

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. No 880/98

Date of Decision 17.3.2003

V.K. Chaufla & Anr.

Applicants

Shri D.O. Chaufla ... Advocate for the Applicant

VERSUS

UOI & Ors. ... Respondents

Shri N.K. Aggarwal, ... Advocates for the Respondents
Senior Counsel

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

Hon'ble Shri V.K. Majotra, Member (A).

Hon'ble Shri Shanker Raju, Member (J).

1. To be referred to the Reporter or not ? Yes

2. Whether it needs to be circulated to other
Benches of the Tribunal?

No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 880/98

(45)

New Delhi this the 17th day of March, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).
Hon'ble Shri Shanker Raju, Member (J).

1. V.K. Chaufla,
Assistant Director of Training,
Directorate General of Employment
and Training,
Shram Shakti Bhavan,
New Delhi.
2. P.D. Sharma,
Assistant Director of Training,
Directorate General of
Employment and Training,
Shram Shakti Bhavan, New Delhi. Applicants.

(By Advocate Shri D.D. Chaufla)

Versus

1. Union of India,
through Secretary to the Govt. of India,
Ministry of Labour,
Shram Shakti Bhawan,
New Delhi.
2. Director General of Employment
and Training/Joint Secretary,
Directorate General of Employment
and Training,
Shram Shakti Bhavan, New Delhi.
3. Shri H.G. Chatterjee, ADT,
Advanced Training Institute,
Dass Nagar, Howrah-711105.
4. Shri K.S. Kothandaraman,
Training Officer,
R.D.A.T., Guindy,
Chennai-600032.
5. Shri J.N. Burse, A.D.T.,
ATI, Sion, Trombay Road,
Mumbai-400022.
6. Shri P.S. Kharbanda, A.D.T.,
ATI, Gill Road, Ludhiana,
Punjab-141003.
7. Shri Kaka Ram Dhiman, A.D.T.,
ATI, Udyog Nagar,
Kanpur-208022.

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8. Shri A.K. Srivastava, ADT,
ATI, Udyog Nagar,
Kanpur-208022.
9. Shri V.Dhan Shekharan, ADT,
CTI, Guindy, Chennai-6000032.
10. Shri Chote Lal, ADT,
ATI, Udyog Nagar,
Kanpur-208022.
11. Shri M.A. Saleem, ADT,
ATI, Vidyanagar,
Hyderabad-500763.
12. Shri M.R. Krishnarao, ADT,
ATI, Vidyanagar, Hyderabad-500763.
13. Shri B.P. Bhangale, ADT,
ATI, Sion, Trombay Road,
Mumbai-400022.
14. Shri Jagdish Prasad, TO,
ATI, Gill Road, Ludhiana,
Punjab-141003.
15. Shri B. Gopalakrishna, ADT,
ATI, Vidyanagar, Hyderabad-500763.
16. Shri M. Gopal, Krishna, ADT,
CTI, Guindy, Chennai-600032.
17. Shri Baldeep Singh, ADT,
ATI, Gill Road, Ludhiana,
Punjab-141003.
18. Shri J.R.D. Khanna, ADT,
ATI, Gill Road, Ludhiana,
Punjab-141003.
19. Shri Amir Kazim, TO,
ATI Udyog Nagar, Kanpur-208022.
20. Shri Sita Ram Sharma, ADT,
ATI Udyog Nagar, Kanpur-208022.
21. Shri M.K. Mazumdar, TO,
ATI, Das Nagar Hawrah-711105.
22. Shri K.N. Haldar, ADT,
ATI, Das Nagar Hawrah-711105.
23. Shri B.S. Ghatke, ADT,
ATI, Sion, Trombay Road,
Mumbai-400022.
24. Shri P.B. Seth, ADT,
ATI, Sion, Trombay Road,
Mumbai-400022.
25. Shri S.A. Juvekar, TO,
CTI, Guindy, Chennai-6000032.

