

Central Administrative Tribunal
Principal Bench

O.A. No. 577 of 1997

New Delhi, dated this the 12th APRIL, 2001

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

1. Shri Prem Lal,
S/o Shri Sohan Lal,
R/o B-4/8 P&T Colony,
Posangipur, Janakpuri,
New Delhi-110058.
2. Shri Paramjit Singh,
S/o Shri Dalip Singh
3. Shri Bhagirath Singh
S/o Shri Bhikhari Singh
4. Shri J.B. Bansal,
S/o Shri Asha Ram
5. Shri K.P. Singh,
S/o Shri Chandī Ram
6. Shri Jai Chand
S/o Shri Puran Chand
7. Shri Ram Singh,
S/o Shri Munshi Ram
8. Shri N.K. Jain,
S/o Shri B.S. Jain
9. Shri Khushal Chand,
S/o Shri Chhutu Ram
10. Shri Sukh Raj,
S/o Shri Bhagwati Parshad
11. Shri K.B. Mehto
S/o Shri Shringar Mehto
12. Smt. Mathida Kirketta,
W/o Shri L. Kirketta
13. Shri R.C. Malhotra,
S/o Shri K.C. Malhotra
14. Shri Om Prakash Mahajan
S/o Shri Munshi Ram
15. Shri Shyam Sundar,
S/o Shri Jagidsh Parshad
16. Shri Ram Chander Singh
S/o Shri Nasha Singh
17. Shri Darshan Lal
S/o Shri Roda Ram

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18. Miss Melanie Beck,
D/o Shri I. Beck,
LPT 303, Sarojini Nagar,
New Delhi-23.

... Applicants

(By Advocate: Shri G.D. Bhandari)

Versus

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

2. The Assistant Director General (CW),
Ministry of Communications,
Dept. of Telecom,
Sanchar Bhawan,
New Delhi.

3. The Superintending Engineer,
Telecom Civil Circle,
Curzon Road Barracks,
New Delhi.

... Respondents

(None appeared)

ORDER

S.R. ADIGE. VC (A)

Applicants impugn respondents' order dated 14.1.97 (Annexure A-1) extending the benefit of TOA pattern to clerical staff of Telecom Civil Wing recruited prior to 1.10.96 but making promotions to TOA Grade III and IV effective from the date of assumption of charge. They pray that it should be made effective from the date of issue of the conversion policy from LDC/UDC pattern to TOA pattern notified vide order dated 9.9.92 (Annexure A). They also pray that respondents be directed not to recover and refix the pay and not to make any

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recoveries of the amounts paid to applicants consequent to the implementation of the aforesaid benefits.

2. By respondents' circular dated 9.9.92 (Annexure A) it was directed to convert the LDC/UDC cadres in Circle Offices/Metro Districts under Telecom. Dept. to the Telephone Office Assistant (TOA) pattern consequent to the progressive introduction of Electronic Exchanges. A perusal of this order makes it clear that it was made subject to the provision of Biennial Cadre Review (BCR) Scheme, and it was to take effect from the date of issue of the order.

3. By subsequent circular dated 16.3.94 (Annexure B) the TOA pattern was extended to clerical staff of Telecom Civil Wing recruited prior to 1.10.86 to which category applicants admittedly belong, and options were invited from those willing to switch over too TOA pattern. By this circular, pay fixation was inter alia made dependant on length of service, and total length of service in different grades was to be counted for the purpose of granting OTBP and promotion under BCR Scheme, as per rules applicable to TOA cadre.

4. Applicants submitted their options, which were accepted, upon which respondents issued O.M. dated 19.10.94 (Annexure D) placing applicants in

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respective grades/payscale as Sr. Section Supervisors under BCR Scheme w.e.f. the date of assumption of charge.

5. Thereupon applicants state that they submitted several representations alleging that they had been discriminated against, in as much as persons doing the same nature of job had been given the benefit w.e.f. 9.9.92 whereas applicants had been given the benefit w.e.f. 19/20.10.94.

