

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

New Delhi: this the 21st day of December, 2001.

OA No 2448/2000 & MA 2903/2000

Hon'ble Shri Govindan S.Tampi, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

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1. Tarun Sharma
S/o Shri S.P. Sharma
Q.No.2/65, Geeta Colony,
Delhi.
2. Shri Sukbir Chand
S/o Shri Jai Prakash
House No.368,
Vill. & Post Barwala,
Delhi-39
3. Smt. Gayatri Devi,
W/o Shri R.P. Sharma,
R/o Flat No.91
Parasnath Apartments,
Vikas Puri, New Delhi-18
4. Manohar Lal
S/o Shri Sant Ram
R/o B7/60 Sector 17,
Rohini Delhi
5. Shri K.C. Dewesher
S/o Kishori Lal
Qr.No.538, Sector-6
R.K. Puram, New Delhi
6. Shri Dharambir Singh Dobas,
S/o Shri Chander Singh,
R/o 290, Vill. & P.O. Barwala,
Delhi.
7. Shri Manjit Singh,
S/o Shri Sahib Singh,
15/68, Rajinder Nagar,
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8. Kishore Vashist
S/o Shri Sita Ram Vashist,
R/o CE-128 A Shalimar Bagh(E),
Delhi.
9. Rajbir Singh,
S/o Shri Lekh Ram
R/o Vill. & Post Kundli,
Sonapat, Haryana.
10. Shri Om Parkash Basatta,
S/o Shri Ram Singh
R/o C-85/5, Bhajan Pura, New Delhi.
11. Shri Yadeshwar,
S/o Shri Deep Chand
Flat No.AM-3,
Dudeshwar Appartment,
Plot No.38, Shalimar Garden Ext.I
Sahibabad, UP

12. Shri Yogesh Bajaj,
S/o Shri O.P. Bajaj,
R/o C-I/115B, Lawrence Road,
New Delhi.
13. Shri Raj Singh,
S/o Shri Banwari Lal,
R/o Vill. & Post Daboda Kalan,
Distt. Jajjar.
14. Shri Balbir Singh Kundu,
S/o Shri Ratan Singh,
R/o 48 Rajindera Park,
Nangloi, New Delhi.

(By Advocate: Shri M.M.Sudan)

...Applicants

VERSUS

Union of India : Through

1. Secretary,
Department of telecommunication-
Cum-Director General(Telecom)
Sanchar Bhawan, New Delhi.
2. The Chief General Manager,
Northern Telecom Region,
Kidwai Bhawan,
New Delhi.
3. The Chief General Manager,
Mahanagar Telephone Nigam Ltd.
Kurshid Lal Bhawan,
New Delhi.

...Respondents

(By Adv. Shri Dinesh Agnani with Ms. Leena Tuteja)

O R D E R (ORAL)

By Hon'ble Shri Govindan S.Tampi, Member(A)

Fourteen applicants have filed this OA challenging the order No.22-26/92-TE-II dated 12.01.2000, issued by the respondents, for implementing the Tribunal's order dated 20.05.1999 in OA No. 2692/92.

2. MA No. 2903/2000 for joining together is allowed.

3. Heard S/Shri M.M. Sudan, for the applicants and Shri Dinesh Agnani with Ms. Leena Tuteja for the respondents

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4. All the applicants are UDCs, who were promoted so on passing the Competitive Departmental Grade Examination. By the order dated 09.09.1992, respondents introduced a scheme by conversion of LDC/UDC pattern into Telecom Operating Asstt. pattern (TOA), by merging the ministerial hands and the Telephone Operators being rendered surplus, on account of progressive automation in the Deptt. The present applicants challenged the scheme in OA No. 2692/1992, which was disposed of on 20.05.1999, with directions for examination of the anomalies and finding an appropriate solution in accordance with equity, justice as well as articles 14 and 16 of the Constitution. Applicants also filed a representation dated 26.07.1999 following which the impugned order was issued on 12.01.2000. Hence, this OA.

