

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(19)

i) OA 1167/89

Date of decision 9.7.91

Gopi Nath Mukherjee & Ors.

.....Applicants.

Vs.

Union of India & Ors.

.....Respondents.

ii) OA 530/88

K.P. Girish

....Applicant.

Vs.

Director of Apprenticeship Training
DGET Ministry of Labour, Govt. of India
Ministry of Labour, S.S. Bhavan,
New Delhi.

....Respondent.

iii) OA 1901/88

Sidharath Kumar & Ors.

....Applicants.

Vs.

Union of India

....Respondents.

iv) OA 373/88

J.R. Choudhry & others

....Applicants.

Vs.

Union of India & others

....Respondents.

CORAM: HON'BLE MR. B.S. SEKHON, VICE CHAIRMAN.
HON'BLE MR. I.K. RASGOTRA, MEMBER (A).

For the Applicants - Mr. D.D. Chaufla, and Mr.
R.L. Sethi, Advocates.

For the Respondents - Mr. P.P. Khurana, Advocate.

B.S. SEKHON:

As questions of law and facts arising for adjudication in the captioned Applications are substantially the same, these Applications are being disposed of by a common judgment.

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2. The facts necessary to be noticed for adjudication of these Applications lie within a short compass. All the Applicants were holding the post of

Assistant Training Officers (for short the ATOs) in

the scale of Rs. 650-960 under the Director General

Employment and Training (for brevity sake called the

DGET), at the time of decision of the Govt. of India

as to the upgrading of the post of ATOs. The aforesaid decision was taken vide order

No. DGET-A.11014/3/86-TA-II, dated 10.12.1987

(copy Annexure-B in OA 1167/89). This decision was

deemed to be taken pursuant to the recommendations of the Fourth

Central Pay Commission (for short the 'Commission').

The Commission had recommended that the post of

ATO be merged with the posts of Training Officers

(hereinafter called 'TOs') and given a pay scale

of Rs. 2000-3500. As is borne out from para 2 of

Annexure-B, President of India accorded sanction to

the upgradation of 136 posts of ATOs to those of TOs

(Rs. 2000-3500) w.e.f. 1.1.1986 in the D.G.E.T.

and vide order dated 12.4.88 (Annexure-C in OA 1167/89),

Headquarter offices and the various field offices/

Institutes under the Training Directorate of the DGET.

It was further recited in this order that consequent

upon the above upgradation, 136 posts of ATOs stand

abolished. Vide order No. DGET-A-31014/1/87-TA-I

dated 12.4.88 (Annexure-C in OA 1167/89), Applicants

were promoted on regular basis as T.Os. They were

entitled to be posted at the places shown against their names with

effect from the date they assume charge of the post

in the pay scale of Rs. 2000-3500. Their promotions were made subject to the following conditions:-

1) They will be on probation for 2 years.

The period of probation will be reckoned from the date they join as TOs.

2) The promotion carries with it the liability to serve in any part of the country.

3) If they do not join duty at the new place of their posting within 20 days from the date of issue of these orders their promotion

order will be treated as withdrawn and the next person on the approved panel will be promoted.

Applicants feel aggrieved by the aforesaid order.

As per the case set up by the Applicants, the post of T.O. was filled up 100% by promotion from the cadre of ATOs. As set out in para 10.323 (Ann. A/1

exhibit B) in OA 1167/89), the recruitment, qualifications and experience as also the duties and responsibilities

of ATOs and TOs were more or less the same. It was on this basis that the Commission recommended that

the post of ATOs and TOs may be merged and given

the scale of Rs. 2000-3500 and suitably redesignated.

