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UNION OF INDIA AND ANR.
v.
R. SWAMINATHAN ETC. ETC.

SEPTEMBER 12, 1997

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[J.S. VERMA, CJ., SUJATA V. MANOHAR AND B.N. KIRPAL, JJ.]

Service Law :

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Fundamental Rule 22(1)(a)(i)—Pay fixation on promotion—Promotee—employee—Drawing less pay than their juniors due to officiating promotion—Higher pay fixation on regular promotion—Anomaly—Govt. order for stepping up pay on par with juniors—Allowed by Tribunal—Held, difference in pay scales is not a result of any anomaly nor result of the application of Fundamental Rule 22(1)(a)(i)—Employees not entitled to have their pay stepped up under the Govt. order—Proper norms to be laid down for making local officiating promotions.

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The respondents were employees of Department of Posts and Telegraph and Telecommunications. On promotion, the respondents were getting in their promotional posts less pay than their juniors who were subsequently promoted. Fixation of pay on promotion to a higher post was governed by Fundamental Rule 22(1)(a)(i). The regular promotions from junior posts to higher posts were on the basis of all India seniority. However, for filling up posts which are short term the Heads of Circle were given powers for making promotion due to administrative exigencies. The juniors therefore received a higher pay on their regular promotion than the seniors, as their initial pay on regular promotion was fixed taking into account the last pay drawn by them while they were officiating in higher post. This resulted in an anomaly and Government Order bearing No. F2(78) E.III(A)/66 dated 4.2.1966 have been issued for removal of anomaly by stepping up the pay of a senior on promotion drawing less pay than his juniors.

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The Central Administrative Tribunal allowed the application of the respondent-employee claiming stepping up of their pay to the level of their juniors from the date of promotion.

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Aggrieved by the order of the Tribunal, the appellants have come up in appeal before this Court.

The contention of the Union of India was that it was not always possible to convene a meeting of the departmental promotion committee for filling up the posts which are short-terms, on an all India basis because of administrative problems. To fill up this gap, local officiating promotions are made in the interest of work. The juniors therefore have received higher pay on their regular promotion than the seniors.

The contention of the respondent-employees was that local officiating promotion within a circle have resulted in their being deprived of a chance to officiate in the higher post, if such chance of officiating promotion arises in a different circle. It was further contended that since there was All India seniority for regular promotions the All India Seniority must prevail even while making local officiating appointments within any circle.

Allowing the appeal, this Court

HELD : 1.1. The employees are not entitled to have their pay stepped up under the Government Order bearing No. F12(78) E.III(A)-66 dated 4.2.1966 because the difference in the pay drawn by them and the higher pay drawn by their juniors is not as a result of any anomaly nor is it a result of the application of fundamental Rule 22(1)(a)(i). [103-D]

1.2. As per Govt. order stepping up is subject to the conditions : (i) both the junior and senior officers should belong to the same cadre and the posts in which they have been promoted should be identical and in the same cadre; (ii) the scales of pay of the lower and higher posts should be identical; and (iii) anomaly should be directly as a result of the application of Fundamental Rule 22(1) (a) (i). The difference in the pay of a junior and a senior in their case is not a result of the application of fundamental Rule 22(1)(a)(i). [101-E]

1.3. The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the post. Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping up of the pay of the seniors. [101-F-G]

1.4. The increased pay drawn by a junior because of *ad hoc* officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority

A nor is seniority alone a criterion for stepping up the pay. [102-F]

B 2. The question is basically of administrative exigency and the difficulty that the administration may face if even short term vacancies have to be filled on the basis of All India seniority by calling a person who may be stationed in a different circle in a region remote from the region where the vacancy arises and that too for a short duration. This is essentially a matter of administrative policy. But the only justification for local promotions is their short duration. If such vacancy is of a long duration there is no administrative reason for not following the All India seniority. Most of the grievances of the employees will be met if proper norms are laid down for local officiating promotions. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements. [102-H; 103-A-B]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8658 of 1996
Etc. Etc.

D From the Judgment and Order dated 9.2.94 of the Central Administrative Tribunal, Madras in O.A. No. 1324 of 1993.

WITH

C.A. Nos. 8810, 8690-94, 8731-8777, 8876, 8813, 8680-82, 8684-8686, 8873, 8874, 8778-8800, 8814-8816, 8817-8818, 8875, 10978 of 1996, 8811-12, 8687, 8730, 8689, 8872 of 1996, 689, 690 of 1997, C.A. Nos. 6257-6287 of 1997.

E N.N. Goswami, P.A. Chowdary, K.R. Sachdeva, A.D.N. Rao, Hemant Sharma, Y.P. Mahajan, Ms. Renu George, K.C. Kausik, Ms. Kanupriya Mittal, G.N. Reddy, S.K. Dwivedi, T.V. Ratnam, R. Venkataramani, L. Nageshwara Rao, S.U.K. Sagar, Ms. S.M. Garg, Harinder Mohan Singh and G. Prakash for the appearing parties.

