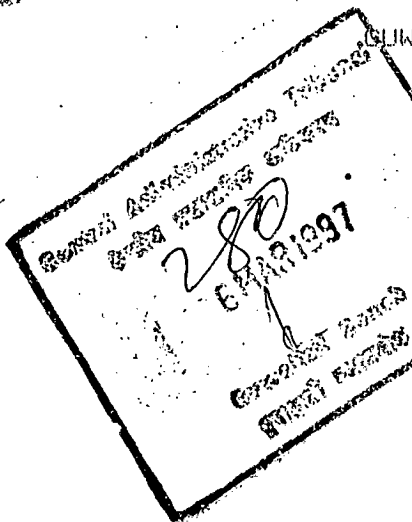
Guwahati Bench : Guwahati-5

गुवाहाटी बेंच : गुवाहाटी-5

Monomohan
K.K. Monomohan
व. न. म. प्र. को. री. 2/96
नामस्वरूप दूर संचार
गुवाहाटी-781001
Accounts Officer / T
Kamrup Telecom Dist
Guwahati 781 007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI.



IN THE MATTER OF:

O. A. NO. 255/96

Shri S. Radhakrishnan.....

-Versus-

The Union of India & Others.

-AND-

IN THE MATTER OF:

Written Statements submitted
by the Respondents No.1,2,3...

The humble Respondents submit their
Written Statement as follows:-

I B. Dasgupta Asstt. Director Telecom
(Legal) ,Office of the Chief General Manager Telecom
,Assam Circle ,Guwahati-781007 do hereby solemnly
affirm and state as follows :-

1. That I have gone through a copy of the
application and have understood the contents thereof
and I have been authorised to file this written state-
ment on behalf of all the respondents. At the outset
the respondents deem it necessary to give a brief
history of the case for proper adjudication of the
matter. The brief history of the case is as follows:

ADT

Contd..

Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007.

Received wpy

M.K. Choudhury
6/3/97

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Shankar
6/3/97
(MD. SHAUKAT ALI)
Central Govt. Standing Counsel
Central Administrative Tribunal
Guwahati Bench, Guwahati

BRIEF HISTORY OF THE CASE

2.0 The applicant (staff no. 81849) entered the Department of Telecommunications as Telecom Accounts Clerk on 14.11.1975. He passed the P & T Accounts Service Examination held in Nov 19980 and promoted to officiate as JAO With effect from 31.3.1981 which was followed by regular promotion to JAO on 7.4.1981, AAO on 1.4.1987 and A.O. on 12/8/1992. on promotion to A.O. the pay of the applicant was fixed at 2450/- with D.N.I. on 1.8.93.

2.1 Shri R.C.Chakraborty (Staff No. 82209) entered the Department of Telecom. as Telecom Accounts Clerk on 16.8.73 and promoted to UDC on 20.5.1983. He passed the P & T Accounts service exam. in 1983 and was promoted to the cadre of JAO on 1.7.1983 ,to the AAO on 1.4.1987. While holding the substantive post of AAO, Shri Chakraborty was locally promoted to officiate as A.O. on adhoc basis in W.B. Telecom Circle for the period given below before his regular promotion on 27.6.1994 . On his regular promotion to the cadre of A.O. the pay of Shri Chakraborty was fixed at 2750/- with D.N.I. on 1.8.94.

Period (Spell) of officiating promotion to A.O.

from	to	Basic Pay
20.07.1987	04.10.1987	Rs. 2375/-
19.12.1987	18.01.1988	Rs. 2375/-

ADT (L)

Contd..

[Signature]
Asstt. Director Telecom (Legal)
C/O the C. G. M. Telecom
Assam Circle. Guwahati-781007.

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29.02.1988	31.03.1988	Rs.2375/-
12.11.1988	10.05.1989	Rs.2375/-
12.05.1989	31.05.1989	Rs.2375/-
01.06.1989	10.07.1989	Rs.2450/-
13.09.1989	07.01.1990	Rs.2450/-
09.01.1990	07.07.1990	Rs.2450/-
09.07.1990	31.07.1990	Rs.2450/-
01.08.1990	04.01.1991	Rs.2525/-
06.01.1991	01.04.1991	Rs.2525/-
03.04.1991	31.07.1991	Rs.2525/-
01.08.1991	27.09.1991	Rs.2600/-
30.09.1991	26.03.1992	Rs.2600/-
28.03.1992	31.07.1992	Rs.2600/-
01.08.1992	23.09.1992	Rs.2675/-
25.09.1992	30.12.1992	Rs.2675/-
01.01.1993	29.06.1993	Rs.2675/-
01.07.1993	31.07.1993	Rs.2675/-
01.08.1993	27.12.1993	Rs.2750/-
29.12.1993	23.06.1994	Rs.2750/-

2.2 The pay of the applicant, on promotion to A.O. was correctly fixed at Rs. 2450/- under FR 22 (1) (a) (1). The correctness of the fixation of pay is not disputed by the applicant. The Statutory rules governing the fixation of pay on promotion is also above all dispute. The pay of Shri R.C. Chakraborty on his promotion to A.O. , was fixed at Rs. 2750/- under the

ADT (L)

Contd..

[Signature]
Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Gauhati--781007.

provision of FR 22 (1) (b) (1) (2) in consideration of his previous officiation in the same post and officiating pay drawn earlier. The application of the rules governing pay fixation in the given circumstance is also not disputed or challenged.

2.3 The applicant has not cited any rules or executive order under which his prayer for stepping up of pay should be permissible. The contention of the applicant seems to be that under no circumstance a senior could draw less pay than the junior. This is a total misconception of the legal position. For various valid reasons a junior may draw higher pay than that of his senior.

In the State of A.P. and others Vs G. Srinivasa Rao and Others (1989 SCC[LSS] 339) when a similar point came up for consideration before the Hon'ble Supreme Court, the Supreme Court observed:-

" Without considering the scope of these Rules (FR) and without averting to the reason for fixing the junior at a higher pay, the High Court and the tribunal have in a omnibus manner come to the conclusion that whenever and for what ever reason a junior is given higher pay the doctrine of 'equal pay for equal work ' is violated and the seniors are entitled for the same pay".

The Hon'ble Supreme Court went on to give

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[Signature]
Asstt. Director Telecom (Legal)
O/O the C. C. M. Telecom
Assam Circle, Gauhati-781007.

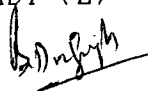
different situation when a junior could legitimately draw a higher pay than the senior. One of the circumstances pointed out by the hon'ble Court was, when pay of the junior is fixed under valid Statutory rules/executive instructions.

2.4 It is a policy and established practice of the department of Telecom. to make Temporary and officiating adhoc arrangement against short term vacancies which may arise in any Territorial Circle. The power of making such officiating arrangement on circle basis is vested with the Head of the Circle. Such officiating arrangement is made in the exigence of service to ensure that the day to day work of the Department is not disrupted because of the post remaining vacant. The practice and power is in existence for more than a decade and is known to everyone in the department who cares to know. It has also support of service Association to which the applicant subscribes. There was no protest against this policy at any stage from any quarter.

2.5 It happened that a vacancy in the grade of A.O. arose in West Bengal Circle where Shri R.C.Chakraborty, then AAO was working. Since he was the senior most among the AAOs available in that Circle at that point of time, Shri Chakraborty was locally promoted by CGMT, WB Circle Calcutta to officiate on adhoc basis to officiate as A.O. against the vacancy. In making such

ADT (L)

Contd..


Asstt. Director Telecom (Legal)
C/O C. O. M. Telecom
Assam Circle. Guwahati-781007.

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arrangement, The CCMT WB Circle Calcutta has acted within his power and in accordance with the rules and departmental instructions on the subject.

The promotion had taken place nearly a decade ago. None of the Senior officials working elsewhere including the applicant had objected to it. Neither they can plead ignorance. Earning of increments and the consequent higher fixation are legitimate consequence of the adhoc promotion which has been done in the case of Shri Chakraborty in accordance with Statute Rules (FR).

2.6 The cause of action is not the junior getting more pay than the senior. The real cause of action and the right to sue arose when the junior was promoted. The applicant had never protested against the adhoc promotion of Sri Chakraborty or expressed his willingness to work in WB Circle in officiating capacity. Also, it is not his stand that he was denied of his right of officiating in place of Sri Chakraborty.

In fact, the applicant was regularly promoted under DOT/New Delhi letter no. 9-1/92/SEA dated 17.7.1992 and was posted in Calcutta. As he was not willing to move to Calcutta from Tamilnadu Circle his posting order was revised at his request on 12/8/92 and posted in his home Circle (Tamilnadu). It shows the reluctance of the applicant to leave the comfort of home Circle even on promotion on regular basis.

ADT (L)

Contd..



Asstt. Director Telecom (Legal)
C/O S. S. S. N. Telecom,
Assam Circle, Gauhati-781007


It is, therefore, difficult to believe that he would have joined at Calcutta on officiating basis even if it was offered to him.

2.7 Even if it is held that it was wrong to give adhoc promotion to Sri R.Chakraborty ignoring his seniors in other circles, the Seniors do not gain legal right to capitalize on it and to make a gain from that wrong by simple comparison of pay without challenging the wrong, the applicant can not claim a remedy from the wrong. It is presumed that such reliefs are alien to Law.

2.8 If the contention of the applicant has to be accepted, it would follow that for one adhoc promotion given in respect of a single vacancy in WB Circle, the pay of all A.O.s in the Department of Telecommunications between staff no. 81849 and 82210 have to be stepped up. That tantamount to giving the benefit of adhoc promotion to each of the officers without actually having worked as A.O. After all, only one person would have been accommodated in the adhoc promotion and not all those who are between staff no. 81849 and 82210. Such a stepping up is not contemplated under any law and if agreed to may have reflect adversely on function of Govt. offices.

2.9 The mode of and the circumstances under which the pay of the senior may stepped up is clarified under ADT (L)

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Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam C. G. M. Gauhati 781007

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G.O.I. Ministry of Finance O.M. no.F 2(78) E-III(A)/66 dated 4/2/1966 and the same is incorporated as Govt of India order (22) below FR 22. It is made clear that stepping up of pay is permissible if the anomaly is directly as a result of the application of FR 22 (c). The Department of Personal has also clarified vide OM no 4/7/92 -Estt (Pay 1) dated 4.11.93 (enclosed in Annexure 1 & 1a).

From the above clarification specially the clarification at para 2 (1) and 2 (c) it is clear that a junior getting the benefit of adhoc promotion may draw more pay compared to his senior who was promoted on regular basis at a later date. In such case, the stepping up of pay is not envisaged. Further the O.M. no. dated 4.2.66 and 4.11.93 not having been challenged, no remedy should be available to the applicant against the consequence of application of the orders.

2.11 'Next below Rule' listed at no.(26) and (27) below FR-22 is reproduced in annexure 2.

The rule emphasized on the principle of 'One to One' even in the case of regular promotion. Against one promotion not more than one officer is authorized to draw the pay of the higher post in respect of any one officiating vacancy filled by his junior. The applicant failed to establish that but for the adhoc promotion of Shri R. Chakraborty, he would have the

ADT (L)

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rightful claim for the post. Clearly the applicant can not stake such a claim for the simple reason that he did not top the list of eligible AAOs for the promotion. There were hundreds of AAOs senior to him for the promotion to AO at the period of time when the adhoc promotion was given.

2.11 It is true that initially different Benches of CAT in different OAs have passed orders permitting the stepping up of pay of senior officers. This may be because of the fact that all relevant connecting factors weren't produced by the respondents before the Hon'ble Tribunal. Gradually the issue reached an alarming proportion and the whole issue was reviewed in totality by the Govt. and important points which escaped the notice earlier were brought on record. Consequently, the subsequent cases have been decided in favour of U.O.I. Some instances are given below:-

1. The Hon'ble supreme Court has granted stay in a similar case in which S.L.P. was filed in their order dated 10.11.95 in OA no. 1523 of 1993, 43 of 1994, 1078 of 1994, 1193 of 1994 and 1226 of 1996 of CAT Hyderabad Bench.