It is pleaded by the Applicants that prior to the merger of the two posts and/or its upgradation, the

ATO's job were non-transferable and an ATO who did not want to be transferred/refuse promotion to the

post of T.O. and the promotion as such could not

be forced upon an unwilling employee. Applicants

have pleaded that though the posts were upgraded

they were offered lower pay scale of Rs. 2000-3200

which was discriminatory. They would have enjoyed

the said scale on the implementation of the recommendation of the Fourth Pay Commission even though they have been promoted to the post of AD and even as ATOs. Saying that the promotion is/misnomer and a fallacy, Applicants have averred that promotion can never be from one post to another which are same in rank. Applicants have added that the impugned order is also prejudicial to them as they will be susceptible to transfer and that the order is totally bad, illegal and void ab initio. With the aforesaid averments, Applicants have prayed that the office Order No. 16 of 1988 dated 12.4.88 be declared invalid and/or struck down and/or quashed. Respondents be commanded to withdraw, rescind, cancel and/or recall the aforesaid order as also Memo. of, even dated April 21, 1988 or otherwise (Annexure-D in OA 1167/89) issued by the Director, State Bus "Krow" & Advance Training Institute, Dasnagar, Howrah.

3. Applicant - Sh. K.P. Girish in O.A. 530/88, requesting direction to the Respondents to declare the impugned office order dated 12.2.1988 (Annexure-I dated AD and O.A. 530/88) invalid (in his OA). By virtue of the aforesaid order, the applicant was reverted to the post of ATC from the post of TO on the expiry of his adhoc promotion to ATC to which he was not entitled. According to the applicant order of his reversion is not sustainable as the same is to a non-existent post. He has been singled out for harsh treatment by reducing him in rank even though he had record of three adhoc increments and also earned two increments and was also due to cross the Efficiency Bar for which the D.P.C. could have been convened but was not convened.

4. Applicants - Sh. J.R. Choudhary & Ors. in OA 373/88 have impugned the order dated 10.12.1987.

inter alia, on the grounds that ATOs, Store Officer, Group Instructor, Maintenance Mechanic/Millwright, Surveyor and Senior Technical Assistants had formed one cadre having common Recruitment Rules, the same common maintaining same scale of pay, the posts were interchangeable, having common seniority and forming common feeder cadre for promotion to the post of TO, all the posts in the said cadre prior to the Third Pay Commission had been merged into a common cadre of pay of Rs. 350-700, the Third Pay Commission on the advice of DGET recommended the common scale of pay of Rs. 650-960 and that the Fourth Pay Commission were misled and misguided by the Ministry of Labour who recommended only the merger of the posts of ATOs and TOs. It is pleaded by the applicants in this OA that all the aforesaid officers should have the scale of pay as TOs according to the principle of 'Equal pay for equal work' and that the Ministry of Labour's recommendations and act is in clear violation of the aforesaid principle.

With these averments, Applicants in this OA have prayed for a direction to Respondents Nos. 1 and 2 to rescind the aforesaid order Annexure-1 and to issue another order conveying the sanction of the President of India to the upgradation of all the posts of ATOs, Store Officer, Group Instructor, Maintenance Mechanic/Millwright, Surveyor and Senior Technical Assistant in and under the DGET to those of Training Officer scale Rs. 2000-3500 w.e.f.

1.1.1986.

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Exhibit Annex-6-Knowing the fact

5. **At what stage of the Applications - Sh. Sidharath Kumar and others**

and others agreed with and relied upon the order dated 20th August 1988 in OA 1901/88, have claimed the same relief as has been prayed for by Applicants in O.A. 1167/89.

6. **Respondents have resisted the Applications,**

principally on the ground that the prior to the merger of the posts of ATOs and TOs, the ATOs were not transferable but subsequent to the merger, incumbents who were promoted as TOs are liable to be posted and transferred all over India. Since the post of TO is gazetted Group-B post, the transfer of TOs were made according to the administrative requirements. The Commission recommended only the merger of the posts of ATOs and TOs, the incumbents holding the posts of ATOs cannot claim the upgraded scale of Rs. 2000-3500. The post of TOs have to be filled up as per the recruitment rules by promotion

but of the eligible candidates in the combined cadre of ATOs/STA/Surveyor etc. It has been further pleaded that because of the administrative reasons,

it was specified in the order that the existing ATOs will continue to draw their pay against the post of TOs till the regular promotions are ordered.

and that the officers included in the impugned order were draw/ scale of Rs. 2000-3200 and hence they were promoted to the post of TOs in the scale of Rs. 2000-3500. Prior to the filing of the Application, applicants had also made representations

to the DGET to draw their pay against the post of TOs in vain to the DGET. It is further pleaded by the Respondents that the mere upgradation of the post of

ATO to that of TO does not entitle the ATOs
to be promoted automatically.