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26. Shri S.B. Gokharal, ADT,
ATI, Sion, Trombay Road,
Mumbai-400022.
27. Shri Ram Bali Ram, ADT,
ATI, Sion, Trombay Road,
Mumbai-400022.
28. Shri R.V. Kharinar, ADT,
ATI, Sion, Trombay Road,
Mumbai-400022.
29. Shri J. Robinson, ADT,
ATI, Guindy, Chennai-600032.
30. Shri M. Subbarayadu, ADT,
ATI, Guindy, Chennai-600032.
31. Shri R.R. Patole, TO,
ATI, Sion, Trombay Road,
Mumbai-400022.
32. Shri V.L. Patil, TO,
ATI, Sion, Trombay Road,
Mumbai-400022.
33. Shri S.P. Nayyer, TO,
ATI, Gill Road, Ludhiana,
Punjab-141003.
34. Shri A.H. Naqvi, TO,
DGET, Rafi Marg, Sharam
Shakti Bhawan,
New Delhi-110001.
35. Shri P.G. Shankaran, TO,
ATI, Sion, Trombay Road,
Mumbai-400022.
36. Shri S. Prabhakar Rao, TO,
ATI, Vidyanagar,
Hyderabad-500763.
37. Shri P.T. Gangasuddan, ADT,
CIMI, Guindy, Chennai-600032.
38. Shri R. Thirunavakarasu, ADT,
RDAT, Guindi, Chennai-600032.
39. Shri M. Perianan, TO,
CIMI, Guindy - Chennai-600032.
40. Shri A. Shyamlakuddy, ADT,
RDAT, Guindi, Chennai-600032.
41. Shri T. Teerthan, ADT,
CTI, Guindi, Chennai-60 0032.
42. Shri P. Packianathan, ADT,
CSTAR, E.N. Block, Sector V,
Salt Lake City Calcutta-700091.

(A8)

43. Shri B.K. Chatterjee, TO,
ATI, Udyognagar, Kanpur-208022. ... Respondents.

(By Advocate Shri N.K. Aggarwal, senior counsel)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J),

This O.A. has been remitted by the Hon'ble Delhi High Court by order dated 14.8.2001 after setting aside the earlier order passed by the Tribunal dated 11.3.1999, for consideration afresh and appropriate orders after hearing the parties.

2. Shri D.D. Chaufla, learned counsel for the applicants has reiterated his submissions which have been noted in the order dated 5.3.2002, that there are conflicting decisions of the Tribunal, that is Calcutta Bench in O.A.1422/90, decided on 25.1.1995 and the common judgement of the Principal Bench in O.A.1167/1989, O.A.530/1998, O.A.1901/1988 and O.A.373/1988, delivered on 9.7.1991 and that the matter should be placed before a Larger Bench for deciding the issues in question. This prayer, to place the reference before the Larger Bench has been opposed by Shri N.K. Agarwal, learned senior counsel who had also reiterated his arguments, on the ground that there are no conflicts in the judgements delivered by the Tribunal, referred to by both the parties, that is Calcutta Bench and Principal Bench (supra), Hyderabad Bench in OA 502/1998 and OA 504/1998, decided on 7.1.2000 and Mumbai Bench in OA 862/1998, decided on 1.9.2001.

82

(A9)

3. In pursuance of the order dated 5.3.2002, we have heard Shri D.D. Chaufla, learned counsel for the applicants at length on the aforesaid judgements and Shri N.K. Aggarwal, learned senior counsel for the respondents, on the issue which has been raised in this case, that is whether the Assistant Training Officers (ATOs)/Surveyors/Senior Technical Assistants/Store Officers/Group Instructors/Millwright/Maintenance Mechanics, etc., that is, persons like the applicants are entitled to automatic promotions as Training Officers (TOs) or not. During the course of hearing, it has been submitted by the learned counsel for the parties that there is only one applicant, that is Applicant No.1 in the present application, who has since been promoted as Assistant Director of Training and applicant No. 2 Shri P.D. Sharma has since retired.

4. Learned counsel for the applicants has referred to the aforesaid judgements of the Tribunal in detail. He has contended that the order issued by the respondents dated 10.12.1987 upgrading 136 posts of ATOs to those of TOs w.e.f. 1.1.1986, in the office of respondents at Headquarter offices and the various field offices/institutes, etc. does not mean that the posts of ATOs have been abolished. He has also vehemently submitted that the respondents have repeatedly hidden certain facts from the notice of the Tribunal in the aforesaid applications. He has contended that the judgement of the Calcutta Bench of the Tribunal is contrary to the judgement

18

(50)

of the Principal Bench in the aforesaid cases. According to him, the feeder category for promotion to the posts of TO is ATO/Surveyor, etc. ~~and~~ the Rules have not been amended even after issuance of the order dated 10.12.1987 upgrading 136 posts of ATOs to TOs w.e.f. 1.1.1986. Learned counsel has placed emphasis on the stand taken by the respondents in the aforesaid O.As, namely, that the upgradation of the posts does not mean that the promotions of the incumbents of the posts of ATO would be automatic ~~and~~ ^{or} that the promotion had been granted from the posts of ATO, for which according to him, the promotions can be done only in accordance with the Rules. He has, therefore, contended that the other feeder categories should also be considered for promotion/upgradation similar to the ATOs which has not been done and that is his main grievance.

