

Central Administrative Tribunal
Principal Bench

O.A.1369/2000

New Delhi this the 23 th day of October 2001

Hon'ble Shri S.R. Adige, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Dr. A. Vedavalli, Member(A).

J.P. Kaushik,
S/o late Shri Madan Lal,
Retd. Deputy Director of Accounts (Postal),
R/o C-2/37, Janakpuri,
New Delhi-110058. Applicant.

(By Advocate Shri Sant Lal)

Versus

Union of India, through
The Secretary to the Govt. of India,
Ministry of Telecommunications,
Department of Telecommunications,
Sanchar Bhawan, New Delhi-110001. Respondents.

(By Advocate Shri R.P. Aggarwal)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The Full Bench has been constituted for consideration
of the following two questions:

"(i) Whether the service rendered by an employee in the erstwhile P&T Department should be counted towards continuous service as in DOT for claiming the benefit of accord of free concessional telephone facility by DOT to their employees by letter dated 25.9.98: and

(ii) Whether the service rendered by the applicant in P&T Accounts and Finance Service Group 'A' after 1.4.85 is to be reckoned as service in DOT for the purpose of according him the benefit of concessional benefits as per letter dated 25.9.98".

2. The above reference has been made in the case of J.P. Kaushik Vs. Union of India through Secretary to the Govt. of India, DOT (OA 1369/2000), on 27.7.2001. The respondents by their Circular dated 25.9.1998 have granted certain concessions by way of telephone facility to retired

8/

employees of the Department of Telecommunications (DOT) as a matter of policy. The applicant is a retired Deputy Director of Accounts (Postal), Department of Posts (DOP) and he has assailed the aforesaid Circular issued by the respondents dated 25.9.1998. He has been denied the extension of the benefits of the concessional free telephone, on the ground that he had not put in a minimum of 20 years or more continuous service in DOT or retired from that Department. Hence, he has prayed in the O.A. that a direction may be given to the respondents to grant him the benefit of the concession of free telephone now being given to retired or retiring DOT employees by treating his entire service in the P&T Accounts and Finance Service Group 'A' (hereinafter referred to as 'the Service') which is common to both the DOT and DOP as service in DOT. The Tribunal by order dated 27.7.2001 had noted that there were conflicting decisions of the Tribunal, namely, the Calcutta Bench (Jiban Kanta Bhattacharya Vs. Union of India & Ors. - O.A.429/2000) decided on 28.9.2000, which had distinguished the decision of the Principal Bench in Amal Kanti Kanjilal Vs. Union of India (OA 1124/99). The Chandigarh Bench of the Tribunal by order dated 9.7.2001 in Birbal Narang Vs. Union of India & Ors. (OA 212/HR/2001) has followed the judgement of the Calcutta Bench in J.K. Bhattacharya's case (supra). Another order passed by the Tribunal (Chennai Bench) dated 4.8.2000 in Bharat Postal Pensioners Forum Vs. Union of India & Ors. (OA 937 of 1999), has also been referred to.

Y.P.

3. We have heard Shri Sant Lal, learned counsel for the applicant and Shri R.P. Aggarwal, learned counsel for the respondents and perused the records and aforesaid decisions of the Tribunal.

4. Shri Sant Lal, learned counsel has submitted a paper book for the Full Bench and has made reference to the documents therein, copy placed on record. One of the main contentions of Shri Sant Lal, learned counsel is that even after the bifurcation of the Ministry of Communications into two Departments, namely, the DOP and DOT, the Service is a common service for both the Departments. He has laid much emphasis on the fact that the cadre controlling authority for persons like the applicant who belong to the Service is the DOT. He has, therefore, contended that as the cadre controlling authority of the employees of the Service is the DOT which issues orders of promotion, posting, transfer as well as superannuation of the concerned officers, the applicant should be treated as belonging to DOT. Admittedly, the DOT has been created from 1.4.1985. In addition to the aforesaid Circular issued by the respondents dated 25.9.1998, they have issued a clarification order dated 30.12.1999. Under clause 8 of this clarificatory Circular, the respondents have stated, inter alia, that the concessional telephone facility made available by Circular dated 25.9.1998 is admissible only to the retired/retiring employees of the DOT and Department of Telecom Services. Learned counsel for the applicant has relied on the Memorandum dated 11.12.1987. In Paragraph 3 of this Memorandum, it has been provided that the applicant's posting as Deputy Director of Postal Accounts, Lucknow is revised and he is posted at Bhopal in Postal Accounts. It