7. The claim of the Applicants in

OA 373/88 has also been resisted by the Respondents.

The salient grounds on which this OA has been
contested is that the duties and responsibilities

of ATOs alone have been considered matching
with those of Training Officers which resulted in
the ATOs with pay scale 2000 being upgraded to the post
of Training Officers with pay scale 2000.

The upgraded posts are to be filled up in accordance

with the existing Recruitment Rules according to
which the feeder cadre is ATO/STA/GI/Store Keeper/

Maintenance Millwright etc. Saying that the

respondents are not to be given posts above 2000 to
upgraded posts will be filled according to the

Recruitment Rules, Respondents have pleaded that
the principle of 'Equal pay for equal work' has
not been violated and that the relief claimed
cannot be granted.

8. We have heard the arguments addressed

by the learned counsel for the parties and have

also given our earnest consideration to the
pleadings and documents on record.

9. It would be appropriate as well as

expedient to deal with OA 373/88 filed by

Sh. J.R. Choudhary & others at the very outset.

The main plea raised by these applicants is that

they are members of the feeder post alongwith

ATOs and are also entitled to be promoted to the

post of TOs, their post should also have been

upgraded to the post of TOs and that the Labour

Ministry have misled the

Commission

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the last round reached in the Settlement of the dispute

by recommending upgradation in the case of ATOs.

In support of their case Applicants also pressed
the demand that the maintenance of seniority list
and promotion of ATOs to T0s should be common

into service the maintenance of seniority list

ATO to seniority of ATOs in the case of upgradation to T0s

making recommendations for merging two sets of posts

is concerned, the same lies within the policy domain

of the Administrative Ministry concerned. This

event itself that GOVT would be ~~unconstitutional~~ liable to

a feeder post and promotion is made to superior

post which is the post of T0 in the instant case.

It is not within the province of the Tribunal to
sit in judgment over the decision of the administrative
authorities in this behalf, unless, of course, Applicant

can establish a case of violation of fundamental
rights or of any other justiciable right vested

in them. The Ministry of Labour have in their
wisdom recommended merger of the posts of ATOs

with those of T0s. We have not been shown as to
how their recommendations or the decision taken

by the Govt. vide order dated 10.12.87 (Ann.-I in
this case) infracts any fundamental right vested

in the applicants. The other plea raised by the
Applicants is that there has been violation of

principle of 'Equal pay for equal work'. We are

unimpressed with this plea either in that applicants
have failed to establish that they are performing

similar duties and work as is being performed by
the ATOs. This OA is, therefore, held to be

not to stand out of DOCS-2010, and to be dismissed

benefit of merit.

10. Turning to OA No.1167/89 Applicants Counsel and the Respondents' Counsel for the respondents, the Applicants who appeared in person, were at pains to stress that the impugned orders Annexure-C and Annexure-D of the respondents dated 10th December, 1987, of their promotion which also seek to transfer them and of upgrading the post of ATOs to those of T0s during the period subsequent to 1.1.86 are unsustainable. It was also contended by the Applicants that the pay scale sanctioned in the Presidential Order dated 10.12.87 (Annexure-B) is Rs.2000-3500 and that there cannot be promotion from the same post to the same post. Annexure-C in this OA and the following portion of Annexure-D read as under and read as under in the order dated 15th December, 1987 A-1 and note in the endorsement of the order dated 10th December, 1987 Annexure A-2 in OA 1901/1988 were assailed on the ground of infraction of the principle of "Equal pay for equal work". The existing ATOs will continue, to draw their present pay against the upgraded post" and to assess and to replace the respondents' Counsel for the respondents further by stating that the promotion is to be made according to the Recruitment Rules which are statutory in character and have been made by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution.

