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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.(1) OA 520/86 Date of decision: 05.06.1992.
(2) OA 1033/86
(3) OA 40/87

(1) OA 520/86

Shri Ram Charan ...Applicant

Vs.

General Manager, Mahanagar Telephone Nigam Ltd. & Another ...Respondents

(2) OA 1033/86

Shri Nagender Thakur ...Applicant

Vs.

General Manager, Mahanagar Telephone Nigam Ltd. & Another ...Respondents

(3) OA 40/87

Shri Indraj Singh ...Applicant

Vs.

General Manager, Mahanagar Telephone Nigam Ltd. & Another ...Respondents

For the Applicants in (1) to (3) above ...Shri J.C. Digpaul, Counsel

For the Respondents in (1) to (3) above ...Shri J.P. Singh, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporters or not? No

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K. Kartha, Vice Chairman(J))

As common questions of law and fact have been raised in these applications, it is proposed to deal with them in a common judgment.

2. The applicants in OA 520/86 and in OA 1033/86 have worked as Telegraph Men while the applicant in OA 46/87

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has worked as Daftri in the office of the General Manager Telephones, New Delhi. The office of the General Manager Telephones, New Delhi, invited applications by letter dated 29.4.1976 for appointment to one post of Senior Care Taker Grade-I in the scale of Rs.330-560 and six posts of Senior Care Taker Grade-II in the scale of Rs.225-308 and the applicants were selected and promoted as Senior Care Taker Grade-II by order dated 12.10.1976. On 14.05.1979, the respondents issued a corrigendum in modification of their earlier order dated 12.10.1976 stating that the appointment of the applicants along with three others was as Care Taker in the scale of Rs.225-308 instead of Senior Care Taker Grade-II with effect from the date they actually joined the duty. The grievance of the applicant relates to the issue of the said corrigendum and the denial to them of the pay scale of Rs.330-480 which is the prescribed scale of pay of the post of Senior Care Taker Grade-II.

3. The applicants are relying upon the precedent of pay fixation of Shri Jai Dayal who has since retired from service and on the judgment dated 25.03.1985 of Mr. Justice S.S. Chadha, J. of the Delhi High Court in CWP No.129/1980. Shri Jai Dayal had been working as Senior Care Taker Grade-II and he was given the scale of Rs.330-480. Similarly Shri Bishamber Singh who is a colleague of the applicant has also been given the pay scale of Rs.330-480 pursuant to the judgment of the Delhi High Court, mentioned above.

4. The respondents have contended in their counter-affidavit that the applicants are not entitled to the reliefs sought by them on the ground of limitation as well as on merits. As regards limitation, they have contended that the cause of action arose in 1976/1979 whereas the

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applications were filed in 1986-87. On the merits they have contended that the corrigendum was issued in 1979 to correct a mistake which had occurred in the advertisement issued by them on 29.04.1976 as well as the order issued by them on 12.10.1976. The mistake was that instead of inviting applications for six posts of Care Takers it was wrongly mentioned in the advertisement as well as in the appointment order that the appointment was to the post of Senior Care Taker Grade-II. They have contended that the applicants were not eligible for appointment as Senior Care Taker Grade-II as they ~~applicants~~ were working in a lower pay scale and could not have aspired for a post carrying the pay scale of Rs.330-480. They have also stated that there was no vacancy in the cadre of Senior Care Taker Grade-II when the advertisement was issued by them in April, 1976.

5. We have gone through the records of the case carefully and have heard the learned counsel of both parties. At the time of hearing, the learned counsel for the applicants has also produced before us the relevant Recruitment Rules for the post of Senior Care Taker Grade-II which were notified in December, 1969.

6. According to the Recruitment Rules, the post of Senior Care Taker Grade-II is in the pay scale of Rs.130-212 which was later on revised to Rs.330-480. Recruitment to the said post is 100% by promotion. The eligibility criteria for the said post included, inter alia, previous experience as a Care Taker of a large buliding. During the hearing of the case, we have been informed that the post of Care Taker at the relevant time carried the pay scale of Rs.225-308 and the applicants have been given the said pay scale. The

applicant in OA 520/86 was working at the Okhla Exchange while the applicant in OA 1033/86 was working at the Chanakya Puri Exchange and the applicant in OA 40/87 in the Delhi Gate Exchange.