A copy of stay order is placed at Annexure 3

2. The Madraj Bench of CAT in their judgment dated 22.11.95 in OA no. 1823, 1824, 1825, 1826, 1830, 1861, 1895, 1829, 1896, 1897, 1898, 1899 of 1993 found

ADT (L)

Contd..

that the applications for stepping up are devoid of merit and accordingly dismissed the OAs.

A copy of the order dated 22.11.95 is placed at Annexure 4.

3. The Madraj Bench of CAT in their judgment dated 28.6.96 in OA no. 1745/93, 18 to 29 of 1994 and 1837/93 has held that the applications for stepping up of pay on similar grounds lack the merit and dismissed the applications.

A copy of the judgment dated 28.6.96 is placed at annexure 5.

4. The full Hyderabad Bench of CAT while disposing a reference to OA no. 1412/93, 127/94 and 517 /94 (Madraj Bench) in its order dated 20.11.96 has found that:-

(a) Stepping up can be granted only where there is a provision in law in that behalf, and only in accordance with that, and

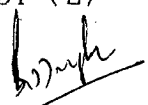
(b) A claim for stepping up can be made only on the basis of a legal right and not on pervasive notion of equality or equity, unrelated to the contempt of Statutory laws.

A copy of the order is placed at Annexure 6.
13. The Hon'ble Supreme Court has granted stay order of the judgment of CAT Madraj in OA no. 1324/95.

A copy of the stay order is placed at Annexure 7.

ADT (L)

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Asstt. Director Telecom (Legal)
C/O the C. G. O. Telecom
Assam Circle, Gauhati-781007.

PARAWISE COMMENT IN RESPECT OF OA NO. 255/98

3. That with regard to the statements made in paragraphs 1,2,3,4.1,4.2,4.3 of the application the Respondents have no comments.

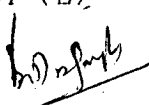
4. That with regard to the statements made in paragraphs 4.4 & 4.5 of the application the Respondents beg to state that, the contents reflected in the para is not based on fact. The reason for fixation of basic pay of Sri R.C. Chakraborty A.O. working in WB Circle is explained in brief history of the case in depth.

5. That with regard to the statements made in paragraphs 5.1 of the application the Respondents beg to state that, Judgment delivered in respect of OAs 64/1995 & 65/1995 by the Hon'ble Tribunal Guwahati Bench was implemented by DOT subjected to the condition that payment will be stopped and the entire amount thus paid will be recovered if SLP filed in the Hon'ble Supreme Court is admitted and a stay order is granted. Office Order enclosed in Annexures 8 & 9.

6. That with regard to the statements made in paragraphs 5.2 of the application the Respondents beg to state that, In view of Judgment given recently by several Benches of Hon'ble tribunal, including a Full Bench of Hon'ble Tribunal/ Hyderabad Bench, a stay granted by Hon'ble Supreme Court in similar nature

ADT (L)

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Asstt. Director Telecom (Legal)
C/O the C. C. & T. Dept.
Assam Circle, Guwahati-781007

of case(O.A.1324 / 95 of CAT Madraj, mentioned in the brief History of the case) the Deptt. is not in a position for similar action as mentioned in 5.1 in respect of the applicant.

7. That with regard to the statements made in paragraphs 5.3 of the application the Respondents beg to state that, The Respondents could not properly and adequately defend the OAs 64/95 & 65/95 due to non availability to relevant documents at their disposal at that time . The present case may be examined afresh in the light of the points and documents mentioned in Brief History of the case and if necessary decision in O.A. no. 64/95 & 65/95 may be suomoto reviewed.

8. That with regard to the statements made in paragraphs 5.4 of the application the Respondents beg to state that, in view of above situation the CGMT /Assam Circle, Guwahati is not in a position to dispose of the case based on the Judgment delivered in respect of OA no.64/95.

8. That with regard to the statements made in paragraphs 5.5 & 5.6 of the application the Respondents beg to appeal to the Hon'ble Tribunal to examine the facts and documents furnished in the Brief History of the case , and not to decide the case as COVERED CASE.

9. That with regard to the statements made in paragraphs 6 of the application the Respondents beg

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ADT (L)

to state that, the position of the case has been described in depth in the Brief History Of The Case.

10. That with regard to the statements made in paragraphs 7 & 8 of the application regarding reliefs sought for, the Respondents beg to state that the applicant is not entitled to any of the relief sought for and as such the application is liable to be dismissed.


11. That regarding Interim order prayed for in the para 9 of the application the Respondent beg to submit that the direction prayed from the Hon'ble Tribunal can not be granted as per law as well as in facts that the applicants case donot comes as a COVERED CASE and as such, the same may be denied and the application is liable to be dismissed.

12. That with regard to the statements made in para 10 & 11 of the application the respondents have nothing to say. Regarding interim relief prayed for the respondents beg to state that the applicant is not entitled to get any relief.

11. That the Respondents, further submit that the application has no merits and as such the same is liable to be dismissed.

ADT (L)

Contd..



Asstt. Director Telecom (Legal)
O/O C & C G. I. Telecom
Assam Circle, Guwahati-781007.

V E R I F I C A T I O N

I, Shri B. Das Gupta, Assistant Director Telecom (Legal) serving in the Office of the Chief General Manager Telecom, Assam Circle as authorised, do hereby solemnly declare that the statements made in paras 1,3,6,7.8.10.11 of this written statement are true to my knowledge, and the statements made in paras 2.0 to 2.11,4,5,9, of this written statement are true to my information and the rests are humble submissions before the Hon'ble Tribunal.

And I sign this verification on the 6th day of March....., 1997 at Guwahati.

Declarant:


Asstt. Director Telecom (Legal)
O/O C.G.M. Telecom Assam Circle
Guwahati -- 781007

Asstt. Director Telecom (Legal)
O/O C. G. M. Telecom
Assam Circle, Guwahati--781007.

Government of India
Ministry of Communications
Department of Telecommunications
Sanchar Bhawan, New Delhi

PAGE (15)

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No. 3-20/93-PAT

DATED:
24 DEC 1993

To

All Heads of Telecom. Circles/
All Heads of Telecom. Districts/
All Heads of Administrative Offices/
M.T.N.L. New Delhi/Bombay
V.S.N.L. New Delhi/Bombay.

Annexure I / page

Subject: Stepping up of pay.

Sir,

I am directed to forward herewith O.M. No. 4-7/92-Estt(Pay-I) dated 4.11.1993 on the subject noted above received from DOP & Tty. for information and necessary action.

Yours faithfully,

S.D. Sharma

(S.D. SHARMA) 17-12-93
SECTION OFFICER(PAT)

Copy Enclosed
(as per Ltr
S/O, List)

NO. ESTT-4/22/2

Dated at Guwahati the 1-2-94

Copy forwarded for information, guidance and necessary action to:-

- 1-2. The AMT, GH/DR.
3. The TDM/GH.
- 4-9. The TDEs, DCH/DR/SC/TZ/REG/JRT.
- 10-14. The STTs, DCH/DR/SC/TZ/JRT.
15. The CS, CTO/GH.
16. The AE, I/C, CTSD/GH.
17. The Principal CTTC/GH.
18. The REM/GH.
19. The ADT(S), Circle Office, Guwahati.

Attended

S.D. Sharma
5/3/94

Asstt. Director Telecom (Legal)
O/O the C.G.
Assam Circle, Guwahati 781007

Asstt. Director Telecom (E&R)
for Chief General Manager Telecom;
Assam Circle: Guwahati: -781007.

No. 4/7/72-Estt. (pay-1)
Government of India
Department of Personnel & Training

Annexure I/para 2

New Delhi, the 1-11-1973.

OFFICE MEMORANDUM

Subject: Stepping up of pay.

Cases for stepping up of the pay of seniors in a pay scale to that of juniors are generally considered if the following conditions are satisfied :-

- (a) Both the junior and senior officer should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which the junior and senior officer are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR-22-C. For example, 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.

Instances have come to the notice of this Department requesting for stepping up of pay due to the following reasons:-

- (a) Where a senior proceeds on Extra Ordinary Leave which results in postponement of date of next increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He, therefore, cannot claim pay parity on promotion even though he may be promoted earlier to the higher grade;
- (b) If a senior is promoted/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while junior avails of the ad-hoc promotion in the cadre. The increased pay drawn by a junior either due to ad-hoc promotion in the cadre. The increased pay drawn by a junior either due to ad-hoc officiating/regular service rendered in the higher posts for periods earlier than the senior, cannot therefore, be an anomaly in strict sense of the term.
- (c) If a senior joins the higher post later than the junior for whatsoever reasons, whereby he draws less pay than the junior, in such cases senior cannot claim stepping up of pay at par with the junior.

Contd...

Attended
5/3/73
Asstt. Director Telecom (Regal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati 781007.

Amended/pay 3

- (d) 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.
- (e) Where a person is promoted from lower to a higher post his pay is fixed with reference to the pay drawn by him in the lower post under FR-22-C and he is likely to get more pay than a direct appointee whose pay is fixed under different set of rules. For example a UDC on promotion to the post of Assistant gets his pay fixed under FR-22-C with reference to the pay drawn in the post of UDC, whereas the pay of Assistant (DR) is fixed normally at the minimum under FR-22-B(2). In such cases the senior direct recruit cannot claim pay parity with the junior promoted from a lower post to higher post as seniority alone is not a criteria for allowing stepping up.
- (f) Where a junior gets more pay due to additional increments earned on acquiring higher qualifications.

3. In the instances referred to in paragraph 2 above a junior drawing more pay than the senior will not constitute an anomaly. In such cases, stepping up of pay will not, therefore, be admissible.

4. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these orders have been issued after consultation with the Comptroller and Auditor General of India.

5. Hindi version will follow.

Sd/-

(MRG. REVATHY IYER)

DEPUTY SECRETARY TO THE GOVT. OF INDIA

To

All Ministries/Departments of Govt. of India.

Attested

5/3/92

Asst. Director Telecom (Legal)
O/O P & C G. M. Telecom
Assam Circle, Guwahati-781007.

3. While fixing the pay of the Draughtsmen in the manner indicated in paragraph 2 above, it may happen that the senior Draughtsmen in the pre-revised scale of Rs. 205-280 who were placed directly in the higher scale of Rs. 425-700 with effect from 1st January, 1973, may be drawing pay less than those juniors to them who were initially placed in the lower scale of Rs. 330-560 and were subsequently promoted to the higher scale of Rs. 425-700. In such cases, it has been decided that the pay of the senior Draughtsman may be stepped up to the level of the pay of his junior in terms of orders contained in O.M., dated the 18th July, 1974. [Order (23) (b) below]. The payment of arrears will be subject to the provisions of O.M., dated the 18th July, 1974.

[G.I., M.F., O.M. No. 7 (13)-E. III/81, dated the 20th March, 1981.]

(22) Removal of anomaly by stepping up of pay of Senior on promotion drawing less pay than his junior.—(a) As a result of application of F.R. 22-C.—In order to remove the anomaly of a Government servant promoted or appointed to a higher post on or after 1-4-1961 drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the higher post should be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:—

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of F.R. 22-C. For example, 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, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under F.R. 27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of re-fixation of pay.

[G.I., M.F., O.M. No. F. 2 (78)-E. III (A)/66, dated the 4th February, 1966.]

(b) As a result of F.R. 22-C application in the revised scales.—
(i) CCS (RP) Rules, 1973: In order to remove the anomaly, wherein a

For references to F.Rs. 22, 22-C, 30 and 31 see the corresponding provisions in the new F.R. 22.

Attached

B. D. Singh

5/3/82

Asstt. Director Telecom (Legal)
O/O Telecom G. M. Telecom
Assam C. e. Guwahati 781007

F.R. 22]

PAY

AUTHORS' NOTE.—The provisions of the above O.M. have since been incorporated in the amended F.R. 22.

