

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1435/2000

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

(15)

New Delhi, this the 25th day of May, 2001

Shri Badri Ram
s/o Shri Mithu Ram
Accounts Officer (Ad-hoc)
under the General Manager (West-I)
Mahanagar Telephone Nigam Ltd.
Mayapuri
New Delhi. ... Applicant
(By Advocate: Ms. Meenu Mainee)

vs.

1. Union of India through
The Secretary to the
Govt. of India
Ministry of Telecommunication
Department of Telecommunication
Sanchar Bhawan
New Delhi.
2. The Deputy Director General (SEA)
Department of Telecommunication
Sanchar Bhawan
New Delhi.
3. The Deputy General Manager (Admn.)
Office of Chief General Manager
Telephones
Mahanagar Telephone Nigam Ltd.
Khurshid Lal Bhawan
New Delhi. ... Respondents
(By Advocate: Shri V.K.Rao)

O R D E R

By Mr. Shanker Raju, Member (J):

In this OA the applicant has assailed the orders dated 16.3.2000 and 5.5.2000 whereby he has been denied actual monetary benefits in pursuance of treatment of his promotion as Junior Accounts Officer (hereinafter called as 'JAO') w.e.f. 20.9.1994 to 7.3.1994 and also on regular basis as Accounts Officer in Indian P&T and Telecommunication in the pay scale of Rs.7500-250-12000 w.e.f. 10.4.2000.

2. The applicant while working as Office Assistant qualified in IInd departmental examination on 15.3.1993 which for the post of JAO. The incumbent who had passed the test had been deputed to 12 weeks training. The applicant in the meanwhile on account of a pending investigation in a criminal case was placed under suspension on 14.10.1992. The staff who had completed 12 weeks training as JAO had been promoted vide letter dated 2.9.1993 which interalia included R.C.Budgujar. The suspension order was revoked and thereafter the applicant completed the training and promoted as JAO w.e.f. 7.3.1994. The suspension period of the applicant could not be decided and as the eligibility condition for next promotion as Assistant Accounts Officer was three years service as JAO, the Juniors of the applicant had been promoted on completion of three years service as JAO. The applicant was also promoted as Assistant Accounts Officer w.e.f. 25.3.1997. The applicant along with two others filed OA 1625/98 and vide order dated 17.12.1999 the respondents were directed to pass an appropriate orders regulating the period of suspension and also examine the claim of the applicant for promotion as JAOs from the date of their juniors so promoted. The respondents on 16.3.2000 vide impugned order in compliance of the order of the Tribunal supra, promoted the applicant to the grade of JAO w.e.f. 20.9.1993 from the date of his junior Shri R.C.Budgujar has assumed the charge as JAO and the seniority of the applicant was properly assigned at Sl. No.617. The pay of the applicant was notionally

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fixed w.e.f. 20.9.1993 as JAO and the actual benefits had been given to him from the date of assumption of the charge, i.e., 7.3.1994.

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3. Vide order dated 5.5.2000, the respondents had promoted the Assistant Accounts Officers to the grade of Accounts Officer on regular basis, the name of the applicant has been conspicuously absent in the list but his junior Shri R.C.Budgujar had been shown at Sl. No.104. Subsequently the respondents vide order dated 17.7.2000 treated the period of suspension of the applicant as spent on duty for all purposes and accord full pay and allowances to the applicant. In this background, the applicant placing reliance on Union of India & Ors. Vs. K.V.Janakiraman, 1991(4) SCC 109 contended that Hon'ble Apex Court has held that principle of normal rule of no work no pay is not applicable to cases where the employee is willing to work and has been kept away from the working by the authorities and nothing fault on him. He also placing reliance of the Judgement of a co-ordinate bench in Smt. Poonam Mulwani Vs. The Secretary, Ministry of Agricultural and Others, 2001(2) SLJ ((CAT)) 1 contended that similar persons cannot be treated differently and if one available for work but not allowed to work is eligible for full pay and allowances. It is in this conspectus, contended that the action of the respondents by denying the actual benefits of pay and allowances w.e.f. 20.9.1993 to 7.3.1994 in the grade of JAO is not legally sustainable as the applicant was willing to work and had also passed the examination and could not be deputed to training but for the illegal action of the

respondents by placing him under suspension. As the suspension period had already been treated as period spent on duty for all purposes, and also for pay and allowances the said period should have also been treated as spent on duty by the applicant as JAO he should not have been deprived of the monetary benefits for none of his fault he has been deprived of the actual promotion w.e.f. 20.9.1993 when his junior Shri R.C.Budgujar was accorded promotion. It is also contended that normal rule of no work no pay would not be available in her case.