F The Judgment of the Court was delivered by
MRS. SUJATA V. MANOHAR, J. Delay condoned.

Leave granted in the Special Leave Petitions.

G These appeals have been filed from the judgments of different Benches of the Central Administrative Tribunal. The employees who are before us belong to the Department of Posts and Telegraph and Telecommunications. They can be broadly classified into two categories : those who belong to the Accounts stream and those who belong to the Engineering stream. In the Accounts stream we are concerned with two posts, the posts of Assistant
H Accounts Officer and the next promotional post of Accounts Officer. In the

Engineering stream, there are employees belonging to the Telegraph Traffic Services and employees belonging to Posts and Telegraph Electrical Wing Services. In the Telegraph Traffic Services, we are concerned with the posts of Junior Engineer and the next promotional post of Assistant Engineer. In the stream of Telegraph Traffic Services we are concerned with the posts of Assistant Superintendent, Telegraph Traffic subsequently re-designated as Junior Telcom Officer and the next promotional post of Superintendent, Telegraph Traffic now designated as Sub-Divisional Engineer. In the Posts and Telegraph Electric wing we are concerned with the post of Junior Engineer and the next promotional post of Assistant Engineer. In C.A. No. 8730/96 the respondent was a Junior Stenographer in the National Aerospace Laboratories, Council of Scientific and Industrial Research. The question raised is the same of pay fixation on promotion.

All these appeals and special leave petitions raise a common question relating to interpretation of certain Fundamental Rules which govern the services of all these employees, and certain Government Orders issued in this behalf. The promotees who are respondents in these appeals claim that they are getting in the promotional post less pay than their juniors who have been subsequently promoted to the same post. This is an anomaly which should be removed by stepping up their pay to the same level as their junior from the date he was promoted.

For the sake of convenience we are referring to the facts in Civil Appeal No. 8658 of 1996. The respondent, R. Swaminathan, at the material time, was an Accounts Officer with the Madras Telephones. Prior to his promotion as Accounts Officer he held the post of Assistant Accounts Officer. On his promotion to the post of Accounts Officer on 18.2.1988 his pay was fixed at Rs. 2675. One J.N. Misra, who was junior to the respondent, was also subsequently promoted to the post of Accounts Officer. His pay, however, was fixed at Rs. 3125. The respondent thereupon filed O.A. No. 1324 of 1993 before the Central Administrative Tribunal, Madras Bench claiming that his pay should be stepped up to equal to that of his junior J.N. Misra from the date on which the anomaly arose and that he should be paid all arrears arising on account of such refixation. The Tribunal by its judgment dated 9.2.1994 allowed the respondent's application on the basis of its earlier decision which is also the subject matter of appeal before us.

Fixation of pay on promotion to a higher post is governed by Fundamental Rule 22(I)(a)(1) which was formerly Fundamental Rule 22-C. It is as follows :

A “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 :-

B (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 the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more.”

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The proviso to Fundamental Rule 22 is as follows :

“Provided that, both in cases covered by Clause (a) and in cases..... covered by Clause (b), if he—

E (1) has previously held substantively or officiated in

(i) the same post,

(ii)

(iii)

F (2)

then the initial pay shall not except in cases of reversion to parent cadre governed by proviso (i) (iii), be less than the pay, other than special pay, personal pay or any other emoluments which may be classed as pay by the President under Rule 9(21)(a)(iii) which he drew on the last occasion, and he shall count the period during which he drew that pay on a regular basis on such last and any previous occasions for increment in the stage of the time-scale equivalent to that pay.”

H For the fixation of pay on promotion, therefore, one has to first look at

the pay being drawn by the promotee in the lower post. This pay in the lower post must be increased by one increment in that pay-scale. His initial pay in the time-scale of the higher post is fixed at the stage next above this notional pay arrived at in the lower post. A

The fixation of this pay in the higher post is, however, subject to the proviso. If the person so promoted has earlier officiated in that higher post or substantively held that higher post for short or long duration, then, (1) his initial pay which is fixed under Rule 22(I)(a)(1) shall not be less than the last pay which he drew when he last held the higher post. (2) The period during which he drew that pay on such last and any previous occasions shall count for increments in the time-scale of the pay for the higher post. For example, if the promotee had previously, on various occasions, officiated in that higher post for different periods, and if the sum total of periods for which he so officiated is more than 12 months, he would be entitled to an increment in that higher pay-scale. His initial pay, therefore, on his regular promotion will be fixed taking into account not merely his entitlement on the basis of his notional pay in the pay-scale of the lower post, but also taking into account the last pay drawn by him while he was officiating in the higher post and also counting the previous periods during which he so officiated for his increment in the higher pay scale. The Department has also in this connection, drawn our attention to Fundamental Rule 26 which, *inter alia*, provides as follows: B C D

"F.R 26 (a): All duty in a post on a time-scale counts for increments in that time-scale: E

Provided that, for the purpose of arriving at the date of the next increment in that time-scale, the total of all such periods as do not count for increment in that time-scale, shall be added to the normal date of increment."..... F