(26) The 'next below rule' and its exact scope.—Doubts have frequently been expressed regarding the exact scope of the various rulings issued in connection with the operation of the 'next below rule'. For avoidance of doubt, the extant decisions on this subject have been summarised below—

2. The working rule subjoined to this paragraph may be taken to express the convention which is commonly known as the 'next below rule' as originally approved, and its provisos, the modifications made from time to time. The intention underlying the "rule" is that an officer out of his regular line should not suffer by forfeiting the officiating promotion which he would otherwise have received had he remained in the original line. The so-called "rule" is not a rule of any independent application. It sets out only the guiding principles for application in any case in which it is proposed to regulate officiating pay by special orders under the second proviso to F.R. 30 (1). The conditions precedent to the application of the 'next below rule' must, therefore, be fulfilled in each individual case before action may be taken under this proviso. It also follows that the benefit of officiating promotion is to be given only in respect of the period or periods during which the conditions of the 'next below rule' are satisfied.

"Rule.—When an officer in a post (whether within the cadre of his service or not) is for any reason prevented from officiating in his turn in a post on higher scale or grade borne on the cadre of the service to which he belongs he may be authorised by special order of the appropriate authority pro forma officiating promotion into such scale or grade and thereupon be granted the pay of that scale or grade if that be more advantageous to him, on each occasion on which the officer immediately junior to him in the cadre of his service (or if that officer has been passed over by reason of inefficiency or unsuitability or because he is on leave or serving outside the ordinary line or forgoes officiating promotion of his own volition to that scale or grade then the officer next junior to him not so passed over) draws officiating pay in that scale or grade:

Provided that all officers senior to the officer to whom the benefit under the substantive part of this rule is to be allowed are also drawing, unless they have been passed over for one or other of the reasons aforesaid, officiating pay in the said or some higher scale or grade within the cadre:

Provided further that, except in cases covered by any special orders, not more than one officer (either the seniormost fit officer in a series of adjacent officers outside the ordinary line, or if such an officer either forgoes the benefit of his own volition or does not require the benefit in virtue of his holding a post outside the ordinary line which secures him

For references to F.Rs. 22, 22-C, 30 and 31 see the corresponding provisions in the new F.R. 22.

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Assam Circle

at least equivalent benefits in respect of pay and pension than the next below in the series) may be authorised to draw the pay of the higher scale or grade in respect of any one officiating vacancy within the cadre filled by his junior under this rule."

3. The 'next below rule' set out in the preceding paragraph, should be applied with due regard to the rulings or decisions mentioned hereunder—

- (i) A purely fortuitous officiating promotion given to an officer who is junior to an officer outside the regular line does not in itself give rise to a claim under the 'next below rule'.
- (ii) The expression "outside the ordinary line" occurring in Fundamental Rule 30 (1) is not intended to be rigidly interpreted as necessarily involving a post either "outside the cadre of a service" or "outside the ordinary time-scale".
- (iii) If Government have approved in any department a list of officers in order of merit for promotion to administrative rank or a selection grade, then that order will prevail as the order of seniority of the officers in the ordinary gradation list of their cadre.

4. It has been held that holders of a special (e.g., tenure) posts such as Secretaryships to a Governor or a State Government should be ready to accept loss of officiating promotion for short periods to posts on a higher scale or grade in the ordinary line in consequence of their incumbency and that, when the stage is reached at which their retention involves loss of substantive or lengthy officiating promotion, the proper course is to make arrangements to release them from the special posts rather than to compensate them for the loss of officiating promotion under the 'next below rule'. 'Short periods' should be interpreted as meaning periods not exceeding three months.

If in such a case the conditions of the 'next below rule' are not satisfied and an officer is deprived of officiating promotion owing to its being impracticable for the time being to release him from the special post, he may be granted such compensation for loss of officiating promotion as would have been admissible under the 'next below rule' for the period in excess of first three months of his retention in the posts in the public interest. No specification or declaration in terms of the second proviso to Fundamental Rule 30 (1) will be necessary in these cases and it will suffice if those authorities issue the requisite orders granting the officers concerned the compensation on that basis. As in the case of the 'next below rule' the periods for which compensation equivalent to the 'next below rule' benefit is allowed will count for increment in the higher scale or grade in which the officer would have officiated, had he not been holding the special posts in the public interest.

For references to F.Rs. 22, 22-C, 30 and 31 see the corresponding provisions in the new F.R. 22.

Attended
by
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Asstt. Director, Telecom (Legal).
C/O I. C. G.
Assam C. C. Guwahati. 781007

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If, however, in such a case the conditions of the 'next below rule' are satisfied, the officer concerned may be granted under the second proviso to Fundamental Rule 30 (1) the concession admissible under the 'next below rule', but save in exceptional circumstances, such an officer should not be retained in the special post if the pay attached thereto is lower than that admissible to him under the 'next below rule' for more than six months beyond the date from which the 'next below rule' begins to operate.

[G.I., F.D., No. F. 2 (25)-Est. III/46, dated the 2nd April, 1947 and G.I., M.F., (C. Dn.), U.O. No. 5635-PT-1/62, dated the 3rd October, 1962.]

(27) One for One Principle under 'next below rule'.—It has been noticed that in some instances claims have been supported for the protection of more than one officer in respect of a single officiating appointment in cases where a consecutive series of two or more officers in a cadre are on deputation to posts outside the regular line, and the officer next below them is promoted to officiate in a higher post in the cadre. In order to eliminate any doubt in the matter, it has been decided that one officer and one officer only, namely, the most senior fit officer who is not debarred by the conditions prescribed for the application of the rule should be allowed the benefit under the 'next below rule'.

It may happen that the seniormost officer serving outside the regular line does not require to be protected under the 'next below rule' by his belonging to one or other of the types indicated below—

- (i) An officer serving outside the ordinary line holds a post carrying a scale of pay identical with that of an administrative post in the ordinary line, and is, by virtue of a declaration in terms of the Exception below F.R. 22, eligible for the pay and incremental benefit of the higher post in the ordinary line and also for the benefit of the additional pension by virtue of a declaration under Article 475-A of the Civil Service Regulations.
- (ii) An officer outside the regular line holds a post (generally temporary) carrying better pay than the 'identical' scale, and qualifying *per se* or by special declaration, for special additional pension as for the higher post in ordinary line.

In such cases, it has been decided that the protection under the 'next below rule' in respect of any one vacancy occurring in the regular line may go to the next seniormost fit officer serving outside the cadre who is not independently protected in respect of pay, increment or pension by belonging to one or other of these types.

[G.I., M.F., O.M. No. F. 2 (2)-Ests. III/46, dated the 9th May, 1949.]

(28) Pro forma promotion under 'next below rule' admissible while on deputation to Territorial Army.—Government of India have under consideration for some time the question of protecting the seniority and chance

For references to F.Rs. 22, 22-C, 30 and 31 see the corresponding provisions in the new F.R. 22.

Attached
B. D. Singh
5/10/52

Asstt. Director Telecom (Legal)
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of promotion under the 'next below rule' of Government servants who join the Territorial Army and are on deputation there either on annual training or for course of instruction or during an emergency, etc. It has been decided that the period of service rendered by them with the Territorial Army may be treated as service outside the ordinary line for the purpose of proviso 2 to F.R. 30 (1), accordingly they will be entitled to pro forma promotion in their parent Departments, under the 'next below rule'. They will also get the seniority in the higher post to which they would otherwise be entitled if they had not been away for training, etc., in the Territorial Army.

[G.I., M.H.A., Memo. No. 47/2/56-Est. (A), dated the 20th January, 1958.]

(29) Counting of service in Emergency Commission on return to civil employ—Application of 'next below rule'.—The Government of India have had under consideration the question whether the period spent in the Defence Services by a Government servant who holds substantively a permanent post in Civil employ, and has been granted an Emergency Commission, should, on his appointment, on return from Military duty, to a higher post in which he would have officiated but for his absence on such duty, be allowed to count for increments in the time-scale of the higher Civil post. It has been decided that posts in the Defence Services held by permanent Civil officers who have been granted Emergency Commission shall be specified as posts 'outside the ordinary line of a service' for the purpose of the second proviso to F.R. 30 (1). As a result of this decision service rendered by such an officer in the Defence Services will count for increments in a post on a higher scale if he would but for his appointment in the Defence Services, have officiated in the higher scale post in Civil employ, and provided also that the precedent conditions for the application of the 'next below rule', as set forth in Order (26) above have been fulfilled.

[G.I., F.D., Endorsement No. F. 15 (18)-Ex. 1/42, dated the 7th November, 1942.]

2. It has been decided that posts in the Defence Services held by permanent civil officers, who, being officers of the Army in India Reserve of Officers have been called out to Military Service, shall also be specified as posts "outside the ordinary line of a service" for the purpose of the second proviso to Fundamental Rule 30 (1).

[G.I., F.D., Endorsement No. F. 15 (18)-Ex. 1/42, dated the 28th July, 1943.]

3. The Government of India have extended to the Commissioned Officers of the Civil Pioneer Force the concession contained in paragraph 1 above.

[G.I., F.D., Endorsement No. 9890-WI/43, dated the 16th November, 1943.]

(30) Pro forma promotion while under training/instruction in India/abroad.—F.R. 20 provides that in respect of any period treated as duty

For references to F.Rs. 22, 22-C, 30 and 31 see the corresponding provisions in the new F.R. 22.

Asstt. Director Telecom

O/O C. C. G. M. Telecom

Assem. Circle, Gwalior, 281007

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

PETITIONS FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO.S
25485 TO 25489 OF 1995

(petitions under Art. 135 of the Constitution of India for Special Leave to Appeal from the judgment and order dated 30th November, 1994 of the Central Administrative Tribunal (Hyderabad Bench) at Hyderabad in OA Nos 1523 of 1993, 43 of 1994, 1078 of 1994, 1193 of 1994 and 1226 of 1994)

WITH

INTERLOCUTORY APPLICATION NOS. 6 TO 10

(Applications for stay by Notice of Motion with a prayer for an ex-parte Order)

1. The CGMT, Andhra Pradesh, Hyderabad.
 2. Union of India, rep. by The Director General, Department of Telecom, New Delhi.
 3. The Secretary, Min. of Telecom, New Delhi
 4. The CGMT Southern Telecom Region, Madras
-Petitioners.

Versus.

1. N. Balakrishna, S/o N. Shri Ramulu, Accounts Officer, O/o The Executive Engineer, Telecom Civil Division, Tirupati.
2. S. Penchalaiah, S/o S. Arjaiah, Accounts Officer O/o The Telecom District Manager, Anantpur.
3. S. Krishana Murthy Sastry S/o Sistu Sree Rama Sastry Accounts Officer, O/o The Telecom District Engineer, Khammam.
4. A. Rajeswara Rao, S/o Kameshwara Rao, Accounts Officer Hyderabad Telecom District, Hyderabad.
5. D. Bhaskara Rao, S/o Sarveswara Sastry, Accounts Officer O/o The CGMT, Station Road, Hyderabad.
6. Bhamidi Surya Narayana, S/o Sarveswara Sastry, Accounts Officer O/o The Telecom District Engineer, Vijayanagaram.
7. Ch. V. Subbva Rao, S/o Subrahmanyam, Accounts Officer, O/o The General Manager, Telecom, Kakinada.
8. U. Thukaram, s/o U. Salaram, Accounts Officer, O/o The Telecom District Engineer, Nizamabad.
9. G.V.V. Satyanarayana, S/o G. Narayana, Accounts Officer, O/o The General Manager, Transmission Projects, Hyderabad.
11. V.V. Koteswara Rao, S/o U. Satya Raju, working as Chief Accounts Officer in the office of the Telecom District Manager, Rajahmundry.

Attended

[Signature]

5/3/92

Asstt. Director Telecom (Legal)
O/o the C. G. M. Telecom
Assam C. e. Gauhati 781007.

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- 9
- 12.F. Sree Rama Murty, S/o P. veerayya working as chief Accounts Officer in the office of the Telecom District Manager, Vishakhapatnam
 - 13.B.V. Narasimhan S/o B. Sanyasi Rad, Working as Assistant Chief Accounts officer, O/o Telecom Dist. Engineer, Srikakulam.
 - 14.B. Sithapathi Rao, S/o Venkat Reddian working as Accounts officer, in the O/o General Manager, Telecom District Guntur.
 - 15.Ch. Narayana Swamy, S/o Ch. Pedda Rangalah, working as Accounts Officer in the O/o The General manager, Telecom District, Guntur.
 - 16.D. Sitaramaiah, S/o D. Sree Rama Murthy working as Assistant Chief Accounts Officer, O/o The General Manager, Telecom District, Rajahmundry.
 17. K.L.N. Moorty, Anantha Ramaiah, Retired Asstt. Chief Accounts Officer, Telecom, Resident of H.No 54-14-26, Srinivas Nagar, Vijaywada.
 18. Ch. Veeraraghavulu
 - 19.S. Ganapathi
 - 20.T. Narashimhamurthy
 - 21.B. Lakshmi Narayana
 - 22.V. Naga char.