5. Grounds raised in this OA are summarised as below :-

i) the impugned order is illegal, arbitrary, malafide and against the directions of the Tribunal in OA 2692/92,

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ii) the issue regarding the juniors getting higher emoluments in terms of OTBP/BCR was still before the Hon'ble Supreme Court in SLP No. 6108/1995 filed by Leelamna Jacob and SLP No. 970/1996 filed by Ruckmani,

iii) respondents have declined to review the scheme,

iv) respondents have failed to appreciate that the conversion scheme was under challenge in OA 2692/1992 and the same was to be adjudged;

v) the Scheme was discriminatory in nature and violative of the principles of equality and fixation adopted was incorrect

vi) future benefits and application of OTBP/BCR was not clearly spelt out.

vii) any litigation relating to OTBP/BCR was not relatable to the conversion scheme

viii) no copies of SLPs referred to by the respondents have been supplied and

ix) Dy. General Manager, MTNL, has himself in his letter dated 02.08.1999, recommended for re-examination of the issue.

6. Accordingly following reliefs are claimed by the applicants :-

to quash and set aside the order dated 12.1.2000 (Annexure A-I) being illegal, null and void having no effect.

To direct the respondents to produce and supply to the applicant the complete copy of the paper book in :-

a) SLP No.6108/95 against the judgement dated 3.8.93 of CAT, Bangalore in OA No.403/92 UOI Vs Smt.Leelama Jacobo & Ors.

b) SLP No.970/96 against the judgement dated 23.12.94 of CAT, Madras in OA No.184/93 UOI Vs Poongothai Ruckmani & Ors.

To declare that the above said SLPs are not applicable to the facts and circumstances and the dispute raised by applicant in OA No.2692/92 of the case of applicant.

To restore and finally dispose of the OA No.2692/92 on merit and grant the relief's to the applicant as claimed in the said OA.

To identify officials guilty of suppression and concealment of true facts and deliberately acting in violation of the orders of this Hon'ble Tribunal and punish them under the contempt of the court.

To grant any other relief's which this Hon'ble Tribunal deems fit and proper in facts and circumstances of the case.

7. The above pleas have been forcefully reiterated by Shri M.M. Sudan, learned counsel for the applicants.

8. Respondents oppose the OA, on the preliminary ground that the Tribunal has no jurisdiction to deal with this OA as the applicants have opted to become employees of MTNL which has not been brought under the Tribunal's jurisdiction by necessary notification in terms of Section 14 of the Administrative Tribunal's Act, 1985. Conversion of the clerical staff like LDCs/UDCs into TOA pattern, directed by the letter dated 9-9-1992, was a policy matter, adopted on the demand by the staff unions and therefore the Tribunal would not like interfere in it.

Effecting changes in the cadres, by merging, bifurcating and introducing new cadres are in the exclusive domain of the Government, as held repeatedly by the Courts and Tribunals. The conversion scheme having been implemented the same cannot be frustrated by a few disgruntled employees, who have ceased to be the employees of the Government. They also are not concerned with the SLP, between the Union & P.G.P. Ruckmani & ors, who are employees of the Union. It is also pertinent that 60% of the employees have accepted the scheme. Respondents have already fully complied with the Tribunal's direction dated 20.05.1999 by the issue of their order dated 12.01.2000 and those who are aggrieved by it can challenge it. The said order has clearly indicated as to how the scheme could not be reviewed and also that such a review would be undertaken only after the decision by the Hon'ble Supreme Court, if need be. Nothing further remained to be done in that regard. As the scheme announced by letter dated 09.09.1992 has clarified the conversion of clerical staff arose on account of the demand by the staff and also as a number of telephone operators were to be rendered surplus due to modernisation. Thus both the demand and administrative exigency brought about the change. This change was of All India applications. When the earlier OA was filed the applicants ~~were~~¹ employees of the Union but a few who have challenged the order dt.12.01.2000 have ceased to be so and, therefore, they cannot seek the jurisdiction of the Tribunal. Therefore, what is being attempted is the revival of the issue already settled and disposed of Applicants representation dt.26.07.1999, and cannot be entertained as they have ceased to be

