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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A.No.243/2001 in O.A.No.2667/2000
R.A.No.247/2001 in O.A.No.871/2000
R.A.No.225/2001 in O.A.No.464/2000

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

New Delhi, this the 29th day of April, 2002

R.A.No.243/2001 in OA No.2667/2000:

J.C.Sur
(Retired Director
Department of Telecom)
R/o 6A, Multi-storey Building
Type-IV Flats
Minto Road
New Delhi - 110 002. ... Applicant
(By Advocate: Shri M.L.Chawla with Shri S.N.Anand)

Vs.

1. Union of India through
Secretary
Department of Telecommunications
Ministry of Communications
Sanchar Bhawan
20, Ashoka Road
New Delhi - 110 001.

2. Assistant Director General (STP)
Department of Telecommunications
Ministry of Communications
Sanchar Bhawan
20, Ashoka Road
New Delhi - 110 001. ... Respondents
(By Advocate: Shri R.N.Singh)

R.A.No.247/2001 in OA No.871/2000:

G.S.Sethi
(Retired Director
Department of Telecom)
B-3/8A, MIG Flats
Lawrence Road
New Delhi - 110 035. ... Applicant
(By Advocate: Shri M.L.Chawla with Shri S.N.Anand)

Vs.

1. Union of India through
Secretary
Department of Telecommunications
Ministry of Communications
Sanchar Bhawan
20, Ashoka Road
New Delhi - 110 001.

2. Assistant Director General (STP)
Department of Telecommunications
Ministry of Communications
Sanchar Bhawan
20, Ashoka Road
New Delhi - 110 001. ... Respondents
(By Advocate: Shri R.N.Singh)

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R.A.No.225/2001 in OA No.464/2000:

P.S.Dhillon
Director(PD)
Department of Telecom
Room No.1206
Sanchar Bhavan
New Delhi. ... Applicant

(By Advocate: Ms. Bharati Verma, proxy of Ms. Shashi Kiran)

Vs.

1. Union of India through
Secretary
Department of Telecom Services
Ministry of Communications
Sanchar Bhawan
New Delhi - 110 001.

2. Secretary
Department of Telecommunications
Ministry of Communications
Sanchar Bhawan
New Delhi - 110 001. ... Respondents

(By Advocate: Shri R.N.Singh)

O R D E R

By Shanker Raju, M(J):

These RAs have been filed by the applicants in a common order passed by this Court on 30.4.2001 in OA 2667/2000, OA 464/2000, O.A.No.871/2000 as well as OA 923/2000.

2. Review applicants have filed OAs against the withdrawal of earlier orders of pay fixation of the applicants with effect from 1.7.1996 and also denying them the benefit of continuous officiation in Senior Time Scale of ITS Group 'A' till their regularisation in Group 'A' Engineering Service and re-fixing it w.e.f. 24.9.1997.

3. After meticulously going into the rival contentions of the parties, the Court has come to conclusion that the applicants having empanelled for promotion to JTS of ITS Group 'A' on regular basis by

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the DPC held on 3.9.1984. Having regard to the Rule 27(b) of the Recruitment Rules, the TES Group 'B' Officers have been empanelled by the DPC and appointed in STS of ITS Group 'A' on hold charge basis w.e.f. 10.10.1984. Applicants and other TES Group 'B' Officers had already been officiating in STS in local arrangements, have been given the benefit of pay fixation w.e.f. 24.9.1984 on the date of approval of the DPC minutes. As a consequence, the local officiating promotion was terminated in terms of promotion order dated 7.10.1982 and the applicants stood automatically reverted to their substantive grade of TES Group 'B' and their pay was accordingly fixed w.e.f. 24.9.1984 and as such there had been a break in service. This entitles them for the pay scale w.e.f 12.8.1996 as they had not completed 13 years of service in Group 'A', which is to be treated as regular service as per the DoPT's OM. As the 13 years service was complete in respect to the applicants, w.e.f. 24.9.1984, they were eligible for grant of pay scale w.e.f. 24.10.1997 as such they were rightly accorded the benefit of pay scale from that date and the pay was re-fixed resulting in recovery.

4. The matter was reserved for orders after hearing both the rival parties on 28.3.2001. Subsequently at the time when the Judgment was pronounced on 30.4.2001, Shri S.N.Anand, learned counsel for applicant has brought to our notice a subsequent clarification which had come to his knowledge, issued by the DoPT and the it is contended that same was not brought to the notice of the Court

and the respondents have also not apprised the Court about it. The learned counsel requested to consider the same. We have considered that request and passed an order on 30.4.2001 by observing that the remedy with the applicant with regard to the discovery of new material and production thereof is to file Review Application against the order which has been pronounced. This gives rise to the present Review Applications.

