

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SHRI R.K. AHOOJA, MEMBER (A)

O.A. NO. 1005/1996

NEW DELHI, THIS 4th DAY OF MARCH, 1997.

SHRI MADAN MOHAN GOEL
Accounts Officer
Department of Telecom
S/o Shri Nand Kishore Goel
R/o F-32, Nag Mandir Road
Shastri Nagar
DELHI

...APPLICANT

(By Advocate - Shri Arun Bhardwaj)

VERSUS

1. Union of India, through
Secretary
Ministry of Communications
Department of Telecom
20 Ashoka Road
NEW DELHI.

2. Department of Telecom
Member (Finance)
20 Ashoka Road
NEW DELHI

3. The Director General (SEA)
Department of Telecom
20 Ashoka Road
NEW DELHI

4. Ministry of Personnel, Public
Grievances & Pensions
through its Secretary
D/o Personnel & Training
North Block, NEW DELHI

..RESPONDENTS

(By Advocate - Shri M.M. Sudan)

ORDER

The applicant, an Accounts Officer (AO) in the Department of Telecom (DoT), qualified the ICWA Final Examination conducted in December 1995. The DoT had vide orders dated 5.12.1978 ('A-II') introduced a Cash Award of Rs.200/- on passing the Inter Exam of ICWA and two advance increments on passing the Final Exam. This was further enlarged vide orders dated 3.8.1989 ('A-III') and provided that on completion of Inter Exam, two advance increments would be granted and further four advance increments on passing

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the Final Exam. The applicant submits that encouraged by these incentives, he joined the ICWA in January 1989, qualified the Inter Exam. and was given two advance increments w.e.f. 4.5.1992 (A-IV). By end of December 1994, he had cleared 14 papers out of 16 and appeared in the Final Exam in December 1995 and passed the same. In the mean while, on 31.1.1995, the respondents passed an order (A-VI) whereby the incentive of six advance increments was sought to be replaced by a one-time lump sum incentive, under which the applicant on clearing the Final Exam. will get only a meagre amount of Rs.10,000/-. The applicant is aggrieved that in the expectation of six advance increments, he had spent nearly a sum of Rs.80,000/-. The impugned orders have put him to great loss. Therefore he seeks a direction to the respondents to give him six advance increments with all consequential reliefs and quash the order of January 1995.

2. The respondents in reply state that they have amended the incentive scheme on the lines of the DOP&T O.M. No.1/2/89-Estt.(Part I) dated 28.6.1993. The DOP&T had issued this order in the light of the recommendations of the IVth Pay Commission and the same was circulated to all the Departments of Government of India.

3. I have heard the counsel on both sides and gone through the pleadings on record also. The 1d. counsel for the applicant argued at length regarding the vested right of the applicant to obtain these advance increments as per the orders of the DoT of 1989. He argued that the applicant

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had undertaken the strenuous task of completing the ICWA Examination because he expected to gain financial benefit of six advance increments which would have led to a life-long financial advantage by way of additional pay and later pension. The ICWA allows seven years for the completion of the examination and the applicant could legitimately expect to obtain this benefit if he completed the exam by 1996. For the purpose of preparing for the examination, he had not only incurred considerable expenditure by way of purchase of books, stationery etc. but had also obtained tutorial assistance and had taken six months earned leave which in itself, by way of lost leave encashment, constituted a great financial sacrifice. Even if the rules were to be changed, then these could have only prospective effect and not applied to cases such as the applicant's whose studies for passing the Final Exam. of ICWA were already underway at the time the orders were issued. In this context, the 1d. counsel cited the case of UDI VS. TUSHAR RANJAN MOHANTY & ORS. 1994 (27) ATC 892 wherein the Supreme Court observed that the power under Article 309 to make laws with retrospective effect could not be used to nullify a right vested in a person under a statute or the Constitution. He also cited the case of UDI VS. ANGLO AFGHAN AGENCIES, AIR 1968 SC 718 to support his argument that where a person has acted upon a scheme of the Government, the benefits promised in that scheme could not be arbitrarily rejected.

4. Shri Sudan, appearing for the respondents, pointed out that as the applicant had passed the Inter examination of ICWA when 1989 orders were upgraded, he obtained two advance increments; and since he failed to pass the Final examination till the date of issue of 1995 orders, he could not complain as he had no vested right in obtaining the advance increments.

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5. I have carefully considered the rival contentions. It is to be noted that originally in 1978 the incentive offered was only Rs.200 for passing the Inter exam and grant of two advance increments on passing the Final examination. The applicant states that he enrolled for the ICWA in January 1989. At that time, the 1978 orders were still operative. Thus, as urged by Shri Sudan, the only expectation the applicant had at the relevant time of registering for ICWA was a lump sum payment of Rs.200 and later two increments on passing the Final exam. The amendment of this scheme came only in June 1989 and as a result of it, on passing the Inter Exam., the applicant got two advance increments. The position of the applicant would have been different if he had passed the Final Exam. also at some date prior to 31.1.1995 when the Government had amended the rules and introduced the lump sum payment of Rs.10,000/- in lieu of the advance increments with retrospective effect to cover also the point of time at which the applicant had passed the Final Exam. If that had happened, then obviously the rules giving retrospective effect would have been open to question on the basis of Tushar Ranjan Bharti case ('Supra'). However, there is no dispute that the applicant passed the Final Exam. only in December 1995, that is, after the rules were amended on 31.1.1995. There was thus no question of the retrospectivity of the orders affecting adversely the interests of the applicant. The applicant had not passed the Final Exam on 31.1.95 and therefore it could not be said that he had a vested right on that date to get the additional four advance increments as per the 1989 orders, grant of the advance increments being contingent upon passing the Final Examination. The applicant was not even a claimant on 31.1.95 and hence had no vested right. It may be that considering the length and difficult

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nature of the examination process he had to work for a long period and even had to take earned leave for six months. At the same time, it cannot be denied that while seven years is the outside limit for passing the Final exam., there is no bar for passing the examination early. It may be the misfortune of the applicant that he could not pass the exam before the January 1995 orders came into being. It is significant in this respect that the Government of India decision regarding replacement of the scheme of advance increments by a lump sum amount had been issued as far back as in June 1993. In fact this order of 1993 (Annexure III to the reply) clearly states that "from the current financial year, the present system of giving advance increments shall be replaced by grant of lump sum amount as incentive". Clearly, therefore, the concerned government servant had sufficient notice regarding the impending change in government policy. It cannot therefore be claimed on behalf of the applicant that he had no notice of the change in government policy.

6. In the light of the above discussion, I find no merit in the O.A. which is accordingly dismissed. No costs.

R.K. Ahooja -
(R.K. AHOOJA)
MEMBER (A)

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