

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.773/89

New Delhi this the 8th Day of February, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)
Shri B.S. Hegde, Member (J)

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1. Shri Lal Chand S/o Shri Jiwan Dass
R/o B9/13A, Krishan Nagar, Delhi-51
2. Shri Bhagwan Das Seth S/o Shri Remal Dass
46 J&K Block, Laxmi Nagar, Delhi-92
3. Shri Hari Kirpal S/o Shri Jagnadass
H.NO.152, Arya Nagar, Ghaziabad.
4. Shri K.L. Soni S/o Shri B.R. Soni
D 321, Nirman Vihar, Delhi-92
5. Shri Joginder Singh Giani S/o M.Nihal Singh Sagarwali Gali
Mori Gate, Delhi.
6. Sh. O.P. Bhagee S/o Shri Kundanlal Bhagee
H.NO.B 79, Nirman Vihar, Delhi-92
7. Sh. K.N. Gupta S/o Sh. Shyam Lall Gupta
A/743 Mayur Vihar, -I, Delhi-91
8. Sh. N.S. Nangia S/o Shri R.C. Nangia
A-43, Nirman Vihar, Delhi-92
9. Sh. S.S. Arora S/o Shri Amar Singh
C/2/311 Janak Puri, Delhi-58
10. Sh. K.S. Sharma C/o Pt. Ram Kishan
C-16, Aruna Park, Shakarpur, Delhi-92
11. Sh. Bhagwan Sarup S/o Shri Tilak Ram
100 Ring Road Nairana, Vihar, Delhi.
12. Sh. M.R. Gupta S/o Umrao Singh Gupta
*/513, Krishan Nagar, Karol Bagh, Delhi.
13. Sh. P.L. Mudgal S/o Shri Raja Ram
H.No. 1560 Gali No.30 Naiwala Karolbagh, Delhi.
14. Sh. M.C. Sharma S/o Shri Ram Kishan
B-15, Aruna Park Shakarpur, Delhi-92
15. Sh. V.K. Bhardwaj S/o Shri A.N. Bhardwaj
219 Shiv Colony Faridabad, Haryana.
16. Sh. Kuldip Singh S/o S. Jagat Singh
358 Kangra Niketan Vihar, Delhi.
17. Sh. P.N. Khanna S/o Shri R.L. Khanna
Wazir Singh Street, Paharganj, Delhi.

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18. Sh. S.R.Naz S/o Shri Basakhi Ram
CC 25/C DDA Flats Near Clock Tower, Harinagar
19. Sh. Amritsarya Ram S/o Shri Baboo Ram
H-18 Ram Bagh Paharganj, Delhi.
20. Sh. S.P. Khanna S/o Shri H.L. Khanna
426, Vikas Kunj Vikaspuri, Delhi
21. Sh. Bishan Sarup S/o Shri Rattan Chand
Q.No.37 Sector IV, R.K. Puram, New Delhi.
22. Sh. Jindu Ram S/o Shri Kanshi Ram
B26/7 Double Storey Ramesh Nagar, Delhi.
23. Sh. Ganga Saran Sharma S/o Sh. Chhidda Lall Sharma
Q.No.141 Sarojini Nagar, Delhi.
24. Sh. Bir Singh Saini
18/165 Gali No.1, East Moti Bagh, Sarai Rohilla, Delhi
25. D.S. Chopra S/o Shri G.M. Chopra
H.NO. 158 Site I Vikaspuri, Delhi-18
26. Sh. D.N. Aggarwal S/o Shri Janki Dass Aggarwal
B-203 Anand Lok Coop. Society, Plot No.13,
Mayur Vihar I.G.H.S. Delhi-92
27. Sh. Daljeet Singh S/o Sh. Daya Singh
47-C, Group IV Pocket B Dilshad Garden, Delhi-32
28. Sh. S.G. Sharma, S/o Late Pandit Gopi Nath
c/o A-43, Nirman Vihar, Delhi.
29. Om Prakash Sharma S/o Sh. Gurdittamal Sharma,
B-1/244, Paschim Vihar, New Delhi. ...Applicants

(By Advocate Sh. K.L. Budhiraja though none appeared)

Versus

1. Union of India through the
Secretary, Ministry of Communication,
Sanchar Bhawan, New Delhi.
2. General Manager (Maintenance)
Kidwai Bhawan, New Delhi. ...Respondents

(By Advocate Sh. M.L. Verma though none appeared)

ORDER (ORAL)

(Mr. N.V. Krishnan)

Neither the applicants nor their counsel
are present, though the case has been called twice.
None is present for the respondents also.