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employees of DOT; still DOT has passed necessary orders which has settled the issue. The present OA is therefore, misconceived. The impugned order dt.12.01.2000 was correct and legal and issued in terms of the earlier order of the Tribunal. The applicants are attempting to revive an issue already settled by Tribunal, after they have gone out of Tribunal's jurisdiction and the same was impermissible. (16)

9. Shri Dinesh Agnani, learned counsel for the respondents stated that the OA was not at all maintainable on the ground of jurisdiction. The applicants having become employees of MTNL cannot agitate the matter before the Tribunal. He also indicated that they cannot seek to rely upon the communication dt.02.08.1999 as it was an internal correspondence and not addressed to the applicants at all. OA, he reiterated merits dismissal.

10. We have carefully considered the matter. While the applicants aver that the respondents have not acted in time with the directions of the Tribunal dated 20.05.1999, while disposing of the OA No. 2692/92, as their order dated 12.01.2000 did not meet with their requirement, the respondents reply that the matter has gone out of the jurisdiction of the Tribunal in the first instance and they had effectively complied with the directions of the Tribunal and therefore the impugned order was unassailable.

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11. On examination of the issues brought on record, we are convinced that the objection on the aspect of jurisdiction raised by the respondents have no legs to stand on. This OA has been instituted on the ground that the directions issued by the Tribunal on 20.05.1999, while deciding the OA 2642/92, against the conversion scheme, when the applicants were still employees of DOT. The impugned order 12.01.2000 is also passed by DOT themselves obviously in pursuance of the Tribunal's order. It is the vires of the DOT's order which is under challenge. This Tribunal therefore has the jurisdiction to deal with and *be responded* averment to the contrary deserves to be repelled.

12. On the merits, we find that what the applicants desire is the proper implementation of the Tribunal's order dated 20.05.1999, while disposing of OA No.2692/1992, filed by 3 applicants, including the present applicants. It would be necessary to refer to the said order, which is quoted in full as below :

"Heard both sides.

2. Applicant apprehend that in the event they opt for the impugned 9.9.92 Scheme (Annexure-A) those who are UDCs but with less than 16 years of service would be fitted in the pay scale of Rs.975-1660/-, which is less than the scale they are presently working viz. Rs.1200-2040, and even if they are given personal pay protection, the fact that they are adjusted in a lower pay scale would mean domination in emoluments and status. They also apprehend that situations may arise when consequent to their acceptance of the 9.9.92 Scheme, their erstwhile juniors may draw more emoluments than then merely because such juniors having completed 16 years of service have been adjusted in the higher pay scale of Rs.1400-2300.

3. While anomalies of the kind mentioned above, cannot be ruled out, they by themselves may not warrant quashing of the impugned 9.9.92 Scheme (Annexure-A) and its related circulars at Annexure B to E. Instead, it would be fit and proper for respondents to examine how best such anomalies could be removed, consistent with equity, justice and the provisions of Articles 14 and 16 of the Constitution. One suggestion which respondents' counsel Shri Sikri himself made during hearing was that the question of retaining the promotional posts for those who opted out of the Scheme could be examined by respondents. On the other hand applicants' counsel Shri Sudan invited our attention to Department of Post's Circular dated 8.2.96 containing instructions modifying the TBOP/BCR Scheme and stated that its contents provided a method for overcoming the anomalies in the implementation of the 9.9.92 Scheme. 18

4. On an earlier date one of respondents' counsel Shri V.K.Rao had invited our attention to the Hon'ble Supreme Court's order dated 25.3.96 in SLP No.CC 970/96 UOI & Ors. Vs. P.G.P.Ruckmani & Ors.(copy on record) and had urged that the aforesaid order directing maintenance of status quo changed the entire complexion of the case. Applicants' counsel Shri Sudan had sought time to studying the implication of that order and on 9.12.98 stated that the aforesaid SLP had no bearing on the present OA, although Shri V.K. Rao asserted to the contrary.

