

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

(10)

O.A. NO.2524 /2003

This the 10th day of August, 2004.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Bahadur Chand, Ex-SDE,
Department of Telecommunications,
R/o 63-A, Ekta Enclave, Peera Garhi,
New Delhi-110081.

... Applicant

(By Shri S. N. Anand, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Communications,
Department of Telecom,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi-110001.

2. Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Khurshid Lal Bhawan, Janpath,
New Delhi-110050.

... Respondents

(By Shri Satish Kumar, Advocate)

ORDER (ORAL)

Hon'ble Shri V. K. Majotra, Vice-Chairman (A) :

Earlier on applicant had approached this Tribunal through OA No.2858/2002 seeking stepping up of his pay vis-à-vis his junior Shri S.R.Singh. The same was disposed of vide order dated 6.11.2002 directing the respondents to dispose of the matter by passing a speaking order within four months. In pursuance of Tribunal's aforesaid order, respondents have conveyed their decision vide Annexure P-1 dated 28.6.2003 rejecting

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applicant's claim stating, "the applicant i.e. Bahadur Chand, SDE (Retd.) was recruited in junior telecom officer cadre from Haryana Circle whereas his junior was recruited as junior telecom officer from Delhi circle. Therefore, as per M.O.F. O.M. No.2(10)-E-III(A)/62 dated 20th July, 1965 the request of the applicant cannot be acceded to." Applicant has challenged these orders of the respondents.

2. The learned counsel of applicant referred to the particulars of the applicant vis-à-vis his junior Shri S.R.Singh, SDE staking his claim for stepping up of his pay as described in paragraph 4.5 of the OA, as follows :

Description	Senior	Junior
1. Name & Designation	Bahadur Chand SDE	S.R.Singh SDE
2. Staff No.	GO 15293	GO 35386
3. Year of Recruitment as JTO	1973	1980
4. Date of joining as JTO	August, 1977	31-8-1982
5. Seniority No. as per Circle Gradation List of JTO	1404 All India JTO List	940 Delhi Tele List of JTOs
6. Seniority No. in TES Group-B	665 SDE Final Seniority List-4	2324, SDE Final Seniority List-5
7. Date of grant of lateral advancement scale	---	1-1-1995
8. Pay fixed in internal advancement scale	---	2375/-
9. DNI in lateral advancement	---	
10. Date of promotion as TES Group-B	Officiating 1-1-90 Regular 31-5-93	Officiating 9-9-95 Regular 24-10-98
11. Pay fixed in TES Gp-B	2300/-	Not fixed 4500/- As on 1-1-99
12. Pay as on 31-12-95 as SDE	2450/-	---
13. Pay fixed on 1-11-96 as SDE	2600/-	8250/-
14. DNI after pay fixation on 1-1-96	2600/-	11-1-2000
15. Pay as on 1-1-98	9250/-	9500/-
16. Present office from which pay drawn	GM W-II	GM Ty.
17. Present Post	SDE(P) KJL	SDE Cable Ty.

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The learned counsel also relied upon S. Santhanam v. Union of India, 1994 (2) SLJ 249 (CAT), contending that respondents' action in denying the benefit of stepping up of applicant's pay is contrary to the decision in the case of S. Santhanam (Annexure-F) as also to Government of India Order No.22 under FR 22 (Annexure-G). He pointed out that while applicant's case met all requirements laid down by the Government of India under FR 22, the respondents have not kept them in view as also the ratio in the case of S. Santhanam and the applicant has been discrimination against.

3. On the other hand, the learned counsel of the respondents stated that applicant has referred to cases of his juniors, namely, S.C. Sharma, J.L. Gupta but applicant's case cannot be compared with those cases as S.C. Sharma and J.L. Gupta, SDEs had been transferred from Bombay and Punjab Circles in the grade of JTO in the year 1985 and 1976 respectively and thereafter promoted in the grade of SDE in Delhi, whereas the applicant who belongs to Haryana Circle in the cadre of JTOs posted to MTNL, Delhi on promotion as SDE on regular basis on 7.3.1994.