is further stated that the applicant shall assume and relinquish charge in the Junior Time Scale in the D.E.T. Bhopal under G.M. Telecom, M.P. Circle, Bhopal on the same day, and then proceed to Postal Accounts, Bhopal where he is now posted in the Senior Time Scale. He has very vehemently contended that as an obedient government employee, the applicant proceeded on transfer to Postal Accounts at Bhopal, although the transfer Memo itself has been issued by the DOT as the competent authority. Similarly, he has also relied on the Memorandum dated 10.7.1989 which has been issued by the DOT on his superannuation on 31.7.1989 which also shows that he belonged to the Service.

5. The Calcutta Bench of the Tribunal in J.K. Bhattacharya's case (supra) has referred to the Principal Bench order dated 19.4.2000 in A.K. Kanjilal's case (supra). The applicant in the case before the Principal Bench is a pensioner under the Central Government. He had prayed for the extension of concessional telephone facility with reference to DOT communication dated 25.9.1998 to other Central government pensioners. The Tribunal did not find any merit in the O.A. and had dismissed the same. The Calcutta Bench of the Tribunal in J.K. Bhattacharya's case (supra) held that the decision is not applicable to the facts of the case before them as the applicant retired from DOT, to whom the concessional telephone facility had been provided by that Department. The Calcutta Bench came to the conclusion that on the facts of the case as the applicant has been a DOT employee and had put in more than 20 years of continuous service before his retirement and, therefore, he fulfils the condition laid down in the Circular of 25.9.1998 regarding grant of concessional telephone facility to the

18-

retired DOT employees, he should have been granted the facility. The applicant, Shri Bhattacharya in OA 429/2000, had retired from service on attaining the age of superannuation as Deputy Director of Accounts (Postal), West Bengal Postal Circle, Calcutta on 31.10.1990 after putting in more than 34 years of satisfactory service under the DOT. The Tribunal held that these facts were clear from the service particulars given in the O.A. Learned counsel for the applicant in that case had submitted that from the date of his initial appointment on 31.7.1958 till 30.11.1996, the applicant had rendered service in DOT or Telegraphs Wing of the erstwhile P&T Department. Even after his transfer to the post of Deputy Director Accounts (P), Calcutta, under the Postal Department, he was holding a lien in his parent department of DOT which was the cadre controlling authority. The above facts were disputed by the learned counsel for the respondents. The Tribunal after considering the facts and issues before it, came to the conclusion that any benefit or facility which either of the two Departments decide or decided to give to their respective employees cannot be limited or should not be limited to the date of creation of the new Departments, i.e. DOT and DOP but will extend to the common lineage before the date of creation of the new Departments when it was known as P&T Department. In this view of the matter, it was held that the applicant had completed the prescribed service condition of minimum 20 years or more service in the DOT and, therefore, was eligible for concessional telephone facility in terms of the Circular dated 25.9.1998. This case has been followed by the Chandigarh Bench of the Tribunal in B. Narang's case (supra), wherein it has been held that the facts of the case on hand are squarely covered by those of J.K.

