

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(17)

O.A.No.2667/2000

with

✓ O.A.No.464/2000
O.A.No.871/2000
O.A.No.923/2000

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

New Delhi, this the 30th day of April, 2001

O.A.No.2667/2000:

J.C.Sur, Director (PFP)
Department of Telecommunications
(Ministry of Communications)
Room No.109, Dak Bhawan
Parliament Street
Delhi - 110 001. ... Applicant

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

with

O.A.No.464/2000:

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

Vs.

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

(R)

2. Secretary
Department of Telecommunication
Ministry of Communication
Sanchar Bhawan
New Delhi - 110 001. Respondents

O.A.No.871/2000:

G.S.Sethi
Director (SBP)
Department of Telecom Services
r/o B-3/8A, MIG Flats
Lawrence Road
Delhi - 110 035. Applicant

Vs.

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

2. Assistant Director General (STP)
Department of Telecom Services
Ministry of Communications
Sanchar Bhawan
20, Ashoka Road
New Delhi - 110 001. Respondents

O.A.No.923/2000:

A.K.Roy
Director (Retired)
Department of Telecommunications
r/o 172, Nehru Apartments
Outer Ring Road
Kalkaji
New Delhi - 110 019. Applicant

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.

3. Senior Accounts Officer (PFP)
Department of Telecommunications
Ministry of Communications
Sanchar Bhawan
20, Ashoka Road
New Delhi - 110 001. Respondents

18R

Presence: Shri S.N.Anand, Advocate for applicants in OA Nos.2667/2000, 871/2000 and 923/2000.

Ms. Shashi Kiran, Advocate for applicant in OA No.464/2000.

Shri R.V.Sinha, Advocate for Respondents in OA No.2667/2000.

Shri V.S.R.Krishna, Advocate for Respondents in OA Nos.464/2000, 871/2000 and 923/2000.

O R D E R(Oral)

By Mr. Shanker Raju, Member (J):

As the issue involved in all these four OAs is common, we proceed to dispose of the same in this common order.

2. The applicants having been aggrieved with the impugned orders passed by the respondents by which it has been sought to deny them the benefit of continuous officiation in Senior Time Scale of Indian Telecom Service Group 'A' (hereinafter called 'TES') till their regularisation in Group 'A' Engineering Service and by withdrawing the earlier orders fixing their pay w.e.f 1.7.1986 and refixing w.e.f. 24.9.1997.

3. The applicants, including Shri A.K.Roy (applicant in OA No.923/2000) who had already retired have been initially being promoted to TES Group 'B' services. In September, 1982 to December, 1982, the applicants have been promoted on local officiating basis in Senior Time Scale (hereinafter called 'STS') of Indian Telecom Services (hereinafter called 'ITS') Group 'A' service and continued to officiate till 10.10.1984 whereby their services have been regularised vide Office Memorandum dated 10.10.1984 as permanent in Senior Time Scale of ITS Group 'A'.

Subsequently the applicants were promoted on ad hoc basis. As in the Junior Administrative Grade (hereinafter called 'JAG') in ITS w.e.f. 6.8.1996. The pay of the applicants were respectively fixed in the revised pay scale of Rs.14300-18300 w.e.f. 1.7.1996 vide order dated 21.1.1998 as per the instructions of the respondents dated 27.10.1997 and 9.2.1998 which provides a total service of 13 years in Group 'A'. The respondents, by the impugned order dated 24.11.2000, have sought to revise the pay of the applicants in the scale of Rs.14300-400-18300 w.e.f. 24.9.1997. The applicants have challenged the action of the respondents on the ground that their refixation w.e.f. 24.9.1997 denying them the pay fixation w.e.f. 1.7.1996 is contrary to their own instructions as the applicants continued to officiate in STS of ITS Group 'A' till the date of their regularisation and is entitled for counting of this continues officiation towards the eligibility criteria of 13 years service, which makes them eligible for grant of earlier fixation of pay w.e.f 1.7.1996. The applicants contended that this continues officiation in Group 'A' post is to be reckoned towards seniority and other service benefits. Drawing our attention to the order passed on 13.12.1982 whereby the applicants have been promoted to hold charge of Senior Time Scale of ITS Group 'A'. It is contended that it is stipulated if the local arrangement against any of the posts falls short of 45 days, the officers will not be entitled to claim any benefit. In this back ground, it is contended that their officiation has exceeded 45 days, they are entitled for reckoning of this period towards seniority and other benefits. It is further contended

that as per the respondents' letter dated 27.10.1997 and 9.2.1998 the only stipulation for grant of revised pay scale is that the upgradation scale will be admissible to such of Superintending Engineers and those holding analogous and equivalent post of all Group Engineering Services who have completed in all, a total service of 13 years in Group 'A'. In this background, it is further contended that the letter talks of only overall service and total service of 13 years and there is no reference as to regular service of 13 years in Group 'A' which entitles them fixation of pay w.e.f. 1.1.1996. It is contended that the respondents have acted wrongly in derogation of their own letters.

