

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI BENCH

DATE OF DECISION 26.5.92

O.A.No.2258 of 1991

Miss Roopwati & others Applicants

Versus

Union of India Respondent

2. O.A.No.2310 of 1991

Mrs. Milred George & others Applicants

Versus

Union of India Respondent

Present: Shri ^{Karnal} R.K. Gupta, Counsel for the applicants.
Shri Jog Singh, Counsel for the respondent

CORAM:

THE HON'BLE MR. JUSTICE RAMPAL SINGH, VICE CHAIRMAN

THE HON'BLE MR. A.B. GORTHI, ADMINISTRATIVE MEMBER

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?

(Judgment delivered by Hon'ble Mr. A.B. Gorthi
Administrative Member)

As the facts brought out in the above two applications and the question of law raised therein are similar, we are disposing of both the applications by means of this common judgment.

1. The applicants in both the cases, seven in number, are the Telephone Operators in the Ministry of External Affairs. Miss Roop Wati and Mrs. Anarjeet Kaur- applicants in O.A.No.2258 of 1991 joined service in 1955 and 1957 respectively, whereas the applicants in O.A.No.2310 of 1991 joined service between the years 1973 and 1984. Their prayer in these applications is

that the entire service rendered by the applicants as Telephone Operators should be counted for seniority as Lower Division Clerk (Grade VI of IFS(B)) with consequential promotional and monetary benefits. They further prayed that in the alternative, the question of seniority be determined in conformity with the instructions issued by the Department of Personnel & Training under O.M. dated 7.11.85.

2. With ^athe view to improve the career prospects of Telephone Operators working in the Ministries/Departments of Govt. Of India/Offices of the Central Secretariat Clerical Service, certain decisions were taken and implemented by the Ministry of Personnel & Training vide Office Memorandum dated 7.11.85, relevant extracts of which are reproduced below :-

"The undersigned is directed to say that on the demands made by the Staff side and with a view to providing promotional avenues to Telephone Operators working in the Ministries/Departments/Offices participating in the CSCS, orders were issued vide this Department's O.M. No. 13/58/71-C.S.II(iii) dated 13.12.71 to the following effect:

(a) Hereafter all posts of telephone operators in the participating offices should be filled only by regular Lower Division Clerks belonging to the Central Secretariat Clerical Service:

(b) The existing Telephone Operators who do not belong to the Central Secretariat Clerical Service, should be inducted into the Central Secretariat Clerical Service after they have qualified in an examination of the same

(11)

standard as that conducted by the Institute of Secretariat Training and Management for recruitment of Lower Division Clerks. Two chances would be allowed within which the existing Telephone Operators have to qualify for induction into the Central Secretariat Clerical Service;

(c) On being posted to work as Telephone Operators the Lower Division Clerks should be granted a special pay of 10% of their pay subject to a minimum of Rs.15/- (Rupees fifteen) while working as Telephone Operators, and they will be eligible for confirmation/promotion in the Clerical Service; and

(d) Existing Telephone Operators will be entitled to the grant of special pay from the date they are declared qualified in the qualifying examination to be held by the Institute of Secretariat Training and Management.

3. The above instructions which came into effect in 1971 were reviewed consequent to a demand from the staff side which were considered by the Board of Arbitration. Accordingly, the Government have decided in 1985 as follows:-

(1) All the 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-bloc below the Lower Division Clerks appointed through the Open Competitive Examination, 1971.

(2) The Telephone Operators appointed in 1972 or thereafter on regular basis and have either rendered three years service or have been declared quasi-permanent may also be inducted to

the Lower Division Grade of the Central Secretariat Clerical Service. They would be assigned seniority below the Lower Division Clerks appointed through the open Competitive Examination of the year in which the Telephone Operators were appointed.

(3) On their induction to the Central Secretariat Clerical Service, they would be entitled to a special pay @ Rs.20/- p.m. while working as Telephone operators.

4. The applicants claimed the same benefits which have been given by the Government to the Telephone Operators of all the other Ministries as stated above. They further challenged the validity of the instructions issued by their own Ministry vide Office Memorandum dated 6/3/71. While attempting to give similar benefits to the Telephone Operators working in the Ministries, the Ministry of External Affairs have deviated from the policy laid down by the Department of Personnel & Training and have stated that the Telephone Operators appointed prior to 1971 would be inducted as Lower Division Clerks in Grade VI of IFS(B) but placed below Lower Division Clerks of 1960 Batch. Similarly, in respect of Telephone Operators appointed in 1971 or thereafter, who have attempted the qualifying examination atleast on two occasions, they would be inducted as Lower Division Clerks but would be assigned seniority below the Lower Division Clerks appointed in the year in which they (Telephone Operators) made their

13

second attempt. The applicants alleged that this Office-memorandum is discriminatory and arbitrary. It is also unfair and unjust because for no reason ^{OR} and rhyme, their seniority is being lowered vis-a-vis the Lower Division Clerks appointed direct.