4. As regards the regular promotion to the grade of Accounts Officer, it is contended that the Junior of the applicant Shri R.C.Budgujar, above whom the applicant was placed in the seniority list by the respondents themselves, has been promoted on regular basis w.e.f. 10.4.2000 but the applicant has been meted out a differential treatment without any justified reasons, is in violation of Articles 14 and 16 of the Constitution of India.

5. The respondents, at the outset, have stated that the necessary action is being taken to promote the applicant from the date of his juniors as Accounts Officer by following the DPC procedure which would take a little more time in completion of the formalities. As regards the pay and allowances it is contended that the applicant had already been assigned seniority and accorded notional promotion and is not entitled to arrears of pay and allowances because he could not pass the training along with his juniors and batch mates and as such as he has not actually worked

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on the promotional post, he is not entitled for the same. The learned counsel for the respondents placing reliance on Paluru Ramakrishnaiah and Anr. Vs. Union of India and Ors., AIR 1990 SC 166 contended that except for refixation of pay on notional seniority, arrears of salary could not be claimed by an employee on retrospective promotion at par with his juniors since he has not discharged his duties on the higher post.

6. The applicant has reiterated his pleas taken in his OA by filing rejoinder. We have therefore considered the rival contentions of the parties and perused the record. As regards the contention of the applicant that he has been deprived of the actual benefits of pay and allowances by the respondents, w.e.f. 20.9.1993 to 7.3.1994 in the grade of JAO, we find force in the contentions of the applicant as laid down by Hon'ble Apex Court in K.V.Janakiraman's case supra and also reiterated in Poonam Mulwani's case supra. We also go along with ratios and find that the action of the respondents by denying the actual benefits of pay and allowances of the applicants was not justified. The applicant who had qualified for IInd departmental examination and was to be deputed for training but has been prevented from joining the same by the action of the respondents by placing him under suspension w.e.f 14.2.1992. The period of the suspension after being revoked has been treated as period spent on duty for all purposes including full pay and allowances to the applicant by the respondents vide their order dated 17.7.2000. In fact, the applicant, but for his suspension, was

willing to undergo the training and in that event he could have been promoted along with their his juniors to JAO w.e.f. 20.9.1993. But has been prevented from working as JAO during this period due to the illegal action of the respondents by putting him under suspension. We find that the applicant was willing to work but has been kept away for no fault of him. By treating the period of suspension as spent on duty any stigma attached to the same has been obliterated. The ratio of Palluru's case supra, as referred to by the respondents would have no application in the present case. The present case also would not have any application of the normal rule of no work no pay. As such the action of the respondents is illegal whereby the period w.e.f. 20.9.1993 to 7.3.1994 has been treated as notional promotion without according actual benefits of pay and allowances to the applicant.

7. As regards the promotion of the applicant as Accounts Officer on regular basis, we find that the applicant had been working as Accounts Officer on ad hoc basis but the juniors of the applicant, namely, Shri R.C.Budgujar had been accorded promotion as Accounts Officer on regular basis w.e.f. 10.4.2000. In view of this, we find that the applicant has been arbitrarily discriminated in the matter of his promotion in violation of Articles 14 and 16 of the Constitution of India. Although we take note of the statement of the respondents that the case of the applicant is under consideration for being promoted as on regular basis as Accounts Officer, and this action has been delayed due to the completion of formalities by the DPC.

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8. In the result and having regard to the discussion made above, we allow this OA and set-aside the impugned action of the respondents whereby the period w.e.f. 20.9.1993 to 7.3.1994 has been treated on notional basis depriving the actual benefits of pay and allowances to the applicant and direct the respondents to pay to the applicant the actual difference in pay and allowances w.e.f. 20.9.1993 to 7.3.1994 in the cadre of JAO. The respondents are further directed to complete the formalities of DPO and to consider the case of the applicant for promotion, as Accounts Officer on regular basis w.e.f. 10.4.2000, the date when his junior Shri R.C.Budgujar was promoted as such. In the event, the applicant is promoted he shall also be entitled for all the consequential benefits. The above stated directions shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/

V.K. Majotra

(V.K. MAJOTRA)
MEMBER(A)