- 28 -

Bhattacharya's case (supra). In B. Narang's case (supra), the applicant had retired from the P&T Department as a Group 'A' officer w.e.f. 31.10.1990. He had also contended that the cadre of officers in the Service is common to both the DOT and DOP. The Tribunal (Chandigarh Bench) has held as under:

"...The Senior Time Scale of P&T Accounts and Finance Service Group 'A' (to which service applicant belongs) is a common cadre of P&T Deptt. and the officers in the Senior Time Scale may be posted either in Deptt. of Posts and Deptt. of Telecom. Their cadre controlling authority is the Deptt. of Telecommunication, meaning thereby that it is the discretion of the cadre controlling authority to post or transfer an officer of the Service either in the Deptt. of Posts or the Deptt. of Telecommunications or to take any other action on them. Just because the applicant happened to be posted in the Deptt. of Posts and retired from there is not good enough to consider him an employee of the Postal Deptt. and deny him the facility, to which he is otherwise entitled to as per the policy".

6. Shri Sant Lal, learned counsel, relies on the aforesaid judgements of the Calcutta Bench and Chandigarh Bench of the Tribunal and has contended that the applicant in the present case should also be given the concessional telephone facility as per the Circular dated 25.9.1998. He has also submitted that the decision of the Calcutta Bench in J.K. Bhattacharya's case (supra) has been implemented by the respondents by the Office of the General Manager, Calcutta, which is not disputed.

7. In another order passed by the Tribunal (Chennai Bench) in Bharat Postal Pensioners Forum Vs. Union of India & Ors. (OA 937/99), decided on 4.8.2000, the applicants have assailed the Circular dated 25.9.1998 as well as the clarification letter dated 30.12.1999 and had prayed for extension of the same benefits of concessional telephone

18-

facility to them. The Tribunal after detailed examination of the facts and arguments advanced by the parties in the case, came to the conclusion that the applicants have no legal right to claim the grant of concessional telephone facility which is given to the retired/retiring employees of DOT and dismissed the application. The Tribunal had also observed that it was for the Government to decide as a matter of policy with regard to the concession and it cannot give any such directions as prayed for by the applicants. The Tribunal had also found that there was no discrimination and it was also held that in exercise of judicial review, it would not be right to direct the Central Government to extend the same facilities to the employees of other Departments also. Reference has also been made to the aforesaid judgement of the Principal Bench in A.K Kanjilal's case (supra).

8. Shri R.P. Aggarwal, learned counsel for the respondents, has submitted that the applicant is not covered by the judgement of the Calcutta Bench as he has not completed 20 years of service in DOT unlike the other applicant. He has also relied on the clarification given by the respondents in para 8 of the Circular dated 30.12.1999. Learned counsel has submitted that the employees of other Departments, other than DOT, are not entitled for concessional telephone facility. & He has submitted that when the applicant retired on 31.7.1989, the P&T Department had already been bifurcated into the DOP and DOT in 1985. He has contended that as far as the second condition laid down in the Circular is concerned, the applicant has not fulfilled that condition either, as he had his posting with the DOP at the time of his retirement. He has submitted

that merely because the cadre controlling authority is the DOT does not make any difference and is not sufficient. He has stressed on the fact that the concessional telephone facility is only in respect of retired/retiring employees of the DOT which is a policy decision and not related to any service conditions of the employees. He has, therefore, submitted that the application should be dismissed as the applicant does not fulfil either of the two conditions for availing the concessional telephone facility.

9. In order to decide the above issues, it will be necessary to see the Circular issued by the DOT dated 25.9.1998, on the subject of grant of concessional telephone facility to retired/retiring employees. The relevant portion of this letter which is a policy decision, reads as follows:

"In order to recognise the long service put in by the DOT employees and to give a sense of satisfaction and belongingness to the organisation, it has been decided to grant the following concessional telephone facilities to the retired DOT employees:

1. All the employees (both permanent and temporary) who put in minimum of 20 years or more continuous service in DOT or having their last posting in DOT for at least one year before retirement will be covered under the scheme.
2. The benefit will also be available to the spouse of the eligible employees who die in harness even before putting in 20 years of service or after the death of retired eligible employees..".

