

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/01111/2015

Date of order: 29.01.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Gobinda Kumar Mukherjee,
Son of Lt. Anil Kumar Mukherjee,
Working as Sr. SDE (now retired),
Staff No. 18655, HR No. 197606923,
Residing at Flat No. 2, AD-21, Street 66,
Action Area-I, New Town Rajarhat,
Kolkata – 700 156, North 24-Parganas.

-Versus-

1. Union of India,
through the Secretary,
Department of Telecommunications,
Sanchar Bhawan,
New Delhi – 110 001.
2. Director (HR)
BSNL, Bharat Sanchar Bhawan,
R.C. Mathur Lane, 10, Janpath,
New Delhi – 110 001.
3. Chief General Manager
Calcutta Telephones
34, BBD Bagh,
Kolkata – 700 001.
4. Chief General Manager,
Telecommunication,
West Bengal Circle,
1, Council House Street,
Kolkata – 700 001.
5. Chief General Manager,
Telephone Bhawan,
Eastern Telecom Region,
Kolkata – 700 001.
6. General Manager,
Satellite Communication Project,
157/1, V.I.P. Road,
Kolkata – 700 054.
7. Accounts Officer (Wages & Bills),
Calcutta Telephones,
Bharat Sanchar Nigam Limited,
Telephone Bhawan, 1st Floor,
34, BBD Bag (South),

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Kolkata – 700 001.

8. Principal Controller of Communication Accounts,
Government of India,
8, Hare Street,
Kolkata – 700 001.

..... Respondents.

9. SHRI PRABHASH BISWAS,
Working as Sub-Divisional Engineer,
Microwave, Eastern Telecom Region,
District – Coochbihar.

..... Proforma Respondent.

For the Applicant

Mr. B.R. Das, Counsel

For the Respondents

Mr. C.S. Bag, Counsel

Mr. S. Panda, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

The instant Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

- (i) Rescind, recall, withdraw and/or quash the order being Annexure-AI so as to direct revision of his pay vis-a-vis his junior having been promoted as SDE in scale of pay of Rs. 7500-25-12000 w.e.f. 06/11/1998.
- (ii) Step up the pay of the applicant w.e.f. 01/02/1999 to Rs. 9500 from Rs. 9000 being in the same scale of pay and the petitioner having been promoted as SDE w.e.f. 18/07/1994.
- (iii) Revise the pays of the applicant at each stage so as to re-calculate the last pay drawn and re-fix his pension and all other pensionary benefits consequential thereto.
- (iv) Pay all the arrears on account of (ii) and (iii), above, forthwith.
AND
- (v) Certify that transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof consonable justice may be done unto the applicant by way of grant of reliefs as prayed for in (i) to (iv), above.
- (vi) Any further order/orders and/or direction/directions.
- (vii) Costs."

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2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The case of the applicant, as submitted by his Ld. Counsel, is that the applicant and proforma respondent No. 9 were appointed as Junior Engineers on 29.12.1976 and on 7.9.1982 respectively by the West Bengal Telecom Circle of the Respondent authorities. The applicant was promoted in the TES Gr. 'B' on 18.7.1994 in the pay scale of Rs. 2000-3500/-. The proforma respondent, however, was promoted to TES Gr. 'B' w.e.f. 6.11.98 in the scale of Rs. 7500-250-12000/- and accordingly, the pay of the proforma respondent was fixed at Rs. 9250/- w.e.f. 1.1.1996 as per 5th CPC. The pay of the applicant, who was promoted prior to 1.1.1996, was fixed at Rs. 8750/-. That, 5 SDEs in TES Gr. 'B', who were senior to the proforma respondent, were allowed stepping up of pay by the authorities. Thereafter, vide an order dated 7.7.2005, 167 more SDEs were also allowed stepping up of pay vis-à-vis the proforma respondent No. 9. When the applicant, however, represented on 20.10.2003 that his pay should be stepped up vis-à-vis his junior, namely, respondent No. 9, as both have been recruited in the West Bengal Telecom Circle in the same capacity of Junior Engineers, he failed to obtain any positive response thereupon. Meanwhile, both the applicant and the proforma respondent were transferred to BSNL w.e.f. 1.10.2000 and the BSNL on 16.2.2015 regretted that the pay of the applicant cannot be stepped up vis-à-vis proforma respondent No. 9 and hence the Original Application.