4. The applicants have further contended that their officiation was continuous on the post as the same has never been terminated in case of applicants and despite the appointment was not in accordance with the rules the period of continues officiation shall be reckoned for the purpose of seniority. Drawing our attention to various Judgments of Hon'ble Apex Court, i.e., L.Chandrakishore Singh Vs. State of Manipur and Others, 1999(3) SCC 267; N.K.Chauhan and Others Vs. State of Gujrat and Others, 1977(1) SCC 306; Constitutional Bench in Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Others, 1990(2) SCC 715; Rajendra Narain Singh & Others Vs. State of Bihar and Others, 1980(3) SCC 217; Harjeet Singh Vs. Union of India & Others, 1980(3) SCC 205; O.P.Garg and Others Vs. State of U.P. and Others, 1991 Sup.(2) SCC 51 and Rajbir Singh and Others Vs. Union of India & Others,

267

1991 Supp(2) SCC 272. It is contended that if the initial appointment is on officiation basis and the incumbent had worked continuously the period shall be reckoned for the purpose of seniority and other benefits. Taking resort to para 47(B) of Direct Recruit Class II Engineering Officers' Association's case *supra*, it is contended that if the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. It is in this back ground contended that the applicants being continuously officiating in Group 'A' service w.e.f. September and December, 1982 and as such they completed 13 years of service and their pay was rightly fixed w.e.f. 1.1.1996 and later decision of revising the pay w.e.f. 24.9.1997 is absolutely illegal. Though the applicants have not prayed for a relief of counting the officiating service, for the purpose of seniority, the relief claimed is only with respect to quashing of the refixation order dated 8.3.2000 and restoring the order dated 8.1.1998.

5. The respondents in their reply took preliminary objection that the applicants' relief is misconceived as they had not prayed for counting of service for the purpose of seniority put in on officiating basis. It is further contended that the applicants had given undertaking to the Department to refund the excess amount made to them in case DoPT decided otherwise for fixation of pay in the scale of Rs.14300-18300 w.e.f 1.6.1996. It is further

contended that the matter had been referred to the DoPT vide letter dated 27.2.2001 the reference was sent regarding counting of officiating service in Group 'A' post for computing 13 years of service Group 'A' for grant of pay scales to the applicants is within the rules or not. On consideration with the DoPT; the Ministry of Finance answered the clarification by stating that only regular service in Group 'A' post shall be taken into account for taking of 13 years of Group 'A' service. It is contended that the action taken by the respondents is in accordance with the rules and advise rendered to them by DoPT. It is further contended that the respondents are estopped by the cardinal principle of Promissory estoppel as the on account of their undertaking the pay scale was accorded to them w.e.f. 1996 subject to the clarification by DoPT and the applicants had undertaken to refund the excess amount and ultimately when in view of the DoPT's decision, the refixation order have been issued and the period of continuous officiation has not been treated as a regular service for the purpose of computing 13 years of service in Group 'A'. The applicants cannot be permitted to challenge the same when they had assented to the decision of the DoPT. It is further contended that the applicants have not claimed any reliefs, with respect to their counting of officiating service towards regular service in their OAs. It is further contended that the necessary affected parties have also not been made as necessary parties in these OAs as grant of seniority to the applicant would affect the entire cadre.

6. In the reply it is stated by referring to Rule 26 of TES service that the applicants were permitted to hold charge basis in Group 'A' post on purely local arrangement and it is stipulated that the same would be terminated on joining of regular incumbent. This stop gap arrangement was in order to meet the exigency of the department and for which the approval of the appointing authority was also not solicited. It is the stand of the respondents that the applicants have never been appointed in Group 'A' but only allowed to officiate in STS of ITS Group 'A' in the interest of service as a temporary measure. According to the respondents as per Rule 26 of RRS of ITS the applicants and other TES Group 'B' officers were empanelled for promotion to JTS of ITS Group 'A' on regular basis by the DPC held on 3.9.1984 but taking advantage of the provisions contained in Rule 27(b), which stipulates the filling up of posts in STS on purely temporary basis or to hold charge by promotion of permanent members of Class II who are on the approval list of promotion to Junior Time Scale, the applicants were appointed in hold charge basis of Group 'A' officers vide order dated 10.10.1984 and the pay fixation was accorded to them w.e.f 24.9.1984 the date on which the minutes of DPC were approved. According to the respondents consequent upon the promotion of STS on hold charge basis, the local officiating promotion of the applicant was terminated in terms of local officiating promotion order dated 7.10.1982 and this had an effect of automatic reversion to the substantive grade of TES Group 'B' which requires no formal order of reversion. The pay of the applicants were also fixed in Group 'B' w.e.f.