We are, however, in the present case, concerned basically with Fundamental Rule 22(I)(a)(1) and the proviso to Fundamental Rule 22 because, in all these appeals, the junior employees who have got higher pay on promotion than their seniors, had officiated in the promotional post for different periods on account of local *ad hoc* promotions granted to them. This is because the Department of Telecommunications is divided into a number of Circles within the country. The regular promotions from the junior posts in question to the higher posts are on the basis of all India seniority. The Heads of Circles have, however, been delegated powers for making local officiating H

- A arrangements based on Circle seniority to the higher posts in question against short-term vacancies upto 120 days in the event of the regular panelled officers not being available in that Circle. This period of 120 days was subsequently revised to 180 days. Under this provision for local officiation, the senior-most official in the Circle is allowed to hold the charge of the higher post for a limited duration. This is purely out of administrative considerations and is resorted to in order to tide over the exigencies of work. This practice, we are informed, has been followed in all Circles in the Department of Telecommunications since 1970. This is because, at times it is not possible to fill up all the vacancies in a particular Circle for various reasons such as non-joining by a particular person, chain promotions or short-term vacancies arising on account of leave etc. It is submitted before us by the Department that it is not always possible to convene the meetings of the departmental promotion committee for filling up all the posts which are only available for short periods on an All India basis because of administrative problems. To fill up this gap, Government has issued instructions from time to time to allow local officiating arrangements in the interest of work. The department has also pointed out that all the aggrieved employees in these appeals have availed of such officiating promotions as and when such occasion arose in their Circle and they were eligible. The Juniors, therefore, in each of these cases who have received a higher pay on their regular promotion than the seniors, have received this higher pay on account of the application of the proviso to Fundamental Rule 22.
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According to the aggrieved employees, this has resulted in an anomaly, Government Order bearing No F2(78) E.III(A)/66 dated 4th of February, 1996 has been issued for removal of anomaly by stepping up of pay of a senior on promotion drawing less pay than his junior. It provides as follows:

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- “(10) 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 scale 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 refixation of pay"

As the Order itself States, the stepping up is subject to three conditions: (1) Both the junior and the senior officers should belong to the same cadre and the posts in which they have promoted should be identical and in the same cadre; (2) the scales of pay of the lower and higher posts should be identical and; (3) anomaly should be directly as a result of the application of Fundamental Rule 22-C which is now Fundamental Rule 22(I)(a)(1). We are concerned with the last condition. The difference in the pay of a junior and a senior in the cases before us is not a result of the application of Fundamental Rule 22(I)(a)(1). The higher pay received by a junior is on account of his earlier officiation in the higher post because of local officiating promotions which he got in the past. Because of the proviso to Rule 22 he may have earned increments in the higher pay scale of the post to which he is promoted on account of his past service and also his previous pay in the promotional post has been taken into account in fixing his pay on promotion. It is these two factors which have increased the pay of the juniors. This cannot be considered as an anomaly requiring the stepping of the pay of the seniors.

The Office Memorandum dated 4.11.1993. Government of India, Department of Personnel & Training, has set out the various instances where stepping of pay cannot be done. It gives, *inter alia*, the following instances which have come to the notice of the department with a request for stepping

A up of pay. These are:

“(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

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(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 junior avails of the *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.*

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(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.”

(d)

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There are also other instances cited in the Memorandum. The Memorandum makes it clear that in such instances a junior drawing more pay than his senior will not constitute an anomaly and, therefore, stepping up of pay will not be admissible. The increased pay drawn by a junior because of *ad hoc* officiating or regular service rendered by him in the higher post for periods earlier than the senior is not an anomaly because pay does not depend on seniority alone nor is seniority alone a criterion for stepping up of pay.

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The aggrieved employees have contended with some justification that local officiating promotions within a Circle have resulted in their being deprived of a chance to officiate in the higher post, if such chance of officiation arises in a different Circle. They have submitted that since there is an All India seniority for regular promotions, this All India seniority must prevail even while making local officiating appointments within any Circle. The question is basically of administrative exigency and the difficulty that the administration

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may face if even short-term vacancies have to be filled on the basis of All

India seniority by calling a person who may be stationed in a different Circle in a region remote from the region where the vacancy arises, and that too for a short duration. This is essentially a matter of administrative policy. But the only justification for local promotions is their short duration. If such vacancy is of a long duration there is no administrative reason for not following the all India seniority. Most of the grievances of the employees will be met if proper norms are laid down for making local officiating promotions. One thing, however, is clear. Neither the seniority nor the regular promotion of these employees is affected by such officiating local arrangements. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the Provisio to Fundamental Rule 22. A B

The employees in question are, therefore, not entitled to have their pay stepped up under the said Government Order because the difference in the pay drawn by them and the higher pay drawn by their juniors is not a result of any anomaly nor is it a result of the application of Fundamental Rule 22(I)(a)(1). C

The appeals are, therefore, allowed and the impugned orders of different Benches of the Central Administrative Tribunal which have held to the contrary are set aside. There will however, be no order as to costs. D

S.V.K.I.

Appeals allowed.