

Central Administrative Tribunal
Principal Bench
New Delhi

22

O.A. No. 547/97

Decided on 5.1.99

Shri G. Srinivasan Applicant

(By Advocate: Mrs. V. Mohana)

Versus

Union of India Respondents

(By Advocate: Mrs. P.K. Gupta
Shri Harveer Singh)

CORAM

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

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not ? No.

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

Central Administrative Tribunal,
Principal Bench

O.A. No. 547 of 1997

New Delhi, dated this the 5th January, 1999. (23)

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

Shri G. Srinivasan,
213, Nirman Apartments,
Mayur Vihar Phase I Extn.
Delhi-110091.

.... Applicant

(By Advocate: Ms. V. Mohana)

Versus

1. Union of India through
the Secretary,
Ministry of Communications,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi.

2. Member (Services),
Telecom. Commission,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi-110001.

3. Member (Finance)
Telecom. Commission,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi-110001.

4. Secretary (P),
Dept. of Personnel & Training,
North Block,
New Delhi-110001.

.... Respondents

(By Advocate: Shri Harveer Singh
proxy counsel for Mrs. P.K.Gupta)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant impugns respondents' O.M. dated
8.1.92 and dated 23.12.93 as well as letter dated
31.8.95 withdrawing the Charge Allowance from
1.7.95 and pray to be allowed pay and other
benefits like Headquarters Spl. Pay in JAG scale

from 28.9.93 to 30.4.95 with additional retirement benefits such as leave encashment, retirement gratuity, pension etc.

2A

2. Applicant's case is that he joined service as T.S. Clerk in 1956 after passing the P&T Accounts Service Exam. Part I & II and was promoted as Junior Accountant in 1964. By O.M. dated 27.11.87 (Ann. I) he was promoted as Asst. Chief Accounts Officer on regular basis which is a Group A post in JTS scale of P&T Accounts & Finance Service, and he joined the Office of G.M., Maintenance, New Delhi on 1.1.88. Thereafter by O.M. dated 8.12.89 (Ann. II) he was posted in STS in an officiating capacity on a purely temporary measure and he joined as Dy. Director Postal Staff College on 1.1.90. His appointment in STS was regularised w.e.f. 22.5.93 by O.M. dated 30.6.93 (Ann. VII) and subsequently he was posted to officiate in JAG on temporary basis in Telecom Dte. by O.M. dated 28.9.93 and he joined the same day (Ann. VIII)..

3. Applicant contends that instead of fixing pay on promotion in accordance with FRs & SRs and instructions issued thereunder, the Telecom Commission by O.M. dated 8.1.92 (Annexure V) introduced a new concept of Charge Allowance to officers who were appointed to hold full charge of duties in Indian Telecom Service and P&T Accounts & Finance Service Group A. As per the O.M. the pay scale of the higher post was to be allowed only to

those officers who fulfilled the conditions in the Recruitment Rules and in all other cases only Charge Allowance was admissible, which would not have the characteristics of pay, with the exception that officiating arrangements made in the Directorate in JAG would not attract the aforesaid O.M. and would be governed by normal FRs & SRs. Applicant asserts that when his turn came for promotion in Telecom Directorate, the above exemption was withdrawn by O.M. dated 23.12.93 (Ann. X) retrospectively from 1.7.91, in contrast to others similarly placed hereto before, causing him recurring pay loss which also affected his increments, Headquarters Spl. Pay and retiral benefits.

4. Applicant states that the DP & T in their advice dated 18.3.94 (Ann. VI) viewed the order dated 8.1.92 as irregular and open to audit objection and the Jt. Secretary (E) also advised similarly, upon which by their order dated 31.8.95 (Ann. XIII) cancelled their O.M. dated 8.1.92, but applicant in Para 4(k) of the O.A. asserts that this cancellation was arbitrarily made prospective i.e. w.e.f. 1.7.95 thereby depriving all the officers including applicant of their eligibility and putting them at a disadvantage for no fault of them vis-a-vis those who were working/officiating after 1.7.95.

5. Applicant asserts that upon his successive representation not receiving any satisfactory response, he has been compelled to file this O.A. (26)

6. Respondents in their reply to the aforesaid para of the O.A. assert that whenever a cut off date is decided for implementing any decision, it is always the case that some officers would ^{gain} ~~lose~~ by the decision by acting in time, while others lose. They state that even if the withdrawal of the DOR order dated dated 31.8.95 was made effective from 1.7.91 applicants pay would have been restricted under FR 35.

7. Applicant in rejoinder reiterates his contention and points that respondents cannot arbitrarily fix the cut off date without any nexus to the irregularity sought to be removed. He states that even now he is prepared to get his pay of JAG fixed under FR 22 read with FR 35, as his claim is made only towards the post to which he was appointed on full time, though on ad hoc basis.

8. We have heard applicant's counsel Mrs. Mohana and respondents' proxy counsel Shri Harveer Singh. Upon our directions respondents have filed an additional affidavit on the manner in which pay and allowances of persons not eligible for promotion as per Recruitment Rules for posts in JAG are fixed consequent to their ad hoc/officiating

promotions as such, subsequent to the issue of letter dated 31.8.95 withdrawing the scheme of charge allowance w.e.f. 1.7.95. (27)

9. Applicant in his reply to this additional affidavit has emphasised that respondents have not denied the fact that the Charge Allowance was introduced ^{without} ~~with~~ the DP&T's concurrence who are the competent authority, and that they had held this order dated 8.1.92 introducing the Charge Allowance ^{to be} null and void ab initio, and also held that pay on promotion should be fixed as per existing FR 22 & FR 25 and that pay of the post cannot be denied even if the post is held on ad hoc basis as per U.o. dated 18.3.94 and D.o. dated 12.1.95, and respondents' averments supports applicant's claim for entitlement of the ^{pay of the} post held by him from 28.9.93 to 30.4.95, but for the order dated 8.1.92 which was withdrawn from an arbitrary date i.e. 1.7.95.

10. We have considered the matter carefully. We hold that DP&T who are the competent authority, have categorically held vide Note dated 18.3.94 (Ann. VI), that respondents' letter dated 8.1.92 introducing the Scheme of Charge Allowance was issued without their concurrence, and was irregular and open to audit objection, respondents' letter dated 31.8.95 (Ann. XIII) withdrawing the Scheme of Charge Allowance w.e.f. 1.7.95 cannot be

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allowed adversely to effect applicant's claim for entitlement of pay of the post held by him from 28.9.93 to 30.4.95 otherwise admissible to him in accordance with rules and instructions.

11. This O.A. therefore succeeds and is allowed. Consequent to the withdrawal of the Scheme of Charge Allowance, respondents are directed to recalculate and pay to applicant his salary and allowances otherwise admissible to him in JAG from 28.9.93 to 30.4.95 in accordance with rules and instructions less what he has already been paid as if that Scheme was not in existence during the aforementioned period. Applicant's retiral benefits including leave encashment, DCRG and pension should likewise be recalculated and should be ~~paid~~ to applicant within four months from the date of receipt of a copy of this order. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
Member (J)
/GK/

S.R. Adige
(S.R. ADIGE)
Vice Chairman (A)