

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(4)

O.A. No. 2541/89
T.A. No.

199

DATE OF DECISION 9.8.1990.

Smt. Krishna Sharma	Petitioner Applicant
Shri S.K. Bahadur	Advocate for the Petitioner(s) Applicant
Versus	
Union of India & Others	Respondent
Shri M.L. Verma	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. D. K. Chakravorty, Member)

The grievance of the applicant, who is presently about 53 years of age, is that since her entry into Government service as a Telephone Operator, she has not received any promotion.

2. She was appointed as Telephone Operator as a direct recruit w.e.f. 23.12.1957 and was confirmed w.e.f. 16.8.62 in that grade. The post of Telephone Operator was abolished w.e.f. 1.1.1975 on the installation of PABX Exchange in the Deptt. of Agriculture and Cooperation. She was declared surplus w.e.f. 28.2.1974. Thereafter, she was nominated against the post of Computer and she joined that post w.e.f. 30.5.1974. The benefit of the previous post of Telephone Operator was not given to her for fixing her seniority in

the new post of Computer, as a surplus employee who has been reappointed in a new post in the same scale is not allowed such a benefit.

3. On 7.11.1985, the Department of Personnel & Training issued an Office Memorandum which provides, inter alia, that "all Telephone Operators appointed in 1971 or earlier may be inducted to Lower Division Grade of the Central Secretariat Clerical Service without their requiring to pass a qualifying examination. They would be assigned seniority en block below the Lower Division Clerks appointed through the open competitive examination, 1971." It was further provided that "the Telephone Operators would be eligible for promotion to the Upper Division Grade of the Central Secretariat Clerical Service, as per the seniority assigned to them. On promotion to the Upper Division Grade, they may continue to work as Telephone Operator, as the positions of Lower Division Grade and Upper Division Grade are interchangeable."

4. On 28.8.1986, she made a representation claiming the benefit of the aforesaid O.M. as she was holding a permanent post of Telephone Operator in 1971. The respondents informed her on 16.2.1987 that "since she was neither physically holding the post of Telephone Operator nor was having any lien on the post of Telephone Operator at the time of issue of orders on the subject, her request for induction into C.S.C.S. Cadre of the Department of Agriculture and Cooperation cannot be acceded to."

5. She again made a representation on 4.5.1989 wherein she stated that her service-book would reveal that she had been confirmed against the permanent post of Telephone Operator on 16.8.1962, that her lien from ~~the said post~~ ^{neither} the said post was ~~neither~~ ^{any} suspended nor transferred that under FR-13, she still held the lien and that denial of the benefit of the aforesaid O.M. to her would be violative of Articles 14 and 16 of the Constitution.

6. She has not been absorbed so far in the Cadre of Computer. She has not earned ^{any} promotion after putting in more than 32 years of service.

7. The respondents have stated in their counter-affidavit that the application is barred under Sections 20 and 21 of the Administrative Tribunals Act, 1985, that the post of Telephone Operator was an isolated post which was abolished w.e.f. 1.1.1975, that she did not have lien on the post of Telephone Operator on 7.11.85 when the aforesaid O.M. was issued, that she was shown as confirmed on the post of Telephone Operator through oversight in the seniority list issued on 26.12.1989, and that when the mistake came to notice, a corrigendum was issued on 22.2.1990 to rectify the same. This was after the present application was filed on 20.12.1989.

8. We have gone through the records of the case carefully and have considered the rival contentions. At the outset, it may be stated that the decision to induct Telephone Operators appointed in 1971 or earlier as Lower Division Clerks and give them consequential seniority was taken only in November, 1985. Soon

thereafter, the applicant made a representation which was entertained by the respondents. Her request was not acceded to on the ground that she was neither physically holding the post of Telephone Operator nor was having any lien on the said post. There is no stipulation in the O.M. of 1985 that the person concerned should have physically held the post of Telephone Operator in 1971 or that he or she should hold a lien in 1985. The applicant was holding the post of Telephone Operator in 1971 and was having a lien on that post then. The crucial date is 1971 and not 1985. In the facts and circumstances of the case, we hold that it will be unjust and inequitable to reject the application on the ground that it is barred by limitation.

9. We may briefly refer to the judicial thinking of the apex Court on the subject. In Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Government of Bihar, AIR 1988 S.C. 1033 at 1034, it has been observed that reasonable promotional opportunities should be available in every Wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. Accordingly the Supreme Court directed the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the Wireless organisation within six months by amending the rules.

10. The Supreme Court reiterated the aforesaid view in C. S. I. R. Vs. K. G. S. Bhatt, 1989 (2) SCALE 395.

11. In Zia-ud-din Vs. Delhi Administration, 1990(1) ATLT (CAT) 445, decided by a Bench of this Tribunal of which one of us (P. K. Kartha) was a Member, and in judgement dated 1.6.1990 in OA-2247/89 (Arvind Kumar Raizada Vs. Union of India & Another) to which both of us are parties, we have respectfully followed the same view.

12. In the instant case, the respondents have admitted that the post held by the applicant in 1971 was an isolated post of Telephone Operator. The respondents should have in fairness and equity, extended all the benefits of the O.M. of 1985 to the applicant, on their own and without waiting for any representation or resort to litigation. We are, however, conscious of the fact that if the promotions made all these years were to be reviewed, it may have serious unsettling effects and give rise to administrative difficulties. In view of this, we are of the opinion that the ends of justice will be met if the respondents were to consider the induction of the applicant to Lower Division Grade of the Central Secretariat Service as on 1971 in terms of the O.M. dated 7.11.1985, even though she was not physically holding the post of Telephone Operator, when the O.M. of 1985 was issued. She should also be considered for notional promotions from the date her immediate junior was promoted. In the facts and circumstances of the case, we do not direct payment of back wages to the applicant. She would, however, be entitled to re-fixation of her pay on the basis of the increments she would have drawn from the date of her notional promotion.

13. The respondents shall comply with the above directions within a period of three months from the date of communication of this order. The parties will bear their own costs.

Chakraborty
(D.K. Chakraborty)
Administrative Member
9/8/90

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(P.K. Kartha)
Vice-Chairman (Judl.)