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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 1165/1994

New Delhi, this 6th day of July, 1995

Hon'ble Shri J.P. Sharma, Member(J)

1. Shri Vijay Kumar Rustogi, s/o Shri Pyara Lal
2. " Amir Chand Malhotra, s/o Sewa Ram Malhotra
3. " Kharati Lal Miglani, s/o Parma Nand
4. " Ram Kanwar Sharma, s/o Shri Sher Singh

All employed as Telegraph Masters (LSG) in
the Central Telegraph Office, New Delhi .. Applicants

By Shri Sant Lal, Advocate

versus

Union of India, through

1. Secretary
Dept. of Telecommunications, New Delhi
2. The Chief General Manager Maintenance
Northern Telecommunications Region, New Delhi
3. The Chief Superintendent
Central Telegraph Office
Eastern Court, New Delhi

.. Respondents

Shri V.S.R.Krishna, Advocate

ORDER(oral)

The applicants have jointly filed this application for the grant of the benefits given to their counterparts, who filed OA 1934/88 decided on 22.8.89 and OA 637/91 decided on 17.1.92 and have been granted the benefit of option regarding grant of increment in the feeder post and thereafter promotion to the higher post and further fixation of pay, but the same has been denied to them. The representation made by them has been considered and rejected vide the communication dated 15.9.93 stating that the judgement delivered in other cases cannot give the benefit to them as those judgements are personal to them.

2. The facts are that the applicants No.1 & 2 joined as Telegraphist in the scale of Rs.110-240 with effect from 20.12.63 and applicants No.3 & 4 joined on the same post and same scale with effect from 18.6.94. Their pay scale was revised to Rs.260-480 with effect from 1.1.73 by the III Pay Commission. While giving them promotion they were also given the benefit of FR 22(C) (now FR 22(i)(a)). All the four applicants were also given promotion to the post of Assistant Telegraph Master (ATM in short), applicants No.1 & 2 from 30.6.81 and No.3 & 4 from 26.11.81 in the scale of Rs.380-50.

Though this promotion was described as ad hoc, but they were given the benefit of pay under FR 22(C) from the date after giving increment in the feeder scale. Their option was accepted in pursuance of the instructions contained in OM dated 26.9.81 of the Ministry of Home Affairs. The applicants were also given one-time-bound promotion under a special scheme with effect from 30.11.83 to the grade of LSG in the scale of Rs.425-640. Now the respondents all of a sudden have passed order reverting the applicants from the retrospective date to the post of Telegraphist by order dated 17.8.83. But subsequently this order was revised to give effect to the date of reversion with effect from 6.12.84 and their pay was revised and the benefit given to them earlier was withdrawn.

3. It appears that ~~that~~ subsequently by order dated 4.9.92 (Annexure A-3) in supersession of the earlier order dated 6.12.84 ~~xxxxxxxxxx~~ the promotion was given on ad hoc and temporary basis as LSG TMs (against converted posts of ATMs) with effect from 17.8.83 F/N to the extent of 85% of the sanctioned posts of ATMs as per instructions contained in

DOT's letter No.15-15/92-TE-2 dated 28.5.92. The names of the applicants at S1.No.87, 88, 96 & 97. It goes to show that the earlier position was revised. Subsequently, by order dated 28.5.94, the word 'ad hoc' mentioned in the letter was deleted. The promotion of the applicants therefore on notional basis as LSG TMs was with effect from 17.8.83.

4. I am of the view that the judgement dated 17.1.92 in OA 637/91 where the Bench has observed that the option exercised as per OM dated 26.9.81 was set aside with the direction to the respondents to refix and readjust the pay of the applicants who are also similarly placed as of the present applicants. The petitioners of that OA were employed as Telegraph Masters in the Central Telegraph Office. The decision in the case of OA 1943/88 dated 22.8.89 was also considered where the benefit of option exercised pursuant to OM dated 26.9.81 for promotion as ATM on ad hoc basis was granted. The OA was made effective from 1.5.81 giving the criteria for fixation of pay on promotion of laying down the principle that either the initial pay of the promotee may be fixed in the higher post on the basis of FR 22(C) without any further review on accrual of increment in the pay scale of lower post or (b) the pay on promotion may be fixed initially in the manner as provided under FR 22(a)(i) which may be fixed on the basis of the above on the date of accrual of next increment in the scale of pay of the lower post.

5. The judgement in OA 637/91 directed the respondents to revise the pay of the petitioners in accordance with the options exercised by them on promotion as ATMs and pay them

(3)

all consequential arrears of pay etc. The respondents contended that the direction contained in that OA is applicable to the applicants of that OA only.

6. The learned counsel for the respondents has further taken a stand that the application is barred by time and has referred to the case of Bhoop Singh Vs. UOI because the cause of action to the applicants has arisen in January, 1991, they have already been promoted in 1983 and further given notional promotion to the post of TM with effect from 17.8.83. As such the judgement in the case of other petitioners can not apply to the case of the applicants to extend the benefit. I have considered this aspect thoroughly and I find that the respondents have adopted oscillatory attitude as they first reverted the petitioners from retrospective date as Telegraphists, subsequently they made the reversion effective with effect from the date of issue of order dated 6.12.84 and again in supersession of the last order, they issued another order in September, 92 to promote all ATMs as TMs, though on notional basis, declaring them ad hoc, but again deleted the word 'ad hoc' from this order by a subsequent order passed on 20.5.94. As such, when the respondents are changing their colour as chameleon, they can not take the stand that the applicants are at fault in not approaching the Tribunal in time. This application is in time.

7. Considering the case of the applicants on merits, when the OM dated 26.9.81 of Dop&T gave a right to the promotee from feeder post for giving option to fix his pay by giving increment first in the feeder post, then in the promotional post or giving effect to the promotion after earning increment in the telegraphist grade, the respondents having

accepted the position earlier, can not deny by unilaterally revising the pay and withdrawing the benefit of option once allowed to the petitioners. The stand taken by the respondents is arbitrary, unjust and unfair.

(X)

8. The application is therefore allowed and the respondents are directed to give the benefit of option to the petitioners on their promotion from the post of Telegraphists to ATM/TM in respect of the applicants No.1 & 2 from 30.6.81 and No.3 & 4 with effect from 26.11.81. While giving this benefit, the respondents are allowed to adjust the pay already drawn by them when the order of reversion was passed on 6.12.84. If by revising of pay, the original pay drawn by the applicants is fixed in the grade of ATM i.e. Rs.380-560, the applicants shall get nothing. But if by revising the pay they are entitled to any revision of pay, they will be entitled to the arrears as the respondents are already considering giving one-time-bound promotion as LSG in the scale of Rs.425-640 and promotion to the post of TM on notional basis with effect from 17.8.83 by the order dated 4.9.92. This exercise must be completed by the respondents within a period of 3 months from the date of receipt of this order.

9. The application is thus disposed of with the above direction with no order as to costs.

Order Issued
(J.P. Sharma)
Member(J)
6.7.1995

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