2078

24.9.1984, as such there is a break in service and their officiation in Group 'A' cannot be treated as continuous. In support the service book of the applicants have been annexed which clearly indicated the refixation of pay in Group 'B' w.e.f. 24.9.1984. It is further contended that the pay scale was accorded to the applicants w.e.f. 1.7.1996 on the basis of their own declaration of completion of 13 years of service in Group 'A' as on 1.9.1995 with an undertaking to refund the excess amount in case DoPT decides fixation of their pay in other way. As the cases of the applicants were re-examined on 8.3.2000, it was found that the applicants were reverted to Group 'B' vide order dated 10.10.1984 and pay benefit was accorded w.e.f. 24.9.1984 as such on completing of regular service in Group 'A' w.e.f. 24.9.1984 and on completion of 13 years, i.e., w.e.f. 24.10.1997 the applicants have been accorded the pay scale. Their continuous service in Group 'A' started only w.e.f. 24.9.1984 and as they had not completed 13 years in Group 'A' service the pay scale was accorded to them w.e.f. 24.9.1997 as per the rules.

7. The respondents have further taken a stand that subsequent to promotion of STS on 10.10.1994, the applicants and other similarly placed officials were regularised w.e.f. 10.10.1989 after completion of 5 years of service on hold charge basis in compliance of the ratio laid down by the Hon'ble Apex Court on 12.12.1991 in N.S.K.Nayyar Vs. U.O.I. Where the service rendered by the applicant and other similarly placed officers w.e.f. 10.10.1984, i.e., the date on which they were promoted to STS on hold charge basis

(93)

for the purpose of regularisation in STS. As the applicants had not objected at that time, their fresh claim for counting of regular service in Group 'A' since 1962 is misconceived. It was further stated that their promotion to STS on hold charge basis is in accordance with Rule 27(b) of the Recruitment Rules prior to promotion on 10.10.1984, the services rendered in Group 'A' on officiating capacity w.e.f. 7.10.1982 terminated w.e.f. 24.9.1984. These officiating promotion were based on Circle/unit Seniority in feeder grade and not on the all India seniority. As the officiating promotions are basically fortuitous in nature depending upon the availability of vacancies in a particular circle/Unit, the counting of officiating period would result in discrimination to other senior officers who could not officiate due to non-availability of vacancies in their Circles/Units.

8. The applicants in rejoinder reiterate their claim made in these OAs and further contended that the service rendered as per letters of Department dated 27.10.1997 and 9.2.1998 a total service of 13 years in Group 'A' irrespective of their designation in JAG. The applicants have resisted the recovery sought to be affected by the respondents on account of the refixation of their pay.

9. We have carefully considered the rival contention of the parties and available material on record. As regards the plea of the applicants for seeking relief to reckon their officiating service in Group 'A' towards seniority and other benefits is

(24) - 11 -

concerned the same has not been prayed by the applicants in their relief clause 8 of the OAs. What is prayed is withdrawal of the order and restoration of the order dated 8.1.1998. We agree with the contention of the respondents that in order to reckon the period rendered on officiating basis, it is essential to establish that such an officiation was uninterrupted and continuous and was not without any break. Although the applicants have not sought any relief vis-a-vis counting of their officiating period towards the seniority but yet in the interest of justice we are adjudicating the same. We find from the service book of the respondents that their pay fixation was done on 24.9.1994 by the respondents although no orders have been issued reverting the applicants to 'Group 'B' but yet in accordance with Rule 26 of ITS which provides as under:

Rule 26: Appointment by promotion to junior time scale in the service shall be made by selection on merit from amongst permanent officers of the Telegraphs engineering Service, Class-II, ordinary with not less than eight years approved service in Class-II, on the recommendation of a duly constituted DPC and in consultation with the Commission. The Period of probation shall be two years (Amendment Notification dated 21-08068)).