Respondent Nos. 18 to 22 are rep. through Chief General Manager, Telecom, Hyderabad. A.P. Respondents.

Dated 10th November, 1995

CORAM: HON'BLE THE CHIEF JUSTICE.

HON'BLE MR. JUSTICE K.S. PARIPOORNAN

For the Petitioner as: Mr. Altaf Ahmad, Additional Solicitor General of India. (Mrs. Abnil Katiyar, Advocate with him.)

The petitions for Special leave to Appeal AND the Applications for stay above-mentioned being called on for hearing before this court on the 10 th day of November, 1995, UPON hearing counsel for the petitioners herein HIS COURT While directing to place this matter alongwith Special Leave Petition (Civil) No. 14784 of 1995 entitled Union of India & Anr. Vs. R. Swaminathan and allied matters BOTH ORDER that there will be stay of the judgement and order dtd the 30 th November, 1994 of the Central Administrative Tribunal (Hyderabad Bench) at Hyderabad in OA Nos. 1523 of 1993, 43 of 1974, 1078 of 1994, 1193 of 1994 and 1226 of 1994:

AND THIS COURT DOOTH FURTHER ORDER THAT this order be punctually observed and carried into execution by all concerned.

WITNESS the Hon'ble Shri Aziz Mushabbir Ahmadi, Chief Justice of India at the Supreme Court, New Delhi dtd this the 10 th day of November 1995.

(C.L. CHOWLA)
DEPUTY REGISTRAR

Altaf
5/11/95
Asstt. Director Telecom (Legal)
Office of G. M. Telecom
Assam Circle, Guwahati-781007.

Annexure - 3 (page 3)

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD

Endt.No.CAT/Hyd/Jud1/SC/95/95

Dated: 28.12.95

The order of the Supreme Court of India in SLP No. 25485-89 of 1995, dt. 10-11-95, is communicated to the concerned herein.

Sd/-
Registrar.

True Copy

1. CGMT, Andhra Pradesh Telecom, Hyderabad.
2. The Director General, Deptt. of Telecommunications, New Delhi.
3. The Secretary, Ministry of Communications, New Delhi.
4. The CGM, Southern Telecom Region, Madras - 600 001.
5. Shri K.Venkateshwar Rao, Advocate, CAT, Hyderabad.
6. Shri N.R.Devaraj, Sr.CGSC, CAT, Hyderabad.
7. Shri Bhimanna, Addl. CGSC, CAT, Hyderabad.
8. One Spare copy.

A.H. Red

Handwritten signature
5/3/92

Asstt. Director Telecom (Legal)
Assam e. Guwahati. 781007.

Wednesday, the 22nd day of November 1995

PRESENT

The Hon'ble Shri P.T. THIRUVENGADAM, MEMBER (A)
The Hon'ble Shri P. SURIYAPRAKASAM, MEMBER (J)

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OA NO.	1823 of 1993
OA NO.	1824 of 1993
OA NO.	1825 of 1993
OA NO.	1826 of 1993
OA NO.	1830 of 1993
OA NO.	1861 of 1993
OA NO.	1895 of 1993
OA NO.	1829 of 1993
OA NO.	1896 of 1993
OA NO.	1898 of 1993
OA NO.	1897 of 1993
OA NO.	1899 of 1993.

S. Ramasamy	..	Applicant in OA NO. 1823 of 1993
A. Chinnakani	..	Applicant in OA No. 1824 of 1993
G.R. Gurukataksham	..	Applicant in OA NO. 1825 of 1993
V. pennuchamy	Applicant in OA No. 1826/93
A.S. Subbarayan		Applicant in OA1830/93
V. Balakrishnan		Applicant in OA1861/93
P. Sakthivel		Applicant in OA 1895/93
K. Ramachandran		Applicant in OA 1829/93
V.S. Ramanujam		Applicant in OA 1896/93
K. Natarajan		Applicant in OA 1898/93
R. Lakshmanan		Applicant in OA No. 1897/93
N. Nagarathnam		Applicant in OA NO. 1899/93

Vs.

1. Union of India rep. by the Director General,
Department of Telecom, Govt. of India, Sanchar
Bhawan, New Delhi.
2. The Chief General Manager, Tamil Nadu Telecom Circle
Madras. Respondents in all the
above OAs.

Mr. K. Kanda Pillai Advocate for the applicants
in all the OAs.
Mr. K. Venkatasubbaraju .. Advocate for the respondents.

Order: Pronounced by the Hon'ble Shri P.T. THIRUVENGADAM
MEMBER (A)

These OAs have been heard together since the issues
raised and the arguments advanced are similar. They
are being disposed of by this common order.

Contd...

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5/3/92

Asstt. Director Telecom (Legal)
O/o Telecom
Assam Circle
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2. The brief facts relating to these OAs are as under. The applicants were all working in Gp 'C' posts in the Department of Telecom. They were working in the posts of Asst. Superintendent of Telegraph Traffic (ASTT for short). Their further promotion is to the post of Telegraph Traffic Service- Gp 'B' service (TTS for short). They have been promoted on various dates to the Gp 'B' service. They have compared their pay on promotion to Gr. 'B' service with reference to certain juniors who were juniors to them in Gr. 'C' as well as in Gr. 'B'. Out of the 12 OAs before us, the applicants in first seven OAs are comparing themselves with reference to Sh. Baleshwar Singh and the details are as under:

OA NO.	Name of the applicant	Date of regular promotion in Gr. 'B'	Seniority position in Gr. 'B'
1823/93	S. Ramasamy	21.8.1982	192
1824/93	A. Chinnakkani	18.10.1982	122
1825/93	G. R. Gmrukataksham	19.7.1984	239
1826/93	V. Pennuchamy	21.6.1982	163
1830/93	A.S. Subbarayan	23.8.1981	134
1861/93	B. Balakrishnan	23.8.1981	160
1895/93	P. Sakthivel	27.8.1981	203

Person compared with:

Baleshwar Singh	23.6.1984	252
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3. Of the remaining five OAs, the applicants in 3 OAs are comparing themselves with one Niranjans Shah and the details are as given below:-

1829/93	K. Ramachandram	3.12.1984	271
1896/93	V.S. Ramanujam	1.4.1990	331
1898/93	K. Natarajan	11.2.1991	382

Person compared with

Niranjana S. Shah	11.2.1991	386
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4. Of the last 2 OAs the applicants are comparing themselves with one P. Pannijiyara and the details are as given below:-

1897/93	R. Lakshmanan	15-12-1983	291
1899/93	N. Nagarathnam	12.12.1988	291

Person compared with

P. Panjiyara	1.9.1989	322
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5. The applicants represented that their pay should be stepped up in comparison with the juniors as mentioned by them. These representations have been turned down

Attached
 5/3/92
 Asst. Director Telecom (Legal)
 Circle, Guwahati-781007

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by the letter dtd 31.5.1993. The contents of this letter are as below:-

"Letter No. 4-31/92-PAT dated 31.5.1993.

Sub: Stepping up of pay of senior in case of junior drawing more pay due to fortuitous increase of pay.
.....

1. I am directed to say that number of cases are being received from different circles with requests for stepping up of their pay with reference to that of their juniors who are drawing more pay due to fortuitous increase, viz. adhoc or officiating promotions etc. To support their claim they had been referring to the judgement dtd 15.11.1991 given by CAT, Hyderabad bench in OA 816/89 filed by Smt. N. Lalitha and others of Deptt. of Mines.

2. The case of stepping up of pay has been examined in consultation with the DOP&T, and it has been clarified that the benefits of the judgement cannot be extended to other similarly placed Govt. Servants. These cases do not constitute an anomaly and stepping up of pay cannot be allowed under the existing orders.

3. As such the circles may inform the concerned officials/officers accordingly and representation in future need not be forwarded to this Directorate. The cases already pending with us alongwith the service books will be returned to the circle separately.

Sd/-
(Budh Prakash)
Asstt. Director Genl (TE)

6. These OAs have been filed with the prayer that the letter of rejection dtd 31.5.1993 may be set aside and for a direction to step up their pay with reference to their juniors with whom they are comparing themselves.

7. It is an admitted position that the senior applicants are fixed on a lower pay compared to the juniors mentioned since those juniors were allowed the benefit of ad hoc promotion. Such juniors have generally worked in different circles. All the same it is claimed that promotion to Gp 'B' from Gr. 'C' is to be made on an All India basis and the applicants were denied the benefit of adhoc promotion at the relevant points of time.

8. The learned counsel for the applicants urged the following grounds in respect of the applicants claim.
(A) stepping up of pay as claimed is permissible as per the Ministry of Finance OM dtd 4.2.1966. The OM is reproduced below:-

"Removal of anomaly by stepping up of pay of senior on promotion drawing less pay than his junior:-

(a) As a result of application of FR 22-C- In order to remove the anomaly of a Govt. servant promoted or appointed to a higher post on or after 1.4.61 drawing a lower rate of pay in that post than another Govt. servant junior to him in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that in such cases the pay of the senior officer in the

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Amph

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Asstt. Director Telecom (Legal)
O/O : : : Telecom
Assam Circle, Guwahati 781007.

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higher post. The stepping up should be done with effect from the date of promotion or appointment of the junior officer and will be subject to the following conditions, namely:-

- (a) Both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example, 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, the above provisions will not be invoked to step up the pay of the senior officer.

The orders refixing the pay of the senior officers in accordance with the above provisions shall be issued under FR27. The next increment of the senior officer will be drawn on completion of the requisite qualifying service with effect from the date of refixation of pay.

(Govt. of India, Mini. of Finance OM No. F. 2(78)-E.III/A/66 dtd the 4th February 1966)

(B) Similar claims have been allowed by a number of benches of this Tribunal.

(C) It would be discriminator to allow the junior to continue with a reckoning benefit on higher pay fixation.

9. Ground: (A) The respondents in their reply are also relying upon the same OM dated 4.2.1966, cited supra, to deny the benefit claimed by the applicants. It has been argued that the anomaly should be directly as a result of the application under FR 22-C. The juniors referred to had the benefit of ad hoc promotion and on their promotion they were fixed under FR 22-C. The senior persons who got the promotion on a regular basis later to the dates of ad hoc promotion of the junior, referred to supra, were also fixed under FR 22-C. There has been no anomaly directly as a result of the application of Rule FR 22-C. An illustration has been given in the reply to bring out where anomalies would arise due to the direct application of the said rule. It has been brought out that due to different dates of increment (s), the anomaly as alleged, would arise.

10. Apart from the above we note that the memorandum of 4.2.66 also states that the anomaly should have arise with the junior being promoted subsequent to the promotion of the senior. In all the cases before us the junior has obviously been promoted earlier on adhoc basis. We also note from the Swamy's Compilation of FR/SR that periodically instructions have been issued to remove the anomaly of a senior getting lesser pay compared to his junior, in the background mentioned therein. Specifically when the recommendations of Pay Commission (s) have been accepted and implemented, anomalies used to arise in that when a senior promoted prior to the date of adoption of the new pay commission's scales of pay would be drawing a lesser pay compared to some of the juniors promoted subsequent to this date. The essential ingredients

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in all these cases is that the senior had been promoted earlier and the juniors were promoted later and both of them were in the same scale of pay both in the lower pay and higher pay. The Department of Personnel in their clarification dtd 4.11.1993 on the subject of stepping up of pay have given the following clarifications, which reads as follows:

"No. 4/7/ 92-Estt(PayI), Govt of India, Department of Personnel and Training, New Delhi.

New Delhi, the 4.11.1993

OFFICE MEMORANDUM

Sub: Stepping up of pay.