5. However, when the matter came up for hearing on 14.5.99, neither side referred to the aforesaid order of the Hon'ble Supreme Court dated 25.3.96.

6. Under the circumstances, in the event that the aforesaid order dated 25.3.96 of the Hon'ble Supreme Court in Rukmani's case (Supra) for maintenance of the status quo is no longer operative and/or has no relevance to the present OA, which should be confirmed by respondents we dispose of this OA with a direction to respondents to examine the anomalies of the kind noticed in para 2 above, and find an appropriate solution to the same, in accordance with equity, justice and the provisions of Articles 14 and 16 of the Constitution, as expeditiously as possible and preferably within 6 months from the date of receipt of a copy of this order. Thereafter, if any amongst the applicants has a specific grievance, it will be open to him to agitate the same in accordance with law, if so advised.

7. The OA is disposed of in terms of para 6 above. No costs.

13. It emerges from the above that the Tribunal had, without at all ^{assailing} ~~challenging~~ the scheme for conversion, directed the respondents to examine the anomalies ^{in its} noticed ^{in its} implementation of the scheme and arrive at appropriate solutions in tune with equity, justice and equality as propounded by articles 14 & 16 of the Constitution. Validity of the scheme has not been frowned upon by the Tribunal, but they have only invited the attention of the respondents to the inherent anomalies in the scheme and advised them to take steps to rectify them. The impugned order dated 12.01.2000, would have to be seen in that scenario. The order reads as below :-

In compliance of the Orders dated 20.5.99 passed by the Principal Bench of the Central Administrative Tribunal at New Delhi OA No.2692/92 filed by Shri N.C. Joshi, UDC, MTNL, New Delhi & Ors, the demand of the said applicants have been examined and the position is as under :

i) The Department of Telecom introduced the Scheme of OTBP and BCR in 1983 and 1990 respectively for Group 'C' and 'D' cadres specific to the Department. The scheme was not applicable to the common cadres like Drivers, Stenographers, LDC/UDC etc. As per the Scheme, the officials will be placed in the next higher scale of OTBP and BCR after completion of 16 and 26 years of service irrespective of his seniority in the cadre.

ii) On the persistent demand from the Staff Unions, it was decided to extend the benefit of OTBP and BCR to the cadre of LDC and UDC by allowing them to opt for the cadre of TOA. Accordingly, Order No.27-4/87-TE.II dated 9.9.92 was issued outlining the details of scheme. As per the scheme, the LDC/UDC who opted for the cadre of TOA will be placed in the OTBP and BCR scale of TOA after completion of 16 years and 26 years of service respectively including their total service in the cadre of LDC/UDC and TOA.

iii) The applicants are although senior in their parent grade of LDC/UDC through passing departmental examination, but have completed less years of service, than some officials junior to them in their parent cadre. This

has resulted in the higher pay scale (OTBP or BCR) for the juniors because of their completing specified (16 or 26 years of) service as compared to their seniors in the parent cadre who have not completed the specified period (16 or 26 years) of service.

iv) The issue that the junior officials are placed in the higher scale of OTBP/BCR because of completion of 16/26 years of service as compared to their seniors who have not completed the specified 16/26 years of service, is presently under adjudication in the Hon'ble Supreme Court in the form of the following two SLPs filed by the Department in the Hon'ble Supreme Court:

a) SLP No.6108/95 against the judgement dated 3.8.93 of CAT, Bangalore in OA No.403/92 U.O.I. Vs Smt. Leelama Jacob & Ors.

b) SLP NO.970/96 against the Judgement dated 23.12.1994 of the CAT, Madras on O.A. No.184/93 U.O.I. Vs Poongathai Ruckmani & Ors.

