

Central Administrative Tribunal
Principal Bench

New Delhi, dated this the 30 January, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, MEMBER (J)

O.A. No. 1014 of 1999

1. Shri J.P. Kaushik,
S/o late Shri Madan Lal,
2. Shri Vishwa Nath Mehra, S/o Shri Ladha Ram
3. Shri Chander Bhan Sharma,
S/o late Shri Lakshmi Chand .. Applicants

Versus

Union of India through the Secretary
Ministry of Communication, Dept. of Telecom.,
Sanchar Bhawan, New Delhi-110001. .. Respondent

O.A. No. 404 of 2000

Shri Bhagwan Singh, S/o late Shri Deep Chand
Retd. Accounts Officer (P&T). .. Applicant

Versus

1. Union of India through the Secretary
M/o of Communications, Dept. of Telecom.,
Sanchar Bhawan, New Delhi-110001.
2. The Secretary,
M/o of Communications, Dept. of Posts
Dak Bhawan, New Delhi-110001. .. Respondents
By Advocates: Shri Sant Lal for applicants
Shri R.P. Aggarwal for respondents

ORDER

S.R. ADIGE, VC (A)

As these two O.As involve common question of
law and fact they are being disposed of by this
common order.

2. Applicants impugn respondents' O.M. dated 10.3.99 (Annexure A-1 - A-3). They seek a direction to extend themselves the benefits of Delhi High Court's order dated 26.4.82 in CWP No. 1119/70 and order dated 10.7.91 in LPA No. 114/82, as also O.M. dated 28.2.94 (Annexure A-5 to A-7) with all consequential benefits.
3. The facts may be summarised.
4. The accounts work of the main department of

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P & T used to be done by officials designated as Sr. Accountants who were governed by the P & T Accounts (Recruitment) Rules, 1958. The accounts work relating to Telecom and Postal Branches of P & T were on the other hand done by personnel of Audit Department called SAS Accountants in the Office of AG Posts & Telegraphs under C & AG.

5. In 1968, Govt. of India decided that Telecom Branch accounts work be transferred to P & T Department itself. Consequently the President issued order on 1.3.68 and formal rules called Departmentalisation of Telecom Accounts Rules, 1969 were published effective from 1.3.68. The transfer of work was to be completed in phases spread over 4-5 years and the SAS Accountants belonging to Audit Department were to be transferred to P & T Dept. on terms and conditions to be decided by Govt. of India with concurrence of CAG. Meanwhile the Indian Audit & Accountants Department (AG P & T), Transfer of Officers and other staff Rules, 1968 was also notified on 30.8.68 (Annexure-R2) which inter alia provided that as far as possible personnel engaged in Telecom accounting work, or who had experience of telecom accounting work for over a year, would be allocated to P & T Department.

6. The CAG transferred SAS Accountants to P & T Department in various phases.

7. As applicants who were SAS Accountants were not transferred to P & T Department, they filed

CW No.816/70 in the Delhi High Court, complaining that while their juniors had been transferred to the said department, they had not been transferred. That CWP was dismissed by a Single Judge by order dated 16.11.71, with the finding that as the petition had no right to be transferred to P & T Deptt. ^{and} the exercise of discretion by the authorised officers in transferring persons who were admittedly junior to the petitioners could not be said to be illegal or arbitrary.

Meanwhile aggrieved by their not being transferred to P & T Deptt. Shri Shivaramaiah & Ors. who were also SAS Accountants filed CW No.1119/70 in Delhi High Court contending that the transfer of personnel from Audit & Accounts Deptt. to P & T Deptt. otherwise than on the basis of seniority was discriminatory and unconstitutional. That CW was finally disposed of by a Single Judge by order dated 26.4.82. Meanwhile as by then Shri Shivaramaiah and others had also been transferred to P & T Deptt. the CWP was allowed by aforesaid order dated 26.4.82 with a direction to official respondents that the rights and positions of the petitioners vis-a-vis the private respondents who had been transferred earlier should be so adjusted so as to retain the seniority of the petitioners over the said private respondents, such that no advantage accrued to the latter, merely because they had been transferred to P & T Deptt. before the petitioner.

9. LPA No.114/82 against the aforesaid judgment dated 26.4.82 was dismissed by judgment dated 10.7.91 (Annexure-A6) with the finding that once the writ petitioners were transferred to the P & T Deptt. they could not be ranked junior or deprived of the benefits given to private respondents merely on the ground that the latter had been transferred earlier, for no fault of the writ petitioners.

10. In compliance with the aforesaid judgment dated 10.7.91 respondents issued order dated 28.2.94 (Annexure-A5).¹

11. Thereupon applicants, who had also been transferred to P & T Deptt. made representations to respondents claiming similar benefits for themselves. When those representations did not elicit any response, they filed OA No.444/95 which along with OA No.494/95 was disposed of by order dated 19.1.98 (Annexure-A7) with a direction to respondents to dispose of the aforesaid representations within 3 months from the date of receipt of a copy of the order, and giving liberty to applicants to challenge the order passed by official respondents, if they were aggrieved by the same.

12. Those representations were rejected by impugned OM dated 10.3.99 upon which applicants have filed the present OA.

13. We have heard both sides.

14. Respondents' counsel Shri Agarwal has

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firstly contended that this OA has been filed with great delay and is therefore hit by limitation. He has cited several rulings in support of his contention. This ground is however rejected because impugned OM dated 10.3.99 gives applicants a fresh cause of action, and reckoned from that date, this OA is well within time. Furthermore, granting the relief prayed for by applicants would have the result of revising the monthly pension drawn by them, which is a continuous cause of action.

15. Secondly Shri Agarwal has relied upon the Bombay High Court (Nagpur Bench) order dated 20.12.84 in Special Civil Application No. 3054/96 a copy of which is taken on record, but there is nothing contained therein, which can be said to run counter to Delhi High Court's judgment dated 10.7.91 in LPA No. 114/82, which in any case is of later date, and with which we are bound.

16. Thirdly it has been contended that the OA is hit by Res Judicata in the light of the Delhi High Court's order dated 16.11.71 in CWP No. 816/70. This ground has no merit because in that CWP applicants' challenge to their non-transfer had been dismissed. Once they were transferred, they cannot be treated differently from others identically placed who were also transferred like themselves and also secured certain benefits consequent to the Delhi High Court's order dated 10.7.91 in LPA No. 114/82.

17. In the result these OAs succeeded and are allowed to the extent that respondents are directed to extend the benefits of Delhi High Court's judgment dated 10.7.91 in LPA No. 114/82 and OM dated 28.2.94 to

applicants with all consequential benefits, including refixation of pay and pension, along with arrears thereof. These directions should be implemented as expeditiously as possible and preferably within 4 months from the date of receipt of a copy of this order. No costs.

18. Let a copy of this order be placed in each case record.

Kuldeep
(KULDIP SINGH)

MEMBER (J)

Arif Ali
(S.R. ADIGE)
VICE CHAIRMAN (A).

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