5. A summary of the relevant judgements has also been submitted by the learned counsel for the respondents which is placed on record and has been referred to during the hearing. In order to appreciate the issues in question and the directions of the Tribunal contained in the aforesaid judgements, it is necessary to see the recommendations of the Fourth Central Pay Commission, para 10.323, ~~or~~ which reads as follows:

"10.323. The assistant training officer class II is a non-gazetted post in the scale of Rs.650-960. While 75 per cent of the posts are filled by promotion from the cadre of vocational instructor in the pay scale of Rs.440-750, 25 per cent are directly recruited. The training officer is a gazetted class II post in the pay scale of

18/

Rs.650-1200 filled up by 100 per cent promotion from the cadre of assistant training officers. The ministry has brought to notice that the recruitment qualifications and experience as also the duties and responsibilities of assistant training officers and training officers are more or less the same and hence these two posts may be merged. We agree that post of assistant training officer and training officer may be merged and given the scale of Rs.2000-3500 and suitably redesignated".

(Emphasis added)

6. A perusal of the judgement of the Tribunal (Calcutta Bench) in O.A. 1422/1990, in which a reference to the judgement of the Principal Bench of the Tribunal has been made, shows that there is no conflict between these two judgements. The applicant in that case, Shri H.G. Chatterjee, who was working as ATO from 1966 had been promoted to the next higher post of TO vide office order dated 19.7.1985. The applicant had relied on the judgement of the Principal Bench in O.A 1167/89 with connected cases and claimed that he was entitled to get the benefit of promotion w.e.f. 1.1.1986. The Tribunal, after noticing the Presidential order dated 10.12.1987 held that all posts of ATOs have been abolished as soon as they were upgraded, to the posts of TOs in the scale of Rs.2000-3500. It was further held that "Obviously all these ATOs will get this benefit w.e.f. 1.1.1986 and the present applicant is one of them". Accordingly, the respondents were directed to give the benefit to the applicant.

7. The Hyderabad Bench of the Tribunal in O.A 502/1998 and O.A. 504/1998 had also noticed the judgement of the Principal Bench in O.A.1167/1989 with connected

82

cases. The stand taken by the respondents that recruitment rules have to be followed has also been noted but it has been observed that importance was not given to the particular submission and it was held by the Principal Bench of the Tribunal that the promotion to the upgraded post of ATOs should also be confined to the ATOs who were in service as on 1.1.1986 for promotion to TOs. Further, it was held by the Hyderabad Bench of the Tribunal that "A careful reading of the judgement (Principal Bench) cannot, in our opinion, lead to any other conclusion other than what is so stated above. That view is strengthened by the fact that the contention of Mr. J.R. Choudhry, who belongs to the feeder category other than ATO's category for promotion to the post of TO was rejected." Hence, in that view, we feel that the Principal Bench of the Tribunal had clearly come to the conclusion that the upgraded posts of TO should only be filled from those who held the posts of ATO as on 1.1.1986 as per the upgradation orders. In the judgement of the Hyderabad Bench, it has been further held that after perusal of the judgement of the Calcutta Bench of the Tribunal (supra), it clearly stated that the upgraded posts of TOs should only be filled by ATOs. There is no other direction in that O.A. and that is a clear cut direction given by the Calcutta Bench of the Tribunal. Finally, the Bombay Bench of the Tribunal has held as follows:

"...We find that Principal Bench struck down the expression that "the existing Assistant Training Officers will continue to draw the present pay against the upgraded post" and directed the

respondents to make a fresh order in accordance with the law in respect of the Assistant Training Officers in OA Nos. 1167/89 and 1901/88.