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2. This case is listed at serial No.4 in today's cause list under regular matters with a note to the counsel that the first 10 cases are posted peremptorily for final hearing. In the circumstances, we have decided to peruse the record and disposed of this OA.

3. The applicants are retired persons who were earlier working in the Telegraph department. Their grievance relates to the fixation of pay L.S.G. Telegraph Masters. It appears that the applicants started as Telegraphists and thereafter they were appointed as Teleprinter Supervisors/Testing Telegraph Masters. On this latter post they were entitled to get only a special allowance of Rs.20, later increased to Rs.30 per month. This post is not on the regular line of promotion.

4. However, when the report of the Third Central Pay Commission was implemented the posts of Teleprinter Supervisors/Testing Telegraph Masters were converted into the post of Assistant Telegraph Master in the pay scale of Rs.380-560 while the posts of Telegraphists carried only the pay scale of Rs.260-480. The Telegraphists were entitled to promotion in their direct line as Lower Selection Grade Telegraph Masters in the pay scale of Rs.520-640.

5. It appears that the applicants who were holding the posts of Assistant Telegraph Masters were promoted to the post of lower selection grade Telegraph Masters and their pay was fixed applying FR-22-C. However, subsequently, by the impugned order dated 16.8.77 this was rectified and it was

held that in such a case the pay should be at the same stage as in the ~~Annex~~ ^{O Assl.} Telegraph Master's grade in the scale of Rs.380-560. Subsequently, it was ~~classif~~ by the impugned order dated 12.9.77 that their pay should notionally be fixed as Telegraphist as on the date of promotion and thereafter applying 22-C, the pay should be fixed as L.S.G. Telegraph Master. Such fixation would show that they have been overpaid in the past. These were directed to be recovered. Copies of these two impugned orders are at Annex.R-12 and R-3 of the reply of respondents.

6. One such person Tilak Raj Khanna approached the High Court of Delhi for suitable relief in C.W. 703/77. That Writ Petition was received on transfer and registered as T-336/85 which was disposed of by this Tribunal on 6.5.1985. A copy of the said order is at Annexure R-14. That application was allowed by the Tribunal holding that persons holding the posts of Assistant Telegraph Master when promoted as L.S.G. Telegraph Master were entitled to have their pay fixed under F.R.22-C.

7. Thereupon, the applicants also requested the Government to extend the benefit of the decision in that case to them. These requests have been rejected by the letter dated 17.6.1988 (Annexure H). The applicants are aggrieved by this decision and they have prayed that the decision rendered in Tilak Raj Khanna's case should be made applicable to them also and their pay and allowances as well as pension revised on that basis.

8. The respondents have filed a reply contending that the O.A. is barred by limitation inasmuch as the applicants seek refixation of pay from 1977 or so, when one of the impugned orders dated 16.8.77 was passed. It is also stated that Tilak Raj Khanna's is not a judgement in rem and that it applies to the applicants therein.

9. On merits it is stated that the posts of Teleprinter Supervisor/Testing Telegraph Masters were not posts of promotion for Telegraphists. After the higher scale of Rs.380-560 was applied and these posts designated as Asstt. Telegraph Master (A.T.M.), also, these posts were treated as a separate line of promotion without further prospects. Only volunteers were promoted. Therefore, Telegraphists can be promoted as A.T.M. applying F.R.22-C. A.T.Ms had to exercise an option whether they wanted to remain as such or get promotion in the regular line, i.e., a L.S.G. Telegraph Master (LSGTM). If they wanted to come to the regular line, the promotion cannot be directly from A.T.M. to L.S.G.T.M. because this is not the direct line of promotion and the former is not the feeder post. Therefore, it was first decided by the R-12 memo. of Delhi Telephones dated 16.8.1977 that they will be fixed at the same stage as they had reached as A.T.M. Later, it was decided by the Delhi Telephones on 12.9.1977 (Annex.R-3) that notionally they would be treated as having worked as Telegraphist in the scale of Rs.260-480 and then promoted as

LSGTM applying FR-22-C to this notional pay.