(Emphasis supplied)

10. The applicants have empanelled for promotion to JTS of ITS Group 'A' on regular basis by the DPC held on 3.9.1984. Keeping in view the provisions of Rule 27(b) ibid 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. The applicant and other TES Group 'B'

24/11

officers were already officiating in STS in local arrangement, were given the benefit of pay-fixation w.e.f 24.9.1984, i.e., the date on which the minutes of the DPC were approved. As a consequence on promotion to STS on hold charge basis, 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 as such the period upto which the applicants were regularised, there was a break in service vide order dated 10.10.1984 as such the claim of the applicant that their officiation to Group 'A' post was continuous is not correct. The service book of the applicant finds mention of this. As such the case law relied upon by the applicant including that of Constitutional Bench of Direct Recruit's case supra would not be applicable in the facts and circumstances of the present case as the applicants had not continued in the post uninterruptedly till the regularisation of their services. As such this period of officiating service will not be reckoned for seniority and other benefits. The claim of the applicant in this regard is also liable to be rejected as there is no relief claimed by the applicant in their OAs for counting of this officiating period towards seniority and other benefits. The contention of the applicants that their initial appointments in Group 'A' service through letter dated 13.12.1982 clearly stipulates that if the local arrangement was exceeded 45 days the officers would be entitled to claim the benefit, is also not well founded. The respondents have acted in accordance with the

~ 13 ~

DoPT

statutory rules. The appointments of the applicants were on officiating basis and were also on temporary basis and as a local arrangement with a stipulation that the same would be terminated automatically on joining of regular incumbent. As rightly pointed out by the respondents that the officiating promotion was on circle/units, seniority and not on all India seniority, if the officiating services is counted the same would be discriminatory to other officers who could not have been offered officiation due to non-availability of vacancies in their circles. It is next contended that in the letters issued by the respondents on 27.10.1997 and 9.2.1998, there is no reference of a regular service of 13 years to entitle the applicants for revision of pay scales w.e.f. 1.1.1996. As such as the applicants had rendered a total service of 13 years in Group 'A' irrespective whether it is regular or not, the period rendered from 1982 to 1984 shall be counted as part of their total service to be reckoned for the purpose of pay fixation w.e.f. 1996. We find from the record that the applicants by their own declaration that they had completed 13 years of service in Group 'A' were accorded pay scale w.e.f. 12.8.1996. At the time of grant of pay scale the applicants themselves had voluntarily given undertaking to the Department to refund the excess payment made to them in case the matter which had already been referred to DoPT is decided other way. From a letter dated 27.2.2001 we find that the Ministry of Finance had written to the Department of Telecommunications regarding clarification which have been arrived at on consultation with the DoPT, wherein, it is stated that

for the purpose of computing 13 years of service in Group 'A' for according pay scale to the applicants only regular service in Group 'A' post shall be taken into account. In this view of the matter, although the letter issued in 1997 and 1998 only refer to a total service of 13 years, but in view of the decision arrived at in consultation with DoPT the total service of 13 years referred to in Group 'A' would be a regular service rendered in the same group by the applicants. As the applicants had rendered 13 years of regular service in Group 'A' w.e.f. 24.9.1984, they were eligible for grant of pay scale w.e.f. 24.10.1997 and as such rightly accorded the benefit w.e.f 27.7.1997. The refixation order issued by the respondents cancelling their previous order is in accordance with the DoPT instructions and cannot be found fault with. Apart from it, the applicants are estopped from challenging this action of the respondents on the principle of estoppel as they were accorded pay scale subject to the DoPT clarification and as such on their clarification the respondents had taken action accordingly, which cannot be found fault with.

11. In the result and having regard to the discussion made above and reasons recorded above, we find no merit in all the four OAs and the same are dismissed. The interim order passed is hereby vacated. No costs.

12. A copy of this order shall be kept in all the OAs.

(SHANKER RAJU)
MEMBER(J)

/RAO/

Aftered

By me

*Co,
CIV*

(V.K.MAJOTRA)
MEMBER(A)

(23)

4.

30.4.2001

OA-2667/2000

with

OA-464/2000

OA- 871/2000

OA- 923/2000

Present: Shri S.N. Anand, Learned counsel for the applicants

Order pronounced and signed.

Before we pronounce orders in OA-2667/2000 with connected matters, Shri S.N. Anand appeared before us on behalf of the applicants and mentioned that a subsequent clarification has come to the knowledge of the applicants which was issued by the DOPT against which he has not been given a reasonable opportunity to rebut. The same was the position of the respondents and was not found in the part of the counter reply and ~~Submissions been~~ no ~~submissions~~ have adduced with regard to the OM. It is contended that this OM would have changed the fate of the case and would have been applicable to the case of the applicants. We have carefully considered the contention of the learned counsel for the applicants. The remedy before him, with regard to discovery of the new material and production thereof is to file a Review Application against the order which has ~~been~~ been pronounced.

S. Raju

(Shanker Raju)
Member (J)

cc.

V.K. Majotra

(V.K. Majotra)
Member (A)