Cases for stepping up of the pay of seniors in a pay scale to that of juniors are generally considered if the following conditions are satisfied:

- (a) Both the junior and senior officer should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
- (b) The scales of pay of the lower and higher posts in which the junior and senior officer are entitled to draw pay should be identical;
- (c) The anomaly should be directly as a result of the application of FR 22-C. For example, 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.

2. Instances have come to the notice of this Department requesting for stepping up of pay due to the following reasons:

- (a) Where a senior proceeds on extraordinary leave which results in postponement of date of next increment in the lower post, consequently he starts drawing less pay than his junior in the lower grade itself. He therefore cannot claim parity on promotion even though he may be promoted earlier to the higher grade;
- (b) If a senior foregoes/refuses promotion leading to his junior being promoted/appointed to the higher post earlier, junior draws higher pay than the senior. The senior may be on deputation while the junior avails of the adhoc promotion in the cadre. The increased pay drawn by a junior either due to adhoc promotion in the cadre. The increased pay drawn by a junior either due to adhoc promotion/regular service rendered in the higher posts for periods earlier than the senior, cannot therefore, be as anomaly in strict sense of the term.

Assisted

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(c) If a senior joins the higher post later than the junior for whatever reasons, whereby he draws less pay than the junior, in such cases senior cannot claim stepping up of pay at par with the junior.

(d) If a senior is appointed later than the junior in the lower post itself whereby he is in receipt of the 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.

(e) Where a person is promoted from lower to a higher post his pay is fixed with reference to the pay drawn by him in the lower post under FR 22-C and he is likely to get more pay than a direct appointee whose pay is fixed under different set of rules. For example a UDC on promotion in the post of Assistant gets his pay fixed under FR22-C with reference to his pay drawn in the post of UDC, whereas the pay of Assistant (DR) is fixed normally at the minimum under FR2B(2). In such cases the senior direct recruit cannot claim pay parity with the junior promoted from a lower post to higher post as seniority alone is not a criteria for allowing stepping up.

(f) Where a junior gets more pay due to additional increments earned on acquiring on higher qualifications.

3. In the instances referred to in paragraph 2 above a junior drawing more pay than the senior will not constitute an anomaly. In such cases stepping up of pay will not therefore be admissible.

4. Insofar as persons serving in the Indian Audit and Accounts Department are concerned, these orders have been issued after consultation with the Comptroller and Auditor General of India.

(Mrs. S. Revathy Iyer)
Dy. Secretary to the Govt. of India

11. From the above clarification, specifically the clarifications at paras 2(b) and 2(c) it is clear that a junior getting the benefit of adhoc promotion may draw more pay compared to the senior who was promoted on a regular basis at a later date. In such a case stepping up of pay is not envisaged. Further the OIA dtd 4-2-66 and the subsequent clarification dtd 4-11-93 not having been challenged, the applicants have to suffer the consequences of these orders.

12. Ground(B): The learned counsel for the applicants then referred to the various citations in favour of the applicants allowing the reliefs similar to what have been claimed in these OAs. In these OAs a copy of the orders passed by this Tribunal on 4.6.93 in OA Nos. 1800 and 1801 of 1992 has been enclosed. In this order reference has been made to the orders passed in N. Lalitha and others Vs. UOI and others, reported in (1992) 19 AT 569. This case was disposed of by the Hyderabad bench

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of this Tribunal and is one of the first such cases dealt with. The bench noted that the junior earned increments during the adhoc promotion on the basis of a local seniority leading to fixation of pay of the junior on a higher pay than the senior's pay. In such circumstances the Tribunal held that the senior is entitled to fixation of his pay on a par with that of his junior. In that case reliance was placed on a decision of that bench in the Review Petition No. 71 of 1990 in OA 622/89 (V. Vivekananda Vs. Secretary, Ministry of Water Resources) which was again based on a decision of the Calcutta bench reported in (1988) 7ATC 224 (Anil Chandra Das- Vs. Union of India). The Hyderabad bench held that not having had the benefit of fortuitous adhoc promotion a senior should not be at a disadvantage in pay fixation and therefore directed the respondents to step up the pay of the applicant on a par with that of his junior. The Govt. appealed against the said order of the Hyderabad bench in OA No. 622 of 1989 and the Supreme Court in disposing of the Special Leave Petition No. 13994 of 1991 upheld the decision of the Hyderabad bench. The same view has been taken by different benches in similar cases. It is not necessary to give all the citations.

13. We however note that an opposite view has also been taken. As for example, in the orders passed by the Bombay bench on the same issue, reported in (1989) 4 SLJ 425) the Bombay bench had observed that when a junior was getting more pay because of his adhoc promotion continuously in a higher post this will not entitle the senior to ask for more pay under FR 22-C.

14. Eventhough we find a conflicting order between the various benches of this Tribunal we do not find it necessary to refer the matter to the Hon'ble Chairman with a request for consideration of the matter by a larger bench in view of the following factors:-

(i) In none of the citations referred to the issue whether the applicants would have been considered for adhoc promotion but for the concerned juniors having been promoted at the given point of time, has been gone into. Even in the applications before us we note that against the promotion of one Shri Balashwar Singh whose seniority position in the Gp 'C' list was at Sl. No. 252, 7 applicants are claiming the stepping up benefit. They were at seniority position in the same list ranging from seniority position No. 122 to 239. There could be many more between Sl. No. 122 and Sl. No. 252 and may be quite a few even above Sl. No. 122 who would have been eligible for promotion at the time when Shri Balashwar Singh was promoted on adhoc basis. Thus against one adhoc promotion a very large number of employees are claiming stepping up benefit which is nothing but the claim for adhoc promotion.

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15. It would be relevant to refer to the Govt. of India orders under FR 30 on the subject of Next below Rule. (Swamy FR/SR-Compilation, 1986)
order no. 3 dtd 9.5.1979 listed below FR 30 reads as under:

"One for one principle under Next Below Rule:

It has been noticed that in some instances claims have been supported for the promotion of more than one officer in respect of single officiating appointment in cases where a consecutive series of two or more officers in a cadre are on deputation to posts outside the regular line, and the officer next below them is promoted to officiate in a higher post in the cadre. In order to eliminate any doubt in the matter, it has been decided that one officer and one officer only namely most senior fit officer who is not debarred by the conditions prescribed for the application of the rule should be allowed the benefit under Next Below Rule".

(i) Thus even with regard to the Next Below Rule, based on regular promotion the principle of one to one alone is followed. Therefore against one adhoc promotion obviously there cannot be so many claims and none of the applicants has established that but for the alleged adhoc promotion of the junior, that only a particular applicant would have the rightful claim for that post. This important aspect of eligibility for adhoc promotion has not been considered in the earlier orders.

(ii) The cause of action is not the junior getting more pay than the senior. The cause of action and the right to sue arose when the junior was promoted. All the applicants ought to have approached the Tribunal for their claim for promotion from an earlier date rather than claiming for monetary benefits by way of stepping up. This is another aspect which had not been considered earlier.

(iii) In none of the citations, the rules regarding stepping up of pay have been discussed. Specifically the orders of 4.2.1966 and the clarification dtd 4.11.93 have been discussed in detail already in this order. When the rules for stepping up specifically prescribe such stepping up arising out of adhoc promotion of the junior and such rules not having been challenged the grant of the relief of stepping up of pay on a par with that of junior, cannot be considered. This is an important aspect which had not been taken into account earlier.

(iv) The aspect of limitation has also not been discussed in most cases decided earlier. As already observed, the cause of action arose prior to 1981 in those cases where Balashwar Singh has been compared with and yet the applicants have chosen to challenge by way of a claim for stepping up only in the year 1993. We have noted that in a few citations relied upon, the aspect of limitation has been gone into. All the same in the absence of a condonation of delay petition we are not in a position to condone the delay in filing these OAs. Their lordships of the Supreme Court have observed in Secretary to Govt. of India and Others Vs- Shivram Mahadu Gaikwad (reported in 1995 SCC(LS) 1148) that in the absence of an

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application for condonation of delay, limitation as prescribed in the Administrative Tribunals Act was to be enforced.

(v) In Director General, Employees State Insurance Corporation and another Vs Raghava Shetty and another reported in 1995(2) SCALE 137, the Supreme Court has observed in para 6 as under:-

"The second respondent got the benefit of his previous service because of that rule (FR 22-C) and therefore his initial pay was fixed at a higher grade. On a plain reading of that provision it becomes clear that it will not apply to the contesting respondents. It does not provide for the type of claim which they had made. They were not denied the benefit of working on a post carrying the duties and responsibilities of greater importance."

This is a case where the respondents before the Supreme Court had claimed the benefit of step ping up of pay since the junior had the advantage of a dhoc promotion. Though the facts are slightly different in the sense that the junior person had opted to move over to a local office whereas the seniors were unwilling for such a posting, the junior was promoted on adhoc basis in the local office and at a later stage on regularisation in the higher post the junior got the benefit of higher pay fixation by virtue of his adhoc service. However the principle that the fixation was purely as per the F. 22-C and as such no anomaly could be attributed, could be culled out of the case. The benefit of this recent order of the Supreme Court was not available in the cases decided earlier.

16. Ground (C): It was argued that it would be inequitable to allow seniors to draw lesser

pay than juniors and that too on a recurring basis. A number of citations to this effect were relied upon. It is not necessary to go into the various citations since their Lordships of the Supreme Court have observed in their judgement dtd 13-1-89 in Civil Appeal No. 307, 316 of 1983 in State of AP and others Vs. G. Sreenivasa Rao and others (1989 SCC (L&S) 339) as follows:-
"Ordinarily grant of higher pay to a junior would ex-facie be arbitrary but if there are justifiable grounds in doing so the seniors cannot invoke the equity doctrine. To illustrate when pay fixation is done under valid statutory rules/executive instructions, when persons recruited from different sources are given pay protection when promoted from lower cadre or a transferee from another cadre is given pay protection, when a senior is stopped at efficiency bar, when advance increments are given for experience/passing a test/acquiring higher qualifications or as incentive for efficiency are some of the eventualities when a junior may be drawing higher pay than his seniors".

17. In the light of the discussion above, we hold that these applications are devoid of merit and accordingly the OAs are dismissed with no order as to costs.

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The applicants in one case are Station Masters of the Bombay Division of the Western Railway. They have the grievance that the second respondent who is the Station Master working at Bandra Marshalling Yard of the Bombay Division of the Western Railway though Junior to them is drawing more than the applicants since 1.11.86. Therefore, there is clear anomaly arising from the fixation of pay of the juniors at a higher level than their seniors and the applicants are hence entitled stepping up of pay at par with the juniors in terms of the Railway Board's Letter, dated 19.3.66. It was contended for the Railways that the higher pay drawn by the junior has arisen not as a direct result of application of FR 22-C which is one of the three essential conditions laid down in Railway Board's Letter, dtd 19.3.66 for stepping up pay of seniors but as a result of earlier adhoc promotions of juniors to higher posts. The service in such adhoc promotion counts for increments though not for seniority and such increments are also taken into account for the purpose of pay fixation on regular or officiating promotions.

Held: In the case of Iqbal Mohammad Khan v. Government of India decided by the Division bench (New Bombay) of the Tribunal on 16.12.1988 (not reported) it was held that when a junior is getting more pay because of his adhoc but continuous appointment to a higher post, that will not entitle his senior to ask for stepping up his pay under F. R. 22-C. In another decision of D. L. Dighe v. Director-General of Posts (1988(1)SLJ(CAT)647) officiating promotions were stated to have been granted to the junior beyond the maximum period stipulated in the relevant Rules by an authority not competent to do so. In this case, which was concerning a postal employee, the Tribunal rejected the claim for stepping up of pay on the ground of irregular adhoc promotion of the juniors as alleged by the applicant holding that one wrong theory cannot justify another. The Tribunal observed that the claim of the applicants therein for stepping of pay was not justifiable since the anomaly did not arise as a result of direct application of F.R.22-C but by virtue of earlier officiating promotions granted to the junior. The Tribunal held that the right course of action for the respondents in that case would be to reexamine strictly in accordance with the rules and delegation of powers prescribing at the relevant time as to whether any of the 8 applicants therein was eligible to be considered for the vacancies in question and if so regular their promotion accordingly and fix their pay notionally by giving them incremental benefits strictly according to the above rules, without, however, giving them arrears of salary on this account as they did not actually should or responsibility in the higher post to which they would have been promoted at the relevant time. On behalf of the applicants it was submitted that at least a limited relief, as in the above case should be granted to them in the present applications, since there has been an administrative error in continuing these adhoc promotions for an abnormally long period.