5. Refuting the contentions, raised in the applications, the respondents have stated that the instructions issued by the Department of Personnel and Training do not automatically apply to the Ministry of External Affairs. Even the Department of Personnel and Training conceded this view. Further in the Ministry of External Affairs, the Telephone Operators are governed by the Indian Foreign Service, Branch 'B' (Recruitment, Cadre, Seniority and Promotion) Rules, 1964 (hereinafter referred to as 'the Recruitment Rules'). According to Rule 16(1-A), the Telephone Operators, who have been declared qualified for induction to Grade VI of the Service on the results of an examination held for this purpose by the Institute of Secretariat Training and Management, may be inducted as Lower Division Clerks in Grade VI of IFS(B). This Sub-Rule (1-A) seems to have been introduced vide Notification No. 122-GA/74 dated 16.9.74. The respondents thus contended that the Recruitment Rules already provide for the betterment of the career prospects of the Telephone Operators of the Ministry of External Affairs. If the applicants did fail to take advantage of the rule-position, they were only

14

to blame. As regards the impugned office Memorandum dated 6.3.91, the respondents have stated that firstly the office memorandum was ^{not} issued ^{any} on account of ^{but} proposal from the staff side, the Ministry itself considered the issue from all angles and following the Department of Personnel & Training's instructions and office memorandum dated 7.11.85 decided to relax the Recruitment Rules and to allow the Telephone Operators who have not qualified in the prescribed examination to be inducted as Lower Division Clerks in Grade VI of IFS(B). However, as regards their fixation of seniority vis-a-vis the regularly appointed Lower Division Clerks, a decision was taken to place all the Telephone Operators who were appointed prior to 1971 below the Lower Division Clerks appointed through the Open Competitive Examination of 1980. As regards the Telephone Operators appointed in 1971 or thereafter but who have attempted the prescribed qualifying examination at least on two occasions, they would be assigned seniority below the Lower Division Clerks appointed through the Open Competitive Examination of the year in which they made their second attempt or 1980 whichever is later. This decision was taken after careful deliberations ^{and consideration} of various special features of the Ministry.

6. At the very outset, the learned counsel for the applicants agitated that it would be grossly improper and illegal to let the Telephone Operators in the Ministry of External Affairs

to rot in the same post and position during the span of their entire career. There can be no doubt that this contention of the learned counsel for the applicants has considerable force behind it. In the case of 'Council of Scientific & Industrial Research & another Vs. Shri K.G.S. Bhatt & another' A.I.R. 1989 (2) S.C. 341, the Hon'ble Supreme Court observed as follows:-

"He was, however, left without opportunity for promotion for about twenty years. This is indeed a sad commentary on the appellant's management. It is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation on not just for a job, but for a whole career. One must, therefore, be given opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation."

7. In the instant case, it was precisely with a view to improve the career prospects of the Telephone Operators that the Ministry of External Affairs introduced a system of lateral induction of the Telephone Operators in Grade VI of IFS (B) as Lower Division Clerks with promotional prospects.

8. The learned counsel for the applicants further agitated that the applicants were being discriminated vis-a-vis Telephone Operators

working in other Ministries and the departments. From the facts brought out in these applications, discrimination in the matter of seniority is clearly discernable. Although the learned counsel for the applicants has drawn our attention to the judgment of the Hon'ble Supreme Court in 'Randhir Singh Vs. Union of India & others' 1982 Supreme Court Cases (L & S) 119 and 'Federation of all India Customs and Central Excise Stenographers & others Vs. Union Of India & others' AIR 1988 Supreme Court 1291 on the subject of ^{the} well settled principle of 'equal pay for equal work', we need not dwell upon these issues any longer because in the instant case, there was no demand for equal pay for equal work. The only complaint of the applicants is that the manner in which their seniority ^{was to be fixed} ~~for~~ the purpose of their lateral entry into Grade VI of IFS(B) would result in great injustice to the applicants. They claimed that there could be no valid reason as to why they ^{should be} ~~made to~~ ^{lose} ~~lose~~ the seniority that they had earned when their counterparts in other Ministries and departments were ^{not} ~~subjected to~~ similar unfair treatment.

9. The claim of the applicants that their seniority should be fixed in accordance with instructions contained in the Department of Personnel & Training Memo dated 7.11.83, is reasonable. All the same, we have on record that this question was carefully considered by the respondents and that decision was taken to fix

17

the seniority of the Telephone Operators on their lateral entry as Lower Division Clerks in a particular manner as specified in Memo dated 6th 3rd 91. The respondent's apprehension is that any higher seniority granted to the applicants may result in counter-claim and complaints from the Lower Division Clerks who were already appointed through the Open Competitive Examination. In the matter of grant of seniority, we should be reluctant to interfere until and unless ^{are} we fully satisfied that the grant of benefit to one group of individuals does not adversely affect the career prospects of the other group particularly when the latter group is not representing ^{ed} before us. In the case of other Ministries and departments this issue was thrashed out in considerable details at ^{the} JCM and the Board of Arbitration before the Government took a final decision. The same has not been done in the case of officials of the Ministry of External Affairs. In these circumstances, we are of the considered view that the Office Memorandum dated 6th 3rd 91, issued by the Ministry of External Affairs cannot be said to be either arbitrary or discriminatory. The same ^{need not} ~~cannot~~ be either quashed or modified as desired by the applicants. As regards the applicants' prayer which is made in alternative that the respondent may be directed to bring the applicants at parity with those Telephone Operators of the other Ministries and departments by modifying the impugned order, we leave it to the respondent to subject this matter to a detailed study by involving the representatives of the Telephone Operators and also the clerical staff Grade VI of IFS (B) and take a mutually acceptable decision.

This may be done within six months from the date of communication of this judgment.

10: Subject to our above ^{remarks} judgment, the applications are dismissed. There shall be no order as to costs.

[Signature]
MEMBER (A)

[Signature] 26.5.92
VICE CHAIRMAN.

(ug)