The applicant has advanced the following grounds, inter alia, in support of his claim:-

(a) That, the applicant nurses a legitimate expectation on the basis of Note 9 below Rule 7 of CCS (Revised Pay) Rules, 1997 which enjoins that if a junior is drawing less pay in the same cadre and gets higher pay after fixation in the revised scale after coming into effect of the Pay

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Commission, the pay of the senior should be stepped up to the same stage as that of the junior.

(b) That, the applicant has referred to ratio laid down by the Hon'ble Apex Court in **K.T. Veerappan & ors. V. State of Karnataka & ors. (2006) SCC (L&S) 1823** wherein it was observed that if those who had approached the Hon'ble High Court earlier had been granted benefit of pay revision, similarly placed persons should be accorded such benefits.

(c) That, the applicant and the proforma respondent having been recruited by the same respondent in the same capacity and having a similar career graph cannot be discriminated against by the junior being allowed more pay than the senior.

4. Per contra, the respondents have argued that the applicant was appointed as Junior Engineer on 29.12.1976 in the West Bengal Telecom Circle and retired on 30.11.2007 as Sr. SDE from BSNL CTD. That, the applicant was promoted as SDE (Regular) w.e.f. 19.7.1994 and his pay was fixed at Rs. 2,375/- and refixed at Rs. 2,325/- w.e.f. 1.1.1995 (Scale Rs. 12000-3500/-) with DNI on 1.1.1996, further revised at the stage of Rs. 8250/- in the revised scale of Rs. 7500-250-12000/- on 1.1.1996 with DNI on 1.1.1997 and after getting due increment his pay was Rs. 9000/- on 1.1.1999. At the time of retirement (30.11.2007) his pay was Rs. 36,510/-

That, the proforma respondent, Shri Prabhas Biswas, SDE/ETR was appointed on 7.9.1982 in West Bengal Telecom Circle and posted under CGM, Telecom Circle, ETR. That, the proforma respondent, Shri Prabhas Biswas was promoted as SDE on officiating basis w.e.f. 14.1.1997 and his pay was fixed at Rs. 8250/- (Scale Rs. 7500-250-12000/-). Thereafter, as regular SDE, his pay was fixed at Rs. 9000/- w.e.f. 6.11.1998 and refixed at Rs. 9500/- w.e.f. 1.2.1999 in the new IDA Scale (Rs. 24,900/- Rs. 50,500/- and his pay was fixed at Rs. 38,090/- as on 1.2.2007. That, although a stepping up order was issued by DGM

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(Admn.)/CGMT/WB Telecom Circle by citing the higher pay of Shri Biswas, the name of the applicant was not included in that list, as he was transferred to CTD.

The contention of the respondents as averred in their reply and also in their oral arguments is that the promotion as referred to by the applicant in Para 4.7 of the O.A. was not related to BSNL CTD but it was rather a matter of ETR, Calcutta.

5. The main point of determination in this matter is whether the applicant is entitled to stepping up of pay w.e.f. 1.2.1999 vis-à-vis proforma respondent No. 9.

6. At the outset we refer to Note 9 below Rule 7 of CCS (Revised Pay) Rules, 1997:

"Note 9. – In cases, where a senior Government servant promoted to a higher post before the 1st day of January, 1996, draws less pay in the revised scale than his junior, who is promoted to the higher post on or after the 1st day of January, 1996, the pay of the senior Government servant should be stepped up to an amount equal to the pay as fixed for his junior in that higher post. The stepping up should be done with effect from the date of promotion of the junior Government servant subject to the fulfillment of the following conditions, namely: –

- (a) Both the junior and the senior Government servant should belong to the same cadre and the posts in which they have been promoted should be identical in the same cadre.
- (b) The pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical.
- (c) The senior Government servants at the time of promotion have been drawing equal or more pay than the junior.
- (d) The anomaly should be directly as a result of the application of the provisions of Fundamental Rule 22 or any other rule or order regulating pay fixation on such promotion in the revised scale. If even in the lower post, the junior officer was drawing more pay in the pre-revised scale than the senior by virtue of any advance increments granted to him, provisions of this Note need not be invoked to step up the pay of the senior officer."