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The respondents have, however, pointed out that adhoc promotion of Respondent No.2 was ordered as early as 1971 and he has been continuing to officiate since then as various orders from time to time posting his seniors in this vacancy could not be implemented, as the concerned officials did not join this post. The Counsel for the applicants could not give any convincing explanation as to why the applicants did not represent against continued adhoc promotion of respondent No.2 on the ground of failure of his seniors to join in his place after their posting orders had been issued. His only explanation was that the applicants had come to know of such adhoc promotion only in 1986 or thereabout.

It is difficult to believe that the applicants, who are all working in the same division, namely, Bombay and some of whom are stated to be office bearers of their Association, should be completely in the dark about continued adhoc officiating promotion of one of their juniors for such a long period as fifteen years. It is accepted that posting a Bandra Marshalling Yard is generally considered to be a hard posting by employees, and therefore, unpopular and all the officers who are posted there do some how manage to avoid this posting on some pretext or the other.

On the basis of foregoing discussions, there is no merit in any of the contentions raised by the applicants in these applicants, which are, accordingly, dismissed.

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Annexure - 5

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

Friday the Twenty Eighth day of June, One
Thousand Nine Hundred and Ninety Six

P R E S E N T

THE HON'BLE MRS. JUSTICE PADMINI JESUDURAI, VICE-CHAIRMAN
AND

THE HON'BLE MISS. USHA SEN, ADMINISTRATIVE MEMBER

ORIGINAL APPLICATION NO. 1745/93, 18 to 29/94 AND
1837 OF 1993

1. E.V. Venkatesan

.. Applicant
in O.A. 1745/93

2. H. Jayaraman

3. R. Varadarajan

4. R.R. Ramasubramanian

5. T. Srinivasan

6. M. Subramaniam

.. Applicants in
O.A. 18 to 29/94

7. V. Rajendran

8. D. Rathinavelu

9. M. Mani

10. K. Ramachandran

11. B. Srinivasan

12. R. Gnanasekaran

13. S. Sankaran

.. Applicant in
O.A. 1837/93

Vs.

1. The Union of India rep. by
Assistant Director General (TE)
Ministry of Communications,
Department of Telecommuni-
cations, Sanchar Bhavan,
New Delhi.

2. The Assistant Chief Accounts
Officer (TCA), Madras
Telephones, 47 Armenian Street,
Madras-600 001.

.. Respondents
1 & 2 in O.A.
1745/93
O.A. 18/94

ALL-And

5/3/97

Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle. Guwahati-781007.

- Respondents 1 & 2 in O.A.
1837/93

Respondents 1 & 2
in O.V. 24, 26 and
29 of 1994

Respondents 1 & 2
In O.A. 25/94

Respondents 1 & 2
in O.A. 21/94

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In OAS 19, 20
Respondents 1

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Respondents 1
O.A.s 19, 20
of 1994

15. Union of India rep. by
Department of Telecommunications
Sanchar Bhawan,
New Delhi.

16. The Chief General Manager,
Southern Telecom Region,
Madras-600 001.

.. Respondents 1 & 2
in O.A. 28/94

Mr. V. Ramasubramaniam

.. Counsel for
the applicants
in O.A. 1745/93 and
18 to 29/94

Ms. R. Vaigai

.. Counsel for
the applicant
in O.A. 1837/93

Mr. K. Venkatasubbaraju

.. Counsel for the
respondents in
all the OAs

O R D E R

(Pronounced by The Hon'ble Mrs. Justice Padmaja
Jesudurai, Vice-Chairman)

Since the facts are similar in these
applications and the relief claimed and the legal
issue involved are identical, these applications are

~~being disposed of together under this common order.~~

2. All the applicants are in the Depart-

ment of Telecommunication, presently as Accounts Officer

in the Tamil Nadu Telecom Circle. On the ground of

operation of the Tamil Nadu Telecom Circle and having

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4 earned increments during ad-hoc officiation as Accounts Officer. As a consequence, which on promotion as Accounts Officer, the junior's pay was fixed higher than that of the applicants, all the applicants seek stepping up of their pay on par with their junior. In O.A.1745 of 1993, the applicant therein compares himself with his junior Mr. G. Renganathan of Ahmedabad Telecom Circle and claims stepping up of pay. The applicants in O.A.18 to 22 of 1994 and 24 of 1994 compare themselves with a junior Mr. J.N. Mishra of another Telecom Circle and seek stepping up of their pay on par with that of Mr. J.N. Mishra. Similarly, the applicants in O.A.23, 25 and 29 of 1994 and O.A. 1837 of 1993 compare themselves with one Mr. K. Sankaranarayanan of Gujarat Telecom Circle, who had had the benefit of ad-hoc promotion as Accounts Officer while working Assistant Accounts Officer and had earned some increments as a result of which his pay on his promotion as Accounts Officer came to be fixed higher than that

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of the applicants in these Original Applications, and stepping up of their pay is prayed for.

3. By way of illustration, we shall give the facts in O.A.1745 of 1993. The applicant therein E.V. Venkatesan was selected and appointed as Clerk in 1969. He passed Part I and Part II of the All India P&T Accounts Examination in May and November respectively of 1974. He was promoted as Junior Accountant on 29.1.1976, as Assistant Accounts Officer on 1.4.1987 and as Accounts Officer on 10.11.1987. The post of Junior Accountant, Junior Accounts Officer, Assistant Accounts Officer and Accounts Officer are borne of All India Cadre, seniority being maintained on an All India basis. On entry into All India Service in the post of Junior Accountant, the

seniority of Mr. E.V. Venkatesan is fixed on the basis of the rank obtained by him in the Part I Examination of P&T

Accounts Examination. The seniority of Mr. E.V. Venkatesan as per the Blue Book corrected upto 1.4.1988 is

As against that one Mr. G. Renganathan was appointed

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of 1994
pay on
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as Junior Accountant on 19.10.1976, as Junior
Accounts Officer on 19.9.1978, as Assistant Accounts

Officer on 1.4.1987 and as Accounts Officer on 12.4.
1990. His placement in the Blue Book is at No.155.

While the applicant belonged to the Tamil Nadu Telecom
Circle, Mr. G. Ranganathan belongs to Ahmedabad Telecom
Circle. While Mr. G. Ranganathan was working as
Assistant Accounts Officer, there had been temporary
vacancies in the post of Accounts Officer in that
Telecom Circle to which Mr. G. Ranganathan had been
promoted on an ad-hoc basis. This ad-hoc officiation
had continued resulting in Mr. G. Ranganathan earning
an increment even while as Assistant Accounts Officer.

When therefore Mr. G. Ranganathan was promoted on
on regular basis,
Accounts Officer, Mr. G. Ranganathan's pay was fixed at

Rs. 2375/- with the date of next increment to Rs. 2500/-
on 1.9.1990. The applicant's pay on his promotion

as Accounts Officer was fixed at Rs. 2375/- with the

date of next increment to Rs. 2450/- on 1.4.1990. In

these circumstances, Mr. E.V. Venkatesan seeks stepping

up of pay on par with Mr. G. Ranganathan.

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of 1994 and O.A.24 of 1994 took stepping up of their pay on par with Mr. J.N. Mishra. In the Blue Book, the applicants in the above OAs are respectively at S.Nos.217, 100, 174, 212, 202 and 246. Mr. J.N. Mishra is at S.No.329. He too had earned some increments while officiating due to ad-hoc promotion as Accounts Officer while he was functioning as Junior Accounts Officer.

5. Similarly the applicant in O.A.23 of 1994, 25 to 29 of 1993 and 1837 of 1993 compare themselves with their junior Mr. K. Sankaranarayanan of Gujarat Telecom Circle. These applicants are placed in the Blue Book at S.Nos.291, 45, 271, 453, 455 and 329. The exact placement of the applicant in O.A.1837 of 1993

Mr. K. Sankaranarayanan is at S.No.417. Mr. K. Sankaranarayanan had been given some ad-hoc promotion as Accounts Officer while he was working as Assistant Accounts Officer and had earned some increments.

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On his regular promotion as Accounts Officer, his pay was fixed on the basis of the pay drawn by him in the lower cadre. This has resulted in the applicant drawing less pay than Mr. K. Sankaranarayanan.

6. Broadly, the claim is based on three grounds, the first being that under no circumstances a senior could draw lower pay than his junior. The second ground is that, this is an anomaly which has to be rectified under FR 22 (I) (a) (1). The last ground is that there are certain judgments of this Tribunal wherein, under similar circumstances the pay of the senior have been stepped up and the same benefit should be extended to the applicants.

7. The stand of the respondents is that Mr. G. Ranganathan, Mr. J.N. Mishra and Mr. Sankaranarayanan of different Telecom Circles, due to the exigencies had not opportunities for officiating as

Accounts Officer and later when they were promoted on a regular scale and their pay was fixed under FR 22(I)

(a) (1), the pay had to be protected and this does not

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constitute an anomaly. According to the respondents, the conditions necessary for stepping up of pay under FR 22(1)(a)(1) are not satisfied and the applicants are not entitled to stepping up.

8. This claim ^{based on} a Junior from different circles due to exigency of administration being given ad-hoc promotion which had continued resulting in earning of increment, ^{resulting in} subsequent higher pay fixation on regular promotion than the senior, is not new to the Tribunal. We find that though initially there were certain orders of different Tribunals granting stepping up of pay in those circumstances, later on the basis of certain judgments of the Supreme Court, the Tribunals have now taken a consistent stand that this does not constitute an anomaly and does not call for stepping up of pay under any provision of law.

The applicant in O.A. 1745 of 1993 is in Tamil Nadu Telecom Circle and is at S.No.83. Mr. U. Ranganathan with whom he compare is in Ahmedabad Telecom Circle and is at S.No.155. Temporary vacancies have to be

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filled up to meet administrative exigencies. Initially it would appear that ^{these vacancies} would for a limited period. Due to several circumstances, these temporary vacancies would continue either with breaks or even continuously. While so, to meet administrative exigencies, these temporary vacancies which are initially for a short period, could not be filled up on an All India basis strictly on seniority. Local arrangements have to be made. One could not expect that employees in Tamil Nadu Telecom Circle would offer to go for a short spell of officiation in the higher post in Ahmedabad or Gujarat Circle or anywhere else. It is under this contingency that ^{the} senior among those in the concerned Circle are given ad-hoc officiation. The real cause of action for the applicants should be the failure to offer them ad-hoc promotion. These promotions had taken place more than a decade ago. None of the applicants had objected to it. They cannot plead ignorance. Earning of increment and the consequent higher fixation are legitimate consequence of the

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ad-hoc promotion and have been done only on the basis of the relevant rules. The failure to give the applicants ad-hoc promotion should be the real cause of action. That has gone unchallenged.

9. If the contentions of the applicants it would follow that have to be accepted, for one ad-hoc promotion given in Ahmedabad Circle, Mr. G. Ranganathan who is at S.No.155 while the applicant in O.A.1745 of 1993 is at S.No.83, the pay of all the Accounts Officers between S.Nos.84 to 155 have to be stepped up. Similarly Mr. J.N. Mishra is at S.No.329 while the applicants in O.A.19 of 1994 is at S.No.100. The pay of all the Accounts Officers between S.Nos.100 and 329 have to be stepped up. Mr. K. Sankaranarayanan of Gujarat Circle is at S.No.470. The applicant in O.A.25 of 1994 is at S.No.45. For one ad-hoc promotion fortuitously earned by Mr. K. Sankaranarayanan, the pay of all the Accounts Officers between S.No.46 and S.No.470 will have to be stepped up. After all, only one person could have been accommodated in the ad-hoc promotion.

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and not all those who are between S.No.45 and
S.No.470. Such a stepping up is not contemplated
under any law.