7. The learned counsel for the applicants heavily relied upon the judgment of the Single Judge of the Delhi High Court in Bishamber Singh's case, mentioned above. The respondents have stated in their counter-affidavit that the true facts of the case were not placed before the Learned Single Judge of the Delhi High Court and that the matter is pending before a Division Bench of the Delhi High Court by way of Letters Patent appeal preferred by the respondents. As regards Shri Jai Dayal, the respondents have stated that he was working in the pay scale of Rs.105-135 as Care Taker. He was promoted to the post of Senior Care Taker Grade-II carrying a pay scale of Rs.130-212 which was later on revised to Rs.330-480. He was working in the Eastern Court and TAX Building and looking after office with an area of more than one lakh Sq. Ft. and according to the Circular dated 1.9.1975, for a Care Taker for an office building/group of buildings having a total floor area exceeding one lakh Sq. Ft., the pay scale is Rs.330-480. Shri Jai Dayal was never appointed to the post of Senior Care Taker Grade-II, as has been alleged by the applicants, but was promoted from the post of Care Taker carrying pay scale of Rs.105-135/Rs.225-308.

8. The applicants made several representations but the respondents did not accede to their request for granting

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them the pay scale of Rs.330-480. The applicant in OA 520/86 had made representations on 21.06.1977, 25.08.1977, 04.10.1977, 19.12.1977, 29.09.1978, 19.05.1979, 31.05.1985, 21.08.1985, 11.09.1985 and 02.05.1986. Similar representations were made by the applicants in the other two applications from 1977 to 1986.

9. The applicants have stated that the matter had been pending in the Delhi High Court from January, 1980 to March, 1985 and they bona fide believed that they could make a claim only after a favourable decision of the Delhi High Court which was only available on 25.03.1985. They have also raised a plea that the Government and its agencies should not take the technical plea of limitation to defeat a just claim.

10. We are not impressed by the above contention. The applicants made their first representation to the respondents in 1977 requesting for the grant of pay scale of Rs.330-480 to them. After waiting for a reasonable period for reply, they should have moved appropriate legal forum to seek redress. This was not done. There is nothing in the judgment of the Delhi High Court dated 25.03.1985 to indicate that it is of general application. The cause of action arose in 1979 when the respondents issued their corrigendum to the effect that the appointment of the applicants was to the post of Care Taker in the scale of Rs.225-308 and not to that of Senior Care Taker Grade-II. The mere fact that the applicants made repeated unsuccessful representations cannot give fresh cause of action so as to revive limitation (Vide Gian Singh Mann Vs. The High Court of Punjab & Haryana, AIR 1980 SC 1894; S.S. Rathore Vs. State of M.P., AIR 1990 SC 10). We are also of the opinion that

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the judgment of the Delhi High Court relied upon by the applicants is not of general application apart from the fact that the matter is still pending in the Delhi High Court by way of Letters Patent appeal.

11. Even otherwise, we find that the applicants are not entitled to the reliefs sought by them. The respondents have annexed to their counter-affidavit sanction issued by the General Manager on 03.04.1976 for one post of Care Taker in the scale of Rs.330-560 for Connaught Place Exchange and six posts of Care Takers in the scale of Rs.225-308 for various buildings in Exchanges at Delhi Gate, Jorbagh, Karol Bagh, Okhla, Chanakya Puri and Haus Khas. They have also annexed to their counter-affidavit sanction issued by the General Manager in September, 1976 ~~xxxxxxxxxxxxx~~ for 7 posts of Care Takers in the scale of Rs.225-308 and two posts of Senior Care Takers in the scale of Rs.380-560 for various Exchanges. The Circular inviting applications for one post of Senior Care Taker Grade-I in the scale of Rs.330-560 and 6 posts of Senior Care Taker Grade-II in the scale of Rs.225-308 was issued on 29.04.1976. It would, therefore, appear that six posts of Senior Care Takers in the scale of Rs.330-560 had not been sanctioned by the respondents against which the applicants could be said to have been appointed. In the advertisement issued on 29.04.1976 even-though the post of Senior Care Taker Grade-II had been mentioned, the scale of pay of the post has been mentioned as Rs.225-308 which in fact is the scale of pay of the post of Care Taker. The same is the position as regards the order issued by the respondents appointing the applicants and others by their order dated 12.10.1976.

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12. In the conspectus of the facts and circumstances of the case, we are of the opinion that the applicants are not entitled to the reliefs sought by them on the ground of limitation as well as on the merits. The applications are, therefore, dismissed.

There will be no order as to cost.

Let a copy of this order be placed in all the case files.

(I.K. RASGOTRA) 5/6/92
MEMBER (A)
05.06.1992

5/6/92
(P.K. KARTHA)
VICE CHAIRMAN(J)
05.06.1992

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