The fact that the applicant fulfilled the conditions at (a) to (d) of note 9 as referred to above are not under dispute.

Undoubtedly, applicant was appointed by the same respondent authority in the same capacity as that of the proforma respondent No. 9 on a date earlier to that of the proforma respondent. It is also on record that vide orders dated

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14.11.2000 (Annexure A-10 to the O.A.) 5 SDEs, senior to proforma respondent No. 9 have received their stepping up of pay w.e.f. 1.2.1999. The respondents have also not disputed the contentions of the applicant that another 167 SDEs have received their stepping up of pay vis-à-vis the proforma respondent No. 9 and the only reason which prevented the applicant from receiving the said stepping up of pay was that the applicant had been transferred to CTD.

In *Union of India and anr. vs. R. Swaminathan & others* (1997) 7 SCC 690 the Hon'ble Apex Court held, that if juniors were officiating in promotional post on account of their local adhoc promotion, the seniors were not entitled to stepping up of pay and the ratio in *R. Swaminathan (supra)* was further upheld in *Union of India v. M. Suryanarayana Rao* (1998) 6 SCC 400 wherein the Hon'ble Apex Court held that stepping up of pay is not admissible to seniors if the junior's adhoc promotion within a Circle was distinct from that of the senior, who belong to a different Circle and was not considered for promotion. In *Gurcharan Singh Grewal & anr. v. Punjab State Electricity Board and others* (2009) 3 SCC 94, however wherein the Hon'ble Apex Court was considering the prayer of the petitioners on benefits of pay fixation consequent to stepping up of pay of the petitioners to that of their juniors it was held that "it is a settled principle of law that a senior cannot be paid a lesser salary than his junior."

In the instant matter, it is not the case of the respondents that the applicant was not promoted in his Circle whereas the juniors were so considered and hence, the ratio of *Gurcharan Singh Grewal (supra)* will apply. It is only incidental that, on account of his transfer to CTD, the applicant failed to be considered for stepping up of pay when orders were issued by the respondent authorities for 5 and 167 SDEs respectively.

Ld. Counsel for the applicant would urge that the ratio held in *W.P.C.T. No. 408 of 2012* in the matter of *The Chief General Manager (CTD) & ors. V. Manik Lal Kar & ors.* namely, that

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"There is no dispute that the BSNL took over the Calcutta Telephones in the year 2006 and the rules came into effect on 10th October, 2006. Therefore, although the BSNL had taken over the establishment of the Calcutta Telephones and the service of the respondents, the old rules of the Central Civil Service (Classification, Control & Appeal) Rules prevailed and covered the service conditions of the employee working in the erstwhile department, prior to the take over. The new rules became applicable only in October, 2006."

would apply. We are convinced that in the case of the applicant also the CCS (RP) Rules, 1997 would apply as such rules were governing the field during the material point of time when the applicant was considered for promotion and the proforma respondent No. 9 was considered for promotion on a subsequent date.

7. Hence, we allow the Original Application and direct the respondent No.2, that is, the Director (HR), BSNL to confer with the office of respondent No. 4, namely, the Chief General Manager, Calcutta Telephones, 34 BBD Bag, Kolkata -700 001 to consider and issue appropriate orders of stepping up of pay of the applicant vis-a-vis his admitted junior respondent No.9 to the O.A.

The entire exercise may be completed within eight weeks from the date of receipt of a copy of this order.

8. With these directions, we allow the O.A. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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