5. Learned counsel for the applicants have placed reliance on a clarification issued by the DoPT's order dated 26.4.2001 wherein the eligibility of 13 years regular service has been clarified and reduced to 9 years of Group 'A' Engineering Service in case the applicants enters STS directly and contended that the aforesaid notification was even after due diligence could not be brought to the notice of the Court, and as such being discovered as a new material, the same is necessary for the adjudication of the RAs and changes the fate of the OAs. According to them, the applicants having entered Group 'A' service to STS directly on having completed 9 years on 1.1.1996, their fixation shown in the departmental orders dated 21.1.1998 is correct.

6. It is also stated that clarification sought by the department from DoPT as to computing 13 years of service in Group 'A' for pay fixation did not form part of the respondents' reply, and the concept of regular service has been imported from the clarification which has been arrived at the back of the applicant. It is also stated that the applicants

belong to promotees of Group 'A' and were subject to recovery after a long period which is inconsistent and is against the principles of natural justice and law laid down on the subject.

7. It is also stated that the Tribunal has erred the approval of President was taken before the applicants have been put on local officiating and regular promotion in Group 'A' as such the same should have been reckoned for continuity of service and entitle them for revision of pay scale.

8. It is also contended that the Court has erroneously observed that the applicants have been empanelled in JTS and contended that they have been promoted on officiating basis from TES Group 'B' and followed by regularisation of their service in STS Group 'A'. The contention that the applicants have been reverted on 1.5.1999 is an after-thought.

9. It is contended that the applicants have never been made JTS but remained in STS. As the designation was not changed the fact of reversion has not been established.

10. The learned counsel also attempted to re-argue the matter by referring to various rulings of the Apex Court.

11. On the other hand, respondents in their reply have contended that the applicants cannot be allowed to re-argue the matter as in appeal under the guise of filing the present review applications. It

is further contended that review is to be decided strictly in accordance with order 47 Rules (1) and (2) read with Section 22(3)(f) of the Administrative Tribunals Act, 1985. It is in this background stated that unless there exists an error apparent on the face of the record or discovery of new material which was though available but could not be produced by the applicants at the time of hearing of the OA finally even after due diligence, Review cannot be entertained. It is further stated that clarification sought to be relied upon by the applicants was issued on 26.4.2001 and was not in existence when the matter was reserved on 28.3.2001, only when the matter was pronounced, then the applicants have brought this into the notice of the Court as such this cannot be treated as material discovery existing on 26.3.2001. As such no review is warranted as per law.

12. It is further stated that applicants have entered in Group 'A' at JTS level which is a lowest rung of Group 'A' of ITS as well as his eligibility in Non-functional Selection Grade as clarified by the Ministry of Finance can be accounted by taking 13 years regular Group 'A' service. As the applicants have been appointed in STS on hold charge basis which was available to the promotee stream officers under Rule 27-B of the relevant Recruitment Rules, having completed the requisite eligibility of service their cases have been considered by the duly constituted DPC, for regular promotion to STS, applicants have been promoted to hold charge basis in STS had their basic seniority in JTS. The applicants have been promoted on officiating local arrangements and

promoted as STS Group 'A' on 10.10.1984 thereby terminating the local arrangement. It was made clear that if the person was given the local officiating arrangement, he or she will be reverted back automatically on joining of regular incumbents. As such the service rendered in local officiating arrangement cannot be computed towards the regular qualifying service for accord of pay scale to the applicant.

13. It is further contended that Ministry of Finance, which is a nodal ministry, has decided that only regular service in Group 'A' post shall be taken into account for computing 13 years of regular Group 'A' service. In case the applicant is given any benefit of counting of service, which is not regular and is rendered in STS on local arrangement basis towards the qualifying service of 13 years it shall create an anamoly viz-a-viz other senior officers.

14. We have carefully considered the rival contentions of the parties and perused the material on record. As held by the Apex Court in K.Ajit Babu & Ors. Vs. Union of India & Ors., JT 1997(7) SC 24, the applicants, by way of this review, have attempted to re-argue the matter as if in an appeal, which is contrary to Order 47 Rule (1) and (2) of CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985, we do not find any error apparent on the face of the record warranting our interference.

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15. As regards the plea that on 30.4.2001, the clarification issued on 26.4.2001 was brought to the notice of the Court. We find that in our order dictated on 30.4.2001 applicants have been accorded liberty to file review, which should be in accordance with the provisions on the subject. We hold that the clarification issued on 26.4.2001 was not in existence at the time when the matter was finally heard on 28.3.2001. The applicant could not produce the same even after due diligence. Any subsequent clarification/notification brought to the notice of the Court cannot be gone into in a review application.

16. In the result, we do not find any merit in the aforesaid RAs, the same are accordingly dismissed. However, it goes without saying that in the event the applicants still feel aggrieved, having regard to the clarification issued on 26.4.2001, it is open for them to assail the same in accordance with law.

17. Copy of this order be placed in RA No.247/2001 in OA No.871/2000 and RA No.225/2001 in OA No.464/2000.

(Shanker Raju)
Member(J)

(V.K.Majotra)
Member(A)

'rao/

Attested

29.4.2002

C.O.

C.V.