The clarification issued by the respondents dated 30.12.1999 reads as follows:

Whether the concessional telephone facilities are admissible to the retired/retiring employees of VSNL/HTL/ITI/P&T Audit, Department of Posts/WPC/TCIL and employees of Departments

The concessional telephone facilities are admissible only to the retired/retiring employees of Department of Telecommunications & Department of Telecom Services. Retired/retiring

B:

other than DoT?

employees of VSNL/HTL/ITI/
P&T Audit/Department of
Posts/WPC/TCIL & employees
of other Departments other
than DoT are not covered
under the purview of the
existing instructions.

(Emphasis added)

10. Admittedly, the DOT has been created only from 1.4.1985 and earlier it was combined with the DOP under the Ministry of Communications. Even after 1.4.1985, the Service is a common service in both the Departments and the cadre controlling authority is the DOT which issues orders of posting, transfer, promotion as well as orders of the superannuation of these employees. The contention of the learned counsel for the applicant that because the cadre controlling authority is the DOT, even though the applicant was admittedly working with the DOP in the Service, cannot mean that he is an employee of the DOT. The intention of the DOT in taking the policy decision to give certain concessions by way of telephone facility is only to be given to its employees. In the circumstances, ^{it is} cannot be given an extended meaning to cover employees of the DOP or other Departments of the Government of India. Even in the Memorandum dated 11.12.1987 relied upon by the applicant which has been issued by the DOT, it is clear that the applicant was asked to proceed to Postal Accounts, Bhopal, where he was posted in the Senior Time Scale. Similarly, the Memorandum dated 10.7.1989 regarding the superannuation of the applicant on 31.7.1989, from the office where he was working, i.e. the Postal Accounts, Delhi will also not assist him to claim that he is an employee of DOT or that he was last posted in DOT for at least one year before he retired from service. We are in respectful agreement with

the observations in the order of the Chennai Bench of the Tribunal dated 4.8.2000 in Bharat Postal Pensioners Forum's case (supra), that the employees of the DOT are a class by themselves and unless the applicant can say that he was an employee of that Department or had worked for at least one year before retirement in that Department, he cannot claim that he is covered under the Scheme/Circular for grant of concessional telephone facility in the Circular dated 25.9.1998. In our view, the clarification given by the respondents in their Circular No. 15 dated 30.12.1999 that the concession is only admissible to the retired/retiring employees of DOT and Department of Telecommunications Service and not to employees of other Departments makes this amply clear. During the hearing, learned counsel for the applicant himself had not submitted that the applicant had rendered 20 years of service or more in DOT but that he fulfilled the second condition, namely retiring from DOT. Having regard to the Circular dated 25.9.1998, the mere fact that the cadre controlling authority is the DOT is not sufficient in the case of persons, like the applicant in the present case who belonged to the Service, who can be posted in either of the two Departments, namely, DOP or DOT. What is required under the Circular is that he should have rendered service for at least one year in the DOT at the time of his superannuation, to be able to claim the concession of telephone facility; otherwise he is in the same position as other Central Government employees working in other Departments, whose claims have been negatived in the order dated 4.8.2000 of the Chennai Bench of the Tribunal (supra). In view of what has been stated above, the applicant in O.A.1369/2000 does not fulfil either of the

two conditions laid down in the Circular issued by the respondents under which he is claiming the concessional telephone facility.

11. Taking into account the fact that the two Departments, namely, the DOP and DOT came into effect only from 1.4.1985 when they were bifurcated by the Ministry of Communications and considering the terms and conditions laid down in para 2 of the Circular dated 25.9.1998, it would include the employees who had put in 20 years or more continuous service in the erstwhile Posts and Telegraph Department even where the cadre controlling authority continues to be the DOT, like in the P&T Accounts and Finance Service, Group 'A', which is a common service for both the Departments. Those employees shall be eligible for the grant of concessional telephone facility as per Circular dated 25.9.1998.

12. In the result, in the facts and circumstances of the case, our answers to question No.(i) is in the affirmative, second question is in the negative.

A. Vedavalli *Lakshmi Swaminathan* *S.R. Adige*
(Dr. A. Vedavalli) (Smt. Lakshmi Swaminathan) (S.R. Adige)
M(J) VC(J) VC(A)

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