10. The contentions of the applicants
seem to be that under no circumstances a senior
could draw less pay than the junior. This is a
total misconception of the real legal position. In
STATE OF ANDHRA PRADESH AND OTHERS VS. G. SREENIVASA
RAO AND OTHERS. (1989 SCC (L&S) 339) when a similar
issue came up for consideration before the Supreme
Court, the Court observed:

"Without considering the scope of these
Rules (Fundamental Rules) and without
adverting to the reasons for fixing the
juniors at a higher pay, the High Court
and the Tribunal have in an omnibus manner
come to the conclusion that whenever and
for whatever reasons a junior is given
higher pay the doctrine of 'equal pay for
'equal work' is violated and the seniors
are entitled to the same pay."

(brackets supplied)

The Court went on to give different situations when
a junior could legitimately draw a higher pay than

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the senior. One the circumstances pointed out by the Supreme Court was, when pay of the junior is fixed under valid statutory rules/executive instructions, the Supreme Court allowed the appeals filed by the State and set aside the orders of the High Court stepping up the pay

11. We shall also refer to certain pronouncements of the Supreme Court on this aspect. In D.G. EMPLOYEES' STATE INSURANCE CORPORATION AND ANOTHER Vs. B. RACHAVA SHETTY AND OTHERS (1995 SCC (L&S) 1014), the Supreme set aside the orders of the Tribunal stepping up the pay of the seniors on par with the juniors, who were drawing higher pay because of ad-hoc officiation. The Supreme Court extracted FR 22(1) (a) (1) and held that when the pay of the junior was fixed up higher under FR 22(I) (a)(1), it had been rightly done since the juniors satisfied the conditions provided in the rule, while the seniors did not satisfy the conditions.

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12. Another instance where a Junior could draw more pay than senior came before the Supreme Court in STATE OF PUNJAB AND ANOTHER Vs. DHARAM PAUL AND OTHERS (1996 (1) SLJ 759). Originally the instructors in all Trades were in the same pay scale. In 1962, the pay scale of the instructors in eight Trades was raised. The instructors of the Trades for which the pay scale was not being raised challenged the same in Court unsuccessfully. In 1970 all the instructors were put under the same scale and for the instructors in the eight Trade for whom the pay scales had already been raised, the difference in the pay was taken as personal to them. In 1976, the pay scales for all the instructors was revised. Those instructors belonging to those eight Trades got higher pay than the instructors in the other Trades even though some of them were juniors. The seniors sought stepping up of pay and the High Court granted it. On appeal by the State of Punjab, the Supreme Court set aside the judgment of the High Court holding that the seniors were not entitled to stepping up.

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9/2/72

13. AND ANOTHER VS. M. PANDURANG AND OTHERS (1996 SCC (L&S) 567), the Supreme Court upheld the position of Juniors drawing higher pay due to grant of Selection Grade or under FR 22(a)(1) due to length of service in the feeder grade. The earlier judgment in G. Sreehiksha Rao's case was followed.

14. This is not an anomaly which requires stepping up of pay of the senior. One of the conditions laid down in No. 6/7/92-estt. (Pay-I) Government of India, Department of Personnel and Training, New Delhi dated 4.11.1993 is that an anomaly should be directly as a result of the application of FR 22-C. In these cases even before the regular promotion as Accounts Officer, the three Juniors from different Circles were drawing higher pay due to fortuitous local officiation. The anomaly is not as a result of the application of FR 22(I)(a)(1).

Added

[Signature]
5/13/97

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O/O Telecom
Assam C. e. Guwahati 781007

15. The judgments of certain Benches of this Tribunal no longer hold the field in view of the recent pronouncements of the Supreme Court referred to above.

16. Even in the ^{Next} Below Rule listed below FR 30 (Swamy's Compilation of FR SR 1986 Order No.3 dated 9.5.1979) the principle of one to one alone is followed even in a case of regular promotion.

Against one ad-hoc promotion, there cannot be hundreds of claim. None of the applicants had established that but for the ad-hoc promotion of Mr. G. Ranganathan, Mr. J.N. Mishra and Mr. Sankaranarayanan, the applicants would have the rightful claim for that post.

17. In the light of the above discussion, we hold that there is no merit in this application. All the applications are dismissed with no order as to costs.

TRUE COPY



Attended
Amr
5/3/92
Asstt. Director Telecom (Legal)
O/O the C. G. Telecom
Assam Circle, Guwahati-781007

(53)

Annexure

Annexure 81

(C)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A.1412/93
O.A.127/94
O.A.129/94

&
O.A.517/94 (Madras Bench)

Wednesday this the 20th day of November, 1996

CORAM

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIK, CHAIRMAN
HON'BLE MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN
HON'BLE MR. P.T. THIRUVENGADAM, ADMINISTRATIVE MEMBER

O.A.1412/93

1. B.L.Somayajulu, S/o Suryanarayana Murthy,
aged about 41 years, Assistant Engineer,
Regional Telecom Training Centre (RTTC)
Department of Telecommunications, Hyderabad.

K.Gangajala Rao, S/o Venkaiah,
aged about 42 years, Assistant Engineer,
U/o the Chief General Manager, Telecom,
A.P. Hyderabad.

3. G.V.S.Ananda Rao, S/o Satyanarayana,
aged about 43 years, Assistant Engineer
O/o the Chief General Manager,
Telecom, AP, Hyderabad.

4. G.Sambasiva Rao, S/o Satyanarayana,
aged about 42 years, Sub-Divisional
Officers (Phones), Deptt. of Telecom--
unications, Vizianagaram.

... Applicants

(By Advocate Mr. V.Surayanarayana)

Vs.

1. The Telecom Commission rep.by the Chairman,
Government of India, Deptt. of
Telecommunications, New Delhi.
2. The Chief General Manager,
Telecom, A.P. Department of Telecommunications,
Govt. of India, Hyderabad.

... Respondents

(By Advocate Mr. V.Bhimanna)

O.A.127/94

P.Krupachary S/o late Sri P.Benjamin,
Senior Assistant Engineer,
Regional Telecom Training Centre,
(RTTC), Secunderabad.

... Applicant

(By Advocate Mr. D.Madhava Reddy)

Vs.

1. Telecom Commission, rep.by its Chairman
Ex-officio Secretary to Govt. of India,
Ministry of Communications, Sanchar Bhavan, New Delhi.

contd.....2

5/3/97
Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007

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2. The Chief General Manager,
Telecommunications,
Andhra Telecom Circle, Hyderabad-1. ... Respondents

(By Advocate Mr. N.R. Devaraj, SCGSC)

O.A. 129/94

1. D. Venkat Reddy, Assistant Engineer,
Regional Telecom Training Centre
(RTTC), Secunderabad.
2. P. Lakshminarayana, S/o Sri Subba Rao
Assistant Engineer,
National Repair Centre, Secunderabad. ... Applicants

(By Advocate Mr. D. Madhava Reddy)

Vs.

1. Telecom Commission, rep. by its Chairman
Ex-Officio Secretary to Govt. of India,
Ministry of Communications,
Sanchar Bhavan, New Delhi-1.
2. The Chief General Manager,
Telecommunications,
Andhra Telecom Circle,
Hyderabad-1. Respondents

(By Advocate Mr. N.R. Devaraj, Sr. CGSC)

O.A. 517/94 (Madras Bench).

T. Balakrishnan,
Accounts Officer (TCA)
Southern Telecom Region,
No. 39, Rajaji Salai, Madras-1. ... Applicant

Vs.

1. Union of India through the Secretary,
Ministry of Communications,
Department of Telecom,
Sanchar Bhavan,
New Delhi-1.
2. The Chief General Manager,
Southern Telecom Region,
39, Rajaji Salai,
Madras-1. Respondents

All the four applications having been heard on 20.11.1996
the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), CHAIRMAN.

This matter comes up before us on a reference.

The questions referred is:

"Whether senior can claim stepping up of pay
with reference to the pay of his junior, when
they work in different seniority units."

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5/3/97
Asst. Director Telecom (Legal)
O/O the C. G. Telecom
Assam Circle, Guwahati-781007.

The two questions that come into sharp focus are:

- "(i) What are the circumstances under which stepping up can be allowed.
- (ii) What is the basis on which stepping up can be claimed."

These questions are of frequent recurrence and general application. Different Benches of the Tribunal have taken differing views.

2. The decisions of the Madras Bench in O.A.Nos. 644/94, 867/94 and 868/94, of the Guwahati Bench in Shri Nimay Sindhu Deb Vs. Union of India and others, 1995(2) SLJ CAT.1, M.P.Kulkarni Vs. Union of India, 1989 SLJ CAT 425, O.A.517/94, take the view that seniority per se, and outside F.R.22(c), do not entitle or justify stepping up of pay of a senior.

3. A contrary view is taken in Anil Chandra Das Vs. Union of India, (1988) 7 ATC 224 (Calcutta), N.Lalitha(Smt) and others Vs. Union of India, 1992(19) ATC 569 (Hyderabad) T.Achutha Ramalah Vs. Director, ESIC, 1992(21) ATC 78, Krishna Pillai and others Vs. Union of India and others, 1994(1) ATJ 36 (Ernakulam), Jacob and 20 others Vs. Union of India, OA 1156/93 (Ernakulam), S.Prabhakara and others Vs. Union of India and others (OA 1022/93) and O.A.159/94 to 165/94 (Bangalore), V.R.Raghuvir and another Vs. Union of India (OA 14/94-Bangalore), Raja Hajarath Vs. Union of India and others (OA 32/94-Hyderabad), S.Viduran and two others Vs. Union of India and others, (OA 31/94-Hyderabad), Om Prakash Vohra Vs. Union of India (OA 1271-93-Allahabad), Mrs.Rajani Krishnan and others Vs. Union of India, 1994(2) ATJ 52 (Bombay), Baidyanath Badhopadhyay Vs. Union of India, 1994(3) SLJ 378 (Calcutta). These divergent, if not different views, call for an authentic pronouncement.

contd.....

4. The former group of cases proceed on the view, that relief cannot be granted unless there is an enforceable legal right in the parties. The latter group of cases appear to proceed on the basis, that considerations of equity and equality require stepping up of pay to bring the seniors on par with juniors. This is also the view advocated by learned counsel appearing for applicants.

5. To our mind, every claim must be based on an enforceable legal right. A right arises by conferment, not by comparison. Broad notions of equity cannot be equated or assimilated to legal rights. There is also the further question whether the Tribunal can exercise a jurisdiction in equity. We are inclined to think that a jurisdiction in equity does not inhere in the Tribunal. If authority is needed for this proposition, it is found in Joginder Singh Vs. Union of India, 1989(11) ATC 474, Union of India Vs. Deokinandan Aggarwal, (1992) 19 ATC 219 (SC). The Tribunal is to be guided by law in its adjudicatory process, and not by considerations of equity alone. It cannot travel into regions of equity and innovate remedies. Perhaps the observation of Benjamin Cardozo that a Judge is not free to seek his own ideal, it is more appropriate in the cases of Tribunals.

6. The argument based on Article 14 cannot advance the case of applicants. Article 14 of the Constitution confers no right, otherwise than by guaranteeing "equality before the law and equal protection of the laws". Unless there is a relevant law, there is no question of equality "before the law". True, arbitrariness is interdicted by Article 14. Then, arbitrariness also is to be tested against

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Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007.

the touchstone of law, and not against broad notions of equity. Every dissimilarity is not discrimination in law, and every anomaly is not arbitrariness in constitutional parlance.

7. If a junior gets a higher pay, that does not mean that the senior also should necessarily get it without a foundation for such a claim in law. Fortuitous events are part of life. Fixation of pay is generally with reference to an individual. Various reasons may account for the grant of a higher pay to a junior. For example undergoing a vasectomy operation or achieving excellence in sports or belonging to a certain community or even a wrong fixation of pay may bring about a situation where a junior gets a higher pay. If a junior is granted a higher pay for any of those reasons, that will not confer a corresponding right in a senior to get the same. If, for example, wrong fixation of pay in the case of a junior is to bring about a corresponding fixation in the case of a senior by applying the principle of equality, that would be an instance of using Article 14 to perpetuate illegality. If a senior is denied what he is entitled to get, he must challenge that denial or that preferment extended to a junior. He cannot acquiesce in a wrong, and make a gain from that wrong by a comparison. Without disguise the attempt of the senior, is to get the benefit of a higher pay, by comparison. Without challenging the wrong, he cannot claim a remedy from a wrong. Such collateral reliefs are alien to law. The decision of the Supreme Court in Chandigarh Administration Vs. Jagjit Singh (1995) 1 SCC 745 supports this view.