6. Thereupon respondents issued order dated 21.7.95 (Annexure E), clarifying ⁱⁿ that with the revision of the effective date of implementation of the TOA pattern for clerical staff from 16.3.94 to 9.9.92, officials eligible for placement in TOA Grade III and IV could be given the benefit from 9.9.92, even though the DPC for promotion to these grades was held on later dates, provided the eligible officers had been recommended as suitable for promotion to Grade III and IV w.e.f. 9.9.92 by the prescribed DPCs, and the DPC's recommendations had been accepted by the appointing authority.

7. Thereupon, in supercession of the O.M. dated 19.10.94, respondents issued O.M. dated 22.8.95 (Annexure F) promoting applicants as Sr. Section Supervisors in TOA Grade III under BCR Scheme in the scale of Rs.1600-2660 on completion of their prescribed length of qualifying service w.e.f. 9.9.92, and dates close to that date. Later, when this clarification was found to be contrary to

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respondent's circular dated 11.3.91 (Annexure R-II), which had clarified that promotions under the BCR scheme would be from the date of assumption of charge, as the promotions were functional, respondents issued impugned circular dated 14.1.97, further clarifying that eligibility for placement in TOA Grade III and IV would not be from 9.9.92 but from the date of assumption of charge.

8. We have heard applicant's counsel Shri G.D. Bhandari. None appeared for respondents. We have perused the materials on record and considered the matter carefully.

9. There is merit in respondents' contention as revealed in their reply, that promotions to TOA Grade III and TOA Grade IV as per BCR Scheme contained in respondents' circular dated 18.10.90 (Annexure R-I) are not time bound in character, but are made after proper screening, by duly constituted Review Committee, who assess the suitability for advancements. The promotions are made to posts which have been upgraded, based upon functional justification, subject to ^{ach} making savings, and upon promotion the individuals have to assume charge of the upgraded posts. In this connection the duties and responsibilities of officials in TOA Grade III and TOA Grade IV are contained in respondent's letter dated 8.5.97 (Annexure R-VII), a perusal of which makes it clear that the two grades are clearly

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distinguishable. It is only the duties of TOA Grade I and Grade II which are interchangeable, but not the duties of TOA Grade III and Grade IV.

10. There is also merit in respondents' contention that applicants cannot compare themselves with the staff of Telecom Engineering side. In the Telecom Engineering side the orders were issued on 9.9.92, while in the Civil Wing the orders were issued on 16.3.94. As the Scheme was implemented in the Telecom Engineering wing and Civil Wing on different dates, and since promotions under BCR Scheme cannot be given with retrospective effect applicants cannot legally claim pay fixation at par with staff of Telecom Engineering Wing where the Scheme was implemented much earlier. Furthermore it is legally open to respondents to extend the benefits of Scheme to a set of Government employees from a certain date, and if in the light of the BCR Scheme, respondents have extended the benefit of the TOA pattern to applicants by making promotions to TOA grade III and Grade IV, effective from the date of assumption of charge, it cannot be said that respondents have acted illegally or arbitrarily so as to justify judicial interference.

11. However, as applicants were granted promotion to TOA Grade III and/or TOA Grade IV w.e.f. 9.9.92 and thereafter, vide respondents' order dated 22.8.95, because of respondents' own decision contained in their earlier circular dated 21.7.95, and not because of any acts of omission or commission

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on the part of applicants, it would be unfair and unjust for respondents to make any recoveries from applicants, pursuant to their subsequent circular dated 14.1.97. In this connection we note that by interim order dated 13.3.97 recoveries from applicants have been stayed.

12. Under the circumstances while the impugned order dated 14.1.97 warrants no interference, the interim orders passed by the Tribunal on 13.3.97 staying recoveries from applicants are made absolute. The O.A. is disposed of accordingly. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

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

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