

Union Of India & Anr vs R. Swaminathan on 12 September, 1997

Equivalent citations: AIR 1997 SUPREME COURT 3554, 1997 (7) SCC 690, 1997 AIR SCW 3659, 1997 LAB. I. C. 3484, (1997) 8 JT 61 (SC), 1997 (8) JT 61, 1997 (3) UPLBEC 1796, 1997 (6) SCALE 109, 1999 (1) SERVLJ 102 SC, (1997) 3 ESC 1959, (1997) 77 FACLR 666, (1998) 1 LABLJ 295, (1997) 3 LAB LN 682, (1997) 4 SCT 467, (1997) 4 SCJ 416, (1997) 8 SUPREME 219, (1997) 6 SCALE 109, (1997) 2 CURLR 861, (1997) 3 UPLBEC 1796, (1997) 5 SERVLR 592, 1997 SCC (L&S) 1852

Author: Sujata V. Manohar

Bench: J. S. Verma, Sujata V. Manohar, B. N. Kirpal

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
R. SWAMINATHAN

DATE OF JUDGMENT: 12/09/1997

BENCH:
J. S. VERMA, SUJATA V. MANOHAR, B. N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

[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, 8811-8812, 8687, 8730, 8689, 887 of 1996 689, 690 of 1997, C.A.Nos. 6267-6287 of 1997 [@ SLP[C] Nos. 11886-1188, 13830-13832, 18255, 18903, 20988, 23712, 20488, 24726, 24729, 25067-25068, 25132, 24759, 24238 of 1996, 3117, 2849 of 1997, 17452.../97 [CC 3258/97], 3796/97] J U D G M E N T Mrs. Sujata V. Manohar, J.

Delay condoned.

Leave granted in the Special Leave Petitions. These appeals have been filed from the judgment of different Benches of the Central Administrative Tribunal. The employees who are before us belong to the Departments 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 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 & Telegraph Electrical wing Service. In the Telegraph Traffic Service, we are concerned with the posts of Junior Engineer and the next promotional post of Assistant Engineer. In the stream of Telegraph Traffic Service we are concerned with the posts of Assistant Superintendent, Telegraph Traffic subsequently re-designated as Junior Telecom Officer and the next promotional post of Superintendent, Telegraph Traffic now designated as Sub-Divisional Engineer. In the Posts & 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. In 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 subsequently promoted to the same post. This is an anomaly which should be removed by stepping 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 Accounts Officer on 18.2.1988 his pay junior to the respondent, was also subsequently promoted to the post of Account 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 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 re-fixation. 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:

"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 the 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."

.....

.....

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--

(1) has previously held substantively or officiated in

(i) the same post,

(ii)

(iii)

(2)

then the initial pay shall not, except in cases of reversion to parent cadre governed by proviso (1) (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.

..... "

For the fixation on 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 the

notional pay arrived at in the lower post.

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 occasion, 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:

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

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."

.....

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 higher posts are on the basis of all India seniority. The Heads of Circles have, however, been delegated powers for making local officiating arrangements based on Circles 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 Charges 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. The 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 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.

According to the aggrieved employees, this has resulted in an anomaly. Government Order bearing No. F.2 (78)E. III (A)/66 dated 4th of February, 1996, has been issued for removal of anomaly by stepping up of pay of senior on promotion drawing less pay than his junior. It provides as follows:

"(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 in that post than another Government servant junior to him in the lower grade and promoted or appointed in the lower grade and promoted or appointed subsequently to another identical post, it has been decided that 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 been 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(1) (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 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 of the pay of the seniors.

The Officer 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 up of pay. There 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:

(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 officiation/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."

(d)

There are also other instances cited in the Memorandum.

The Memorandum makes it clear that in such instance 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 anomaly because pay does not depend on seniority alone is seniority alone a criterion for stepping up of pay.

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 promotion. this All Indian 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 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 arrangement. The employees who have not officiated in the higher post earlier, however, will not get the benefit of the Proviso to Fundamental Rule 22.

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 as a result of any anomaly: nor is it a result of the application of Fundamental Rule 22(I)(a)(1).

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.