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Assd. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam C. C. Guwahat 781007.

8. Ultimately the question boils down to this, what is the right of the senior and where does he find that right. Certainly he does not find that right in any law. The law governing the subject is F.R.22-C which is now F.R. 22(1)(a)(1). Incidentally this rule is not challenged. It follows that only those anomalies that are directly referable to that rule, are amenable to the curative process thereunder namely stepping up, and no other. Equity does not offer a cause of action, as we have already pointed out. Discrimination arises only vis-a-vis law. Difference on facts - often non actionable facts, does not give rise to a cause of action in law. The Supreme Court of India in comparable circumstances held (State of A.P. and others Vs. G. Sreenivasa Rao and others, (1989) 10 ATC 61, that difference per se, is not discrimination.

9. In this context, it is necessary to notice a submission made on behalf of applicants. It was submitted that some of the orders of the Tribunal granting stepping up of pay on considerations of equity have been 'upheld' by the Supreme Court by rejecting the SLPs. We cannot assent to the submission that the rejection of a Special Leave Petition is affirmation of the legal principle decided in the order sought to be appealed against. Authority is legion for this proposition, and if it is required it is found in Alpna V. Mehta Vs. Maharashtra State Board of Secondary Education and another, AIR 1984 SC 1827, C.S.I.R. Vs. KGS Bhat, (1996) 7 SCALE 893. The Supreme Court has made it clear that even when the Tribunal makes an error, the jurisdiction under Article 136 is not

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Att. Ad
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Asstt. Director Telecom (Legal)
O/O P & C G. M. Telecom
Assam Circle, Guwahati-781007.

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invoked unless there is a question of general public importance or overriding considerations of justice. The contention of applicants has to be noticed only to be rejected.

10. We do not propose to lay down any general rule as to what the position will be, with reference to those in different seniority units. For one thing, this is more a question of fact. For another thing, a declaration in this behalf might take in the element of a legislative exercise. There may be a variety of cases where disparity arises due to special circumstances, mentioned earlier, or even due to errors. These have to be viewed with reference to the facts of the case. Our answers to the questions formulated are:

- (a) Stepping up can be granted only where there is a provision in law in that behalf, and only in accordance with that; and
- (b) a claim for stepping up can be made only on the basis of a legal right and not on pervasive notions of equity or equality, unrelated to the context of statutory law.

11. In the light of our findings, the cases will be disposed of by the appropriate Benches with reference to the facts, like whether there are speaking orders, like whether application of F.R.22(C) is vitiated by errors apparent on the face of the record and so on.

12. We answer the reference accordingly.

প্রমাণিত কপি
CERTIFIED TO BE TRUE COPY

A. Surendra Das
কোর্ট অফিসার
COURT OFFICER
মহান প্রশাসনিক আদালত
Central Administrative Tribunal

A. H. ...
5/3/72
Asstt. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati-781007.

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Annexure 7

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Annexure 7 (68)

File No. 10, 31 & 43

COURT No. 10

SECTION XII
A/M MATTER

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No. 14784/95
(From the judgement and order dated 09/02/94 in OA 1324/95
of the High Court of Madras. *C.A.T. Madras*

UNION OF INDIA & AHR

Petitioner (s)

VERSUS

R. SWAMINATHAN

Respondent (s)

(With Appln(s). for stay)
(With Office Report)

With

SLP (Civil) No. 25486-25489/95, SLP (Civil) No. 26086-26132/95, SLP (Civil) No. 3164/96,
SLP (Civil) No. 3243/96, SLP (Civil) No. 3246/96, SLP (Civil) No. 3279/96,
SLP (Civil) No. 3381/96, SLP (Civil) No. 3438-3440/96, SLP (Civil) No. 3858-3860/96,
SLP (Civil) No. 4239/96, SLP (Civil) No. 4240/96, SLP (Civil) No. 5111/96,
SLP (Civil) No. 9034-9036/96, SLP (Civil) No. 9106-9128/96, SLP (Civil) No. 9371-9372/96,
SLP (Civil) No. 9387/96, SLP (Civil) No. 9391-9392/96, SLP (Civil) No. 9805/96
SLP (C)...../96 (CC 2375/96) With SLP (C) No. 11142/96.
Date : 10/05/96 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.P. SINGH
HON'BLE MR. JUSTICE S. SAGHIR AHMAD

For Petitioner (s)

Mr. V.R. Reddy, A.S.G.
Mr. A.N. Jaya Ram, A.S.G.
M/s CV Subba Rao, ~~Adv.~~ & Indra Sawhney, Adv. Mrs. Anil Katiyar, Adv.
Mr. Rakesh U Upadhyay & Mr. CV Subba Rao, Adv.
Mr. Arvind Kumar Sharma, Adv.

For Respondent (s)

Mr. T.V. Ratnam, Adv.

For case

Mr. Nageshwar Rao & Mr. BU Kumar Sagar, Adv.
Mr. Somvir Singh Degwal, & Mr. RC Tyagi, Adv.
& Mr. Shree Pal Singh, Adv.
Mr. S.M. Garg, Adv.

Recd.
24/6/96
ADGET

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Ass't. Director Telecom (Legal)
O/O the C. G. M. Telecom
Assam Circle, Guwahati 781007.

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Delay condoned.

Leave granted.

There shall be stay of the impugned orders in all /
the appeals. No recovery shall be made in respect of
payments already made, pending disposal.

Hearing be expedited.

Ganga

Nanul Mohanty
(N. Moorjani) 13/11
Court Master.

13/11

Asstt. Dir
Legal
5/11/77

Asstt. Director Telecom (Legal)
O/N i.e. G. M. Telecom
Assam Circle, Guwahati-781007.

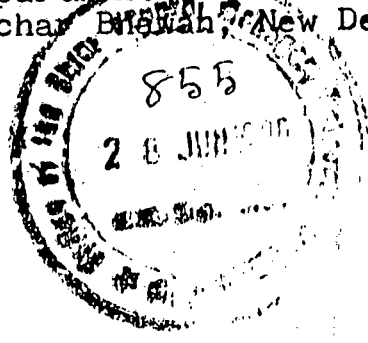
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Annexure 8

(118)

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Government of India
Department of Telecomm
Sancha Bhawan, New Delhi



No: 2-50(4)/96-PAT

Dated: 21-6-96

To
The Chief General Manager
Assam Telecom Circle
Guwahati

Sub: Judgement of CAT Guwahati in OA 64/95 and 65/95 titled
Sh. H.C. Chakraborty and Sh. M.M. Day.
....

In pursuance of CAT Guwahati judgement dated 22.1.95 in OA 64/95 and 65/95 filed by Sh. H.C. CHakraborty and Sh. M.M. Day, I am directed to inform you that it has been decided to implement the CAT verdict, to the petitioners only subject to outcome of SLPs being filed in the Supreme Court of India. Govt. Counsel may be requested to appear before the CAT on 25.6.96 (Date of hearing of CCPs) and explain the position.

This issues with the concurrence of Telecom Finance vide UO No. 1359/FAI/96 dated 21.6.96.

(BUDH PRAKASH)
ASSTT. DIRECTOR GENERAL (TE)

Assstt. Director Telecom (Legal)
O/O the C. G. M.
Assam Circle, Guwahati. 781007.

(63) Annexure 9 (67) 81

A ~~Amr...~~

Govt. of India.
Department of Telecom.
Office of the Chief General Manager Telecom.
Ulubari, Bora Service Station, Guwahati-781007.

No. STES-21/102/95-96/42

Dated, at Guwahati the 21.08.98.

To:

✓ The Chief General Manager Madras Telephone District
No.78 Parusawakam High Road, Madras-600010.
The Chief General Manager, Task Force, Guwahati.
The Chief General Manager Telecom, AP Circle, Hyderabad.
The TDM, Guwahati.
The Area Director Telecom, Guwahati.
The TDE Jorhat.
The TDE Nagaon.
The TDE Tezpur.
The AO/TA, Office of CGMT/Guwahati.

Sub:-

Stepping up of the pay of 18 nos. of Accounts Officers in accordance with the CAT/Guwahati order dated 22.11.95 given in OA No.64/95 and 65/95 filed by Shri H.C.Chakraborty & Others and Shri M.M.Dey & others against union of India & others.

In continuation of this office letter no. STES-21/102/95-96/34 dated 21.3.96, the Chief General Manager Telecom, Assam is pleased to order the stepping up of the pay of the Applicants in OA 64/95 at par with their Juniors Shri R.C. Chakraborty and the Applicants in OA 65/95 at par with their Junior Shri K. Sankarnarayanan.

The clearance for affecting the benefit to the Applicants is being issued by this office provisionally as an SLP is being filed in the Supreme court against the Order dated 22.11.95 of CAT guwahati passed in OA 64 and 65 of 1995. It is made clear that in case the SLP against the judgement in the Original Application is admitted by the Supreme Court and stay order granted, the benefit thus paid will be withdrawn and the amount thus paid to the applicants shall be recovered in full. The officers concerned will give an undertaking to this effect before receipt of payment.

The list of the Applicants are as follows:

Sl.No.	Name of the Officer	Designation	Unit Posted presently.
1.	Sri Haran Chandra Chakraborty	Sr.A.O.	O/o the TDM/Guwahati.
2.	Sri Biswajit Deb,	Sr.A.O.	-do-
3.	Sri B.B.Mukherjee,	A.O.	O/o TDE/Nagaon.
4.	Sri J.Chenchaiah,	Sr.A.O(ICO)	O/o CGMT/A.P.Circle, Hyderabad.

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Assd
Smt
5/12/98
Asstt. Director Telecom (Le...
O/O the C. G. M. Telecom
Assam C... Guwahati-781007.
Guwahati-781007

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Sl.No.	Name of the Officer	Designation	Unit Posted presently.
5.	Sri G.Thalamuthu,	A.O(TRA)	Madurai Telecom.Dist. Madurai(T.N.Circle)
6.	Sri S.Seshadri,	A.O(ICO)	O/o.CGMT/Guwahati.
7.	Sri P.Sundarajan,	A.O(Cash)	O/o.TDE/Jorhat.
8.	Sri C.Rajendran,	A.O.	O/o.the CGMT/Guwahati.
9.	Sri S.U.Balakrishnan,	A.O.	O/o the TDM/Guwahati.
10.	Sri T.S.Nagarajan,	A.O.	under Director,Mtce. ETR/Guwahati.
11.	Sri V.K.Hariharan,	A.O.	O/o CGMT/Madras Telephone Madras--10.
12.	Sri K.S.Monoharan,	A.O.	-do-
13.	Sri Monomohan Dey,	Sr.A.O.	O/o.the TDM/Guwahati.
14.	Sri Babul Kumar Das,	Sr.A.O.	O/o the AMT/Guwahati.
15.	Sri Nanabendra Saha,	Sr.A.O.	O/o.the CGMT/Guwahati
16.	Sri Khagendra Nath Sarma,	Sr.A.O(A&P).	-do-
17.	Sri Islam Ahmed,	Sr.A.O.	O/o. the TDE/Tezpur.
18.	Sri B.Tirupataiah,	Sr.A.O(ICO)	O/o.CGMT/A.P.Circle Hyderabad.

The orders in respect of the officers at Sl.No.4,5,10, 11,12 and 18 are not issued from this office as they do not belong to Assam Telecom.Circle.

(S.K. Nayal)
Deputy General Manager Telecom
O/O The C.G.M.T.Assam Circle.
Guwahati---781007.

A. K. Nayal

B. Nayal

5/3/92

Attended

B. Nayal

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Asstt. Director Telecom (H)
O/O the C. G. M. T. Assam C
Assam Circ'e. Guwahati-781007