10. The D.G.P. & T., however, seems to have issued a final clarification on 29.11.1978 (Annex. R-4). Inter alia, it decided as follows:-

"xxxx xxxx xxxx xxxx xxxx

(b) The appointment of ATMS as LSGTMs will be considered as not involving higher duties and responsibilities. Their pay on appointment as LSGTMs shall be fixed at the same stage, at which their pay is drawn in ATMs cadre, if there is such a stage in the scale of pay of LSGTMs or at the next higher stage, if there is no such stage, if the pay in the LSG TM grade is fixed at the same stage the next increment would be granted from the same date on which it would have accrued in the ATMs grade. If, however, the pay is fixed at the next higher stage, the next increment should be granted after completion of normal incremental period of 12 months in the grade of LSG TM."

Hence, pay should be regulated accordingly.

11. Respondents rely on the P & T (Selection Grade Posts, Telegraphs Traffic Wing) Recruitment Rules, 1979 (Annex.R-1) notified on 6.9.1979. These provide that the post of LSGTM will be filled by promotion to the extent of $66\frac{2}{3}$ from Telegraphists. It is stated that the judgement in Tilak Raj Khanna's case is distinguishable for these reasons.

12. We have carefully perused the record. If the applicants were aggrieved by the decision taken on 16.8.77 and on 12.9.1977 as to the manner in which their pay on promotion to LSGTM ought to have been fixed and the recovery ordered as a consequence thereof they ought to have resorted to legal remedies at

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about that time. Such a course of action was taken by Tilak Raj who filed the writ petition in 1977 in the High Court of Delhi. In the circumstances, we are satisfied that the cause of action in the case of the applicants arose as early as in 1977. Normally that would render this OA time barred.

13. There are, however, certain special features in this case.

13. There are, however, certain special features in this case.

14. No doubt, the judgement rendered in Tilak Raj Khanna's case is not a judgement in rem. But by the decisions of this Tribunal, it has been given effect to in similar cases by the Ernakulam and Hyderabad Benches. Copies of those decisions are on record, viz., OA-1334/91 decided on 1.6.92, OA-66/93 decided on 15.1.93, OA-43/93 decided on 25.2.93, all by Ernakulam Bench, and OA-72/89 decided on 1.7.1989 by Hyderabad Bench. That is a factor which cannot be lost sight of. That apart in OA-1334/91 decided on 1.6.92 by the Ernakulam Bench to which one of us (N.V. Krishnan) was a party, the following declaration was also given:-

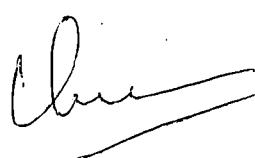
".....We also declare the letter No.213/47/76-STM/PAT dt. 29.11.78 of Director General of P&T produced as Annexure R2(A) void to the extent that it denies the applicability of FR 22(c) in regard to fixation of pay on promotion from the post of Assistant Telegraph Masters to LSG Telegraph Masters."

in respect of Annexure R-4(para 10) and is That is a declaration/in rem and it has to be given effect to in similar cases.

15. Therefore, we find that the applicants are entitled to relief in this case taking note of the fact that they have inordinately delayed in seeking legal remedies. Therefore, we quash the impugned orders No.Acct.I/PF/CTO dated 16.8.77 (Annexure R-2) from the Administrative Officer (P&A) Delhi Telephones as well as Acct.I/PF/CTO/50 dated 12.9.77 and direct that the pay of the applicants as L.S.G. Telegraph Masters shall be refixed in the scale applicable to that post, after giving them the benefit of FR 22-C on the scale of pay as Assistant Telegraph Masters which they held at the time of such promotion. This fixation will be on a notional basis and, therefore, they will not be entitled to any arrears of pay on the basis of this fixation till the date of their retirement. However, their pensionary benefits, including gratuity shall be re-determined on the basis of that pay as refixed on the post of L.S.G. Telegraph Masters on the date of retirement and the difference in the pensionary benefits shall be paid to the applicants within a period of three months from the date of receipt of this order failing which such payment will carry interest @12% ^{from the} on the expiry of such period until the payment is made.

16. The O.A. is disposed of as above.
No costs.


(B.S. Hegde)
Member (J)


(N.V. Krishnan)
Vice-Chairman (A)

Sanju.