

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

20

- 1) 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. GirishApplicant.
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 IndiaRespondents.
- iv) OA 373/88
J.R. Choudhry & othersApplicants.
Vs.
Union of India & othersRespondents.

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.

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 taken in the matter of upgradation 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 taken pursuant to the recommendations of the Fourth Central Pay Commission (for short the 'Commission').

The Commission had recommended that the post of ATOs 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.

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 posted at the places shown against their names with effect from the date they assume charge of the post

22

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

i) They will be on probation for 2 years. The period of probation will be reckoned from the date they join as TOs.

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

iii) 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

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 as ATOs. Saying that the promotion is ^a 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

(Annexure-D in OA 1167/89) issued by the Director, Advance Training Institute, Dasnagar, Howrah.

3. Applicant - Sh. K.P. Girish in O.A. 530/88, has impugned office order dated 12.2.1988 (Annexure-I in his OA). By virtue of the aforesaid order, the applicant was reverted to the post of ATO from the post of TO on the expiry of his adhoc promotion to the said post. According to the applicant order of his reversion is not sustainable as the same is to non-existent post. He has been singled out for harsh treatment by reducing him in rank even though he had 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,

24

interalia, 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 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 common cadre prior to the Third Pay Commission had common scale of pay of Rs. 350-700, the Third Pay Commission on the advice of DGET recommended the common scale 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 post 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.

5. Applicants - Sh. Sidharath Kumar and others

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,

inter alia, on the ground that 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

scales of Rs. 2000-3500. The post of TOs have to be

filled up as per the recruitment rules by promotion

out 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 office

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

in vain to the DGET. It is further pleaded by the

Respondents that the mere upgradation of the post of

26

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 has resulted in upgradation of posts of ATOs to the post of TOs. 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 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 as 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

by recommending upgradation in the case of ATOs. In support of their case Applicants also pressed into service the maintenance of ^{common} seniority list in respect of ATOs. So far the question of making recommendations for merging two sets of posts is concerned, the same lies within the policy domain of the Administrative Ministry concerned. This would be so even if there are different posts in a feeder post and promotion is made to superior post which is the post of TO 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 TOs. 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 the ^{the} 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 bereft of merit.

98

10. Turning to OA No.1167/89 Applicants Counsel and the Applicants who appeared in person, were at pains to stress that the impugned orders Annexure-C of their promotion which also seek to transfer them and of upgrading the post of ATOs to those of TOs subsequent to 1.1.86 are unsustainable. It was also contended on behalf of 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 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 1904/1988 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.

The learned counsel for the respondents countered 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 upgradation of the post does not mean that the promotion of the incumbents of the post of ATOs would be automatic and that the promotion had been granted from the post of ATOs for which scale was Rs.2000-3200 to the post of TOs

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 TDs in the scale of Rs.2000-3500 and all the 136 posts stood abolished w.e.f. 1.1.86. The aforesaid submission 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 lacunous inasmuch as it seeks to promote the applicants to the same post.

The plea of the respondents that the promotion to the post of TDs 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 existence w.e.f. 1.1.86, in view of the Presidential Order dated 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 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 Bhagwan Sahai Carpenter and Others Vs. Union of India and another.

30

In view of the aforesaid reason, the expression 'the existing ATOs 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 endorsement of the order dated 10th December, 1987 Annexure A² are not sustainable.

11. The grievance of Shri K.P.Girish-Applicant in OA 530/88 is perfectly justified. As rightly pleaded by him, 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 ATOs 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) in D.A 530/88; Offite Order No.16 of 1988 dated 12.4.88 Annexure-C in OA-1167/89 are hereby quashed. The expression 'the existing ATOs will continue to draw their present pay against the upgraded post' in the order dated 10.12.87 Annexure A-B, and similar expression in the note in the endorsement of the order dated 10.12.87 in Annexure A2 in OA 1901 of 1988 is 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 TOs 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.

(I.K.RASGO/TRA)
MEMBER (A) 9/7/91

(B.S.SEKHON)
VICE CHAIRMAN.

Pronounced by me in the open Court
5-7-91