It was further submitted by the learned counsel for the respondents that the upgrading of the post

does not mean that the promotion of the incumbents automatically was automatic and that the promotion had been granted from the post of ATOs for which scale was Rs.2000-3200 to the post of T0s

of the Respondents and, moreover, viscosity to the same, is that the submission of the Respondents is in the scale of Rs. 2000-3500. Taking up the last submission first, it may be stated that the same is clearly devoid of substance inasmuch as with effect from 1.1.86, 136 posts of ATOs had been upgraded to those of T0s in the scale of Rs.2000-3500 and all the 136 posts stood abolished w.e.f. 1.1.86. The aforesaid submission is obviously untenable put forward on behalf of the Respondents, is thus, held to be unsustainable. We find merit in the submission of the applicants that the impugned order is lacunic inasmuch as it seeks to promote the applicants to the same post. The plea of the respondents that the promotion to the post of T0s is to be regulated in accordance with the Recruitment Rules cannot be said to be altogether devoid of merit but the fact remains that there was no post of ATOs in 80.A.21 batch as on 10.12.87 abolishing 136 posts of ATOs. In case the respondents stand by their plea that the promotion to the post of ATOs is to be made on the basis of recruitment rules, the needful has to be done w.e.f. 1.1.86. Annexure-C, however, seeks to give promotion from later dates. Another serious infirmity in this order which can also be said to be infractive of the principle of 'equal pay for equal work' is that the impugned order seeks to give different pay scales to the officers performing similar duties and functions and possessing similar or nearly the similar qualifications. Applicants' submission in this behalf stands fortified by the dicta of the Supreme Court in P.Savita and others Vs; Union of India, Ministry of Defence(Deptt. of Defence Production), New Delhi and others and Bhaquan Sahai Carpenter and Others Vs.Union of India and another.

In view of the aforesaid reason, the expression 'the existing ATDs will continue to draw their present pay against the upgraded post' occurring in the order dated 10th December, 1987 Annexure A-1 and the note in the 10th of December, 1987 Annexure A-2 in the order dated 10th December, 1987 Annexure A-3 are not sustainable.

11. The grievance of Shri K.P.Girish-Applicant in OA 530/88 is perfectly justified. As rightly pleaded by the petitioner and at para 6 of his affidavit, he could not be reverted to the post which was not in existence on the date, the impugned order dated 12.2.88 was made. The posts of ATDs had been abolished right from 1.1.1986. This OA also, thus, merits acceptance.

12. In the premises, OA 373/88 titled J.R.Chaudhary & Others Vs. Union of India & Others is hereby rejected. Order No.DGET-26/176/87 WOT dated 12.2.88 (Annexure 1) & Annexure-C in OA 1167/89 are hereby quashed. The expression 'the existing ATDs will continue to draw their present pay against the upgraded post' in the order dated 10.12.87 in Annexure A-1 and similar expression in the note in the 10th of December, 1987 Annexure A-2 in the order dated 10.12.87 in Annexure A-3 are hereby struck down. Respondents are hereby directed to make fresh orders in accordance with law in respect of the applicants in OAs 1167/89 and 1901/88 within a period of 3 months from the date of receipt of copy of this judgement. We may also add that nothing contained in this judgement should be taken to preclude the respondents from transferring such of the applicants as are appointed as TDs as per the orders to be made, in accordance with law. The OAs stand disposed of in the above terms, but in the circumstances, we make no order as to costs.

Order

D.P.K.RASGOTRA
MEMBER (A) 9/2/91

(B.S.SEKHON)
VICE CHAIRMAN.

5-7-91
pronounced by one in the open Court
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