The Hon'ble Court has granted interim stay order directing for maintenance of STATUS QUO in the matter, which is still in vogue. The said two SLPs are still pending for final adjudication.

Any decision in the said SLPs will also be applicable in case of such Optees under Memo. dated 9.9.1992 who are placed in the situation similar as explained in sub para(iv) above.

In view of the facts & circumstances as explained above, the matter has been examined and it has not been found appropriate to review the scheme implemented vide Memo.dated 9.9.1992. It has accordingly, been decided that this issue could be examined further only in the light of the impending judgement of the Hon'ble Supreme Court on aforesaid SLPs.

14. Respondents have declined to undertake any examination of the conversion scheme communicated by order No. 27-4/87-TE.II dated 09.09.1992 as the issue of anomalies with regard to junior officials placed in OTBP/BCR, on completion of 16/26 years getting higher scale than the seniors, though with lesser years of service was concerned in two SLPs No. 6108/95 against the order of Bangalore Bench of the Tribunal in OA 403/92 and OA 970/96 against the order of the Madras

Bench of the Tribunal in OA 184/93, can be examined only after the Hon'ble Supreme Court's decision in the SLPs is received. The applicants have referred to a letter dated 2.8.99 reportedly written by Dy General Manager (Admn) MTNL in support of their plea that the present OA is not at all concerned with SLP No. 970/1996. However, as they have not shown as to how they have come to possess and place as record a communication not addressed or endorsed to them, we are not recording any finding thereon. At the same time, not being provided the copies of the SLPs by either of the parties we are not ~~entitled~~ ^{assisted} to record any ^{opinion} thereon. We do not find that action of the respondents in ^{introducing} ~~introducing~~ advancing the conversion scheme through their letter dated 9.9.92 as anything irregular or illegal as the adoption of change in the policy with regard to the cadres of staff under their control is within the exclusive domain of the Govt. as has been laid down time and again by the courts of law. The fact, however, remains that the respondents themselves have conceded the existence of certain anomalies in the Scheme which are under agitation before the Hon'ble Apex Court and have undertaken to review the scheme, once the decision is handed ^{down} ~~down~~ by the Hon'ble Supreme Court. Respondents would have to undertake and complete the said exercises once the decision of the Supreme Court is received and while doing so, they would ^{also} ~~also~~ have to bear in mind the directions of the Tribunal dated 20.5.98, issued while disposing of the OA No. 2692/92 challenging the conversion scheme, which they had declined to do in para 2 of the impugned order stating that "it has not been ^{found} ~~found~~ appropriate to review the scheme

implemented vide memo dated 9.9.92". They cannot avoid the above and ^{↓ decline to} grant the relief to the applicants under the specious plea of lack of jurisdiction by the Tribunal, which they were at considerable pains ^{to canvass} though incorrectly, to canvass and which has been repelled in para 8 above. The impugned order is being modified only to that extent.

15. Other reliefs being claimed by the applicants to have the SLPs declared as being inapplicable in this matter, and have the earlier OA 2692/92 restored and disposed of have no merits and have to be rejected.

16. In the above view of the matter the application succeeds marginally and is accordingly disposed of. Impugned order dated 12.1.2000 is modified with the direction, that the respondents shall, on receipt of the decision of the Hon'ble Supreme Court in the two SLPs 6108/95 and 970/96, review the Conversion Scheme to remove the anomalies as pointed out by the Tribunal in their order dated 20.5.98 while disposing of the OA 2692/92. Applicants should be granted the benefits arising from the scheme, as ^{and} ^{to exercise is} when ^{is} undertaken, as if they are the employees of DOT, which they were, when the scheme was set in motion. Other reliefs sought are ^{rejected} ~~dismissed~~ as being devoid of merits. No costs.

S. Raju
(Shanker Raju)
Member(J)

(Govindan S. Tampi)
Member (A)