4. We have considered the rival contentions of both sides.

5. It is relevant to reproduce provision of FR 22 (I) (a) (1) for considering the present matter :

"F.R. 22. (I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows :-

(a) (1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of

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the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only, whichever is more."

Government of India decision No.23 below FR 22 relating to removal of anomaly by stepping up of pay of senior on promotion drawing less pay than his junior prescribes fulfillment of the following conditions, namely :

- "(a) both the junior and the senior Government servants should belong to the same cadre and the post 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."

6. Applicant's case is identical with that of S.Santhanam (supra).

In that case, the applicant, an Assistant Engineer in Group 'B' of MTNL claimed stepping up of his pay to the level of pay drawn by his junior. The applicant was not only senior in TES Group-B but also senior in the lower grade of JTO. He was appointed in Tamil Nadu Circle while his junior worked in Maharashtra Circle. Both were stated to be in the All India Service. Stepping up of the applicant was allowed with reference to the date when his junior was allowed to get the higher pay than the applicant, along with interest.

7. It is beneficial to extract paragraph 4 of the order in the case of S.Santhanam (supra) :

"4. I have given careful consideration to the arguments of both the parties. It is an undeniable fact that the applicant is senior to the persons with whom he is claiming parity in pay in the TES Group 'B'. TES Group 'B' is an All India cadre having the same scales of pay with liability of transfer anywhere in the country. It is fortuitous circumstances like vacancies arising on short term basis which are required to be filled up by adhoc promotions for a period of not longer than 180 days at a time. If there are any long term vacancies, the same are required to be notified to the higher Headquarters in the Telecom Branch of the

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Government of India, i.e., Telephone Commission which has to take necessary steps to fill up the vacancy on All India basis. However, these directives of the Government of India are normally observed in abeyance. The short term and long term vacancies are hardly ever calculated properly and in advance and in certain Circles and units, officials are allowed to continue uninterruptedly on adhoc basis without being considered by the Departmental Promotion Committee and without having a regular right to hold such appointments. So long as these are not objected to by the seniors, nobody is bothered about. But once it has come to the notice of the Department of Telecommunication that a junior was allowed to officiate continuously for a number of years enabling him to draw increments on a higher pay scale to the disadvantage of his seniors who were duly qualified and eligible for such appointment, the matter becomes insupportable. The Telecom Department itself should have taken steps to ensure that the senior working in the same unit is allowed to have the benefit of stepping up of his pay to the level of his junior. The applicant and Shri Ganjewar are now working in the same unit, i.e. MTNL Bombay and that is why the gross disparity becomes more unsustainable. This Tribunal is not able to deal with the circumstances why a junior was allowed to continue uninterruptedly for more than 180 days at a time giving him undue advantage over his senior. Since the matter is brought for redressal before the Tribunal, I would allow the applicant to step up his pay with reference to the date when his junior was allowed to get pay higher than him, and he shall also be allowed interest at the rate of 12% p.a. for the denial of his bonafide stepping up when it became due to him."

7. It is observed that respondents have not denied that S.R.Singh, SDE was junior to the applicant but was drawing more pay as stated above. Respondents have not explained at all how the applicant's junior Shri S.R.Singh, SDE was allowed higher pay than the applicant when at all stages he was junior to the applicant.

8. In our view, applicant's case meets all the conditions prescribed under FR 22 (I) (a) (1) read with Government of India's decision No.23 thereunder and the ratio of the case of S.Santhanam (supra) is also fully applicable to the facts of the present case.

9. In result, it is held that respondents vide impugned letter dated 28.6.2003 have created an anomalous position which warrants instant correction. Applicant is entitled to stepping up of his pay with reference to the pay of his junior Shri S.R.Singh. As such, this OA is allowed directing

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the respondents to step up applicant's pay with reference to the date when his junior Shri S.R.Singh, SDE was allowed to get a pay higher than he. He shall also be allowed simple interest at the rate of 9% per annum. These directions shall be complied with within a period of three months from the date of receipt of these orders. No costs.

S. Raju
(Shanker Raju)
Member (J)

V. K. Majotra
(V. K. Majotra) 10.8.04
Vice-Chairman (A)

/as/