15. A reading of the judgement of the Principal Bench in the aforementioned OA, shows that the Principal Bench held that only the Assistant Training Officers who were in position prior to 1/1/86 were entitled to be upgraded as Training Officers from 1/1/86 as the post of Assistant Training Officers were abolished and merged in the post of Training Officers from 1/1/86. The feeder categories such as those of the applicants in the present OA were not to be upgraded automatically. Their promotions were to be regulated according to recruitment rules from 1/1/86 onwards. In our considered view there is no scope for interpretation otherwise than as this..... The position emerging after these judgements is that the Assistant Training Officers who were in position prior to 1/1/86 shall get promoted as Training Officers w.e.f. 1/1/86 on the abolition of the post of Assistant Training Officers and their merger in the additional post of Training Officers created for the purpose. Those who had already been promoted as Training Officers prior to 1/1/86 would continue to be promoted. The other feeder categories not merged in the post of Training Officers shall be eligible for promotion to the post of Training Officers as before in accordance with the recruitment rules w.e.f. 1/1/86. The respondents in pursuance of the [judgement of the Principal Bench and the Calcutta Bench therefore rightly followed these guidelines and held review DPCs and recast the seniority list. We do not find any conflict or contradiction in the judgement of the Principal Bench and Calcutta Bench and therefore if the respondents in pursuance of these two judgements have issued the revised seniority list of 18/12/97, the same cannot be faulted. Our view is further fortified by another judgement of the Hyderabad Bench of this Tribunal in OA 502/90 and 504/90 delivered on 7/1/2000. A copy of the same has been produced. In this judgement, the judgements of the Principal Bench and the Calcutta Bench have been discussed at length and it has been held that these judgements are not contrary to each other but they are in keeping with the spirit of sanction conveyed by the President dated 10/12/87, which is merger of post of Assistant Training Officers in the post of Training Officers".

(Emphasis added)

6. From the relevant portion of the judgement of the Tribunal quoted above, we find that the various Benches

(5A)

of the Tribunal, while passing the orders in the various Benches referred to above have not given any contradictory decisions. In fact, the Bombay Bench of the Tribunal had come to the conclusion that there is no conflict or contradiction in the judgements of the Principal Bench or Calcutta Bench of the Tribunal or the manner the respondents have implemented by issuing a revised seniority list dated 18.12.1997. When the matter was referred to a Larger Bench vide order dated 5.3.2002, a tentative view had been taken in the light of the Hon'ble Delhi High Court's order dated 14.11.2001 and the earlier order passed by the Tribunal dated 11.3.1999, that there were conflicting decisions. However, on further examination of the aforesaid judgements of the Tribunal, we are unable to agree with the contentions of Shri D.D. Chaufla, learned counsel that the decisions of the Tribunal in the different Benches, that is, Principal Bench, Calcutta Bench, Hyderabad Bench and Bombay Bench are in any way conflicting or contrary to each other. The contentions of the learned counsel for the applicants based on the stand taken by the respondents in the aforesaid cases will not assist the applicants, particularly after the decisions of the Tribunal in the various Benches have been implemented by the respondents themselves.

9. The recommendations of the 4th Pay Commission in Paragraph 10.323 have been accepted by the respondents to merge the two posts by upgradation of ATOs as TOS w.e.f. 1.1.1986. This has been done by the respondents' order dated 10.12.1987 which has been upheld by the aforesaid

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55

judgements of the Tribunal, subject to the observations of the Principal Bench to certain parts of that order which is not an issue in the present reference. The reliance placed by the applicants on the earlier stand taken by the respondents in earlier cases cannot be accepted in the light of the judgements of the Tribunal which have been implemented by the respondents themselves. In the circumstances, the contention of the learned counsel for the applicants that the other categories of persons in ~~the~~ the feeder grade in the recruitment rules for promotion to TOs should be treated on par with ATOs, cannot be accepted and is accordingly rejected. As such, the decisions of the Tribunal in the aforesaid O.As are fully applicable to the facts in the present case.

10. In the above facts and circumstances of the case, the applicant who did not hold the post of ATO at the relevant time when the order dated 10.12.1987 was issued, is not entitled to the benefits under that order of upgradation to the post of TO w.e.f.1.1.1988. As the main contentions of the applicant have been answered by the Larger Bench itself as above, there is no merit in this application. O.A. is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

S. Raju
(Shanker Raju)
Member (J)