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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1075/1991

New Delhi this the 22nd day of September, 1995.

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)

Hon'ble Mr. R.K. Ahooja, Member (A)

1. Shri G.C. Thakur,
Son of Shri Shiv Ram,
Resident of Qr. No. 18, Block 20,
Lodhi Colony,
New Delhi.
2. Shri P.N. Vishwakarma,
S/o Late Shri Anant Vishwakarma,
Resident of C-7/194, Sector 8,
Rohini,
Delhi-110 085.
3. Shri B.M. Arya,
S/o Shri Rajendra Deo,
Resident of 17-B, Kundan Nagar,
Delhi-110 092.
4. Shri K.K. Sharma,
S/o Shri Krishan Kumar Sharma,
Resident of A-1/311, Madhu Vihar,
Palam Matiala Road,
New Delhi-110 059.
5. Shri H.P. Gupta,
S/o Shri Late Shri R.N. Gupta,
Resident of)-26/A/4 Janta Flats, Dilshad Gardens,
Delhi-110 032.
6. Shri Krishna Gopal Paliwal,
S/o Shri Kalyan Dutt,
Resident of JB POocket 33-F, Mayapuri,
New Delhi-110 064.
7. Shri S.K. Sharma,
S/o Shri Devi Dass Sharma
Resident of D-155, P&T Quarters,
New Delhi-110 021,
8. Shri Z.A. Siddiqui,
S/o Shri Abdul Hai Siddiqui,
Resident of House No. 6/281, Lane No. 4, Nai Basti,
Aligarh. Applicant

(By advocate: Shri S.D. Kinra)

Vs

Union of India through
The Secretary-Cum-Chairman,
Telecom Commission, Department of Telecommunication,
Ministry of Communications,
Sanchar Bhawan,
New Delhi.

Respondents

By Advocate: Shri A.K. Sikri

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O R D E R

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)

The applicants eight in number after acquiring degree in engineering joined the Telecommunication Department as Junior Telecom Officer during the years 1977-1982 as direct recruits. Direct recruitments to the cadre were to be made according to the recruitment rules towards 65% of the total vacancies in a ~~particular~~ recruitment year and the balance 35% vacancies were to be filled by promotion of the departmental candidates through a competitive/qualifying examination. The minimum educational qualification for promotion of the departmental candidates was matriculate. The qualification prescribed for direct recruitment to the post was a degree in engineering or B.Sc with first class. Prior to the acceptance of the ^{Report of} Third Central Pay Commission Engineering Graduates recruited as Junior Telecom Officers (then designated as Engineering Supervisor) were allowed ~~xxx~~ six advance increments in the pay scale of Rs. 180-280 but this scheme for grant of advance increment was withdrawn on the recommendations of the Third Central Pay Commission. The Graduates Telecom Officers represented against the withdrawal of the advance increments. The matter was taken through the Association before the Joint Consultative Machinery. Ultimately, on 11.7.1990 the Government of India, Department of Telecommunication issued an order No. 15-1/89 to the effect that two advance increments in the respective grade may be granted to those Junior Engineers, Junior Telecom Officers, Officers of TES Group 'B' and officers of ITS in the junior time scale and senior time scale promoted from TES Group 'B' who acquired or have acquired a degree in engineering in any one of the disciplines of mechanical/electrical, telecommunication, electronics,

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radio engineering and computer engineering from a recognised university or its equivalent qualification while in service. The above Government order granted two advance increments only to those officers of the telecommunication department who acquired the engineering degree while in service. The applicants who had acquired engineering degree even before they were directly recruited to the post of Junior Telecom Officer are being denied the benefit of two advance increments. Feeling aggrieved the applicants made a representation to the respective General Managers with a copy to the respondents. They did not get any response. Therefore, the applicants have filed this application praying that the respondents may be directed to modify the impugned order dated 11.7.1990 so as to allow the benefit of two advance increments to those JTOs who had acquired the degree even before they entered the service. It has been alleged that to classify Junior Telecom Officers who are Engineering Graduates performing the identical duties and similar situated in all respects into two separate classes - 1) those who have acquired engineering degree while in service and 2) those who have acquired engineering degree even before entering the service being on the basis of an intelligible differentia for the purpose of denying the benefit of advance increments to the latter class amounts to hostile discrimination which is violative of Articles 14 and 16 of the Constitution. It has further been alleged that to deny the benefit of two increments to those JTO who even before joining the

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service had acquired the engineering degree and performing equal work with those JTOs who acquired the degree while in service is violative of the Directive Principles of State Policy enshrined in Article 39(d) of the Constitution.

2. The respondent contest the claim of the applicants on two grounds: viz

1. As the impugned order was issued pursuant to a settlement dated 31.5.1990 between the department and the representatives of all the unions to which the applicants belong, the applicants are estopped from contending against it; and

2. The advance increments to the officials who acquire degree in engineering while in service having been granted as an incentives to encourage them to gain expertise in their field, there is a rational basis to the decision to limit the benefit of advance increments to those JTOs who acquire^{acquired} or had/qualification while in service only and for that purpose the classification of the graduate telecom officers into those who have acquired the degree while in service and those who had already acquired degree before entering service has a clear intelligible differentia which bears a rational nexus to the objectives sought to be achieved.

3. We have gone through the pleadings in this case and have heard the arguments of the learned counsel on either side at considerable length. On the point that the impugned order was issued limiting the benefit of advance increments to those Telecom Officers who

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acquired degree in engineering while in service on the basis of a bi-partite settlement between the Unions and the Department on the Charter of Demand, the applicants have no dispute. The learned counsel for the applicants argued that if the Union Leaders entered into an agreement against the interest of individual employees, they must have the right to challenge the decision before the appropriate forum. The agreement contains several terms of settlement of which the grant of two advance increments in respective grades to those JTOs, TES Group 'B' officers, JTS/STC promoted from Group 'B' who acquired engineering degree while in service was only one. The applicants who are Members of the Association which was signatory to a bi-partite settlement cannot approbate and reprobate by challenging the orders issued on one of the terms of settlement while accepting the other terms of settlement. The learned counsel for the applicant then argued that the applicants are not impugning the order but are seeking extension of the benefit of the order to them also. Once the decision is to grant advance increments to those officials who have acquired the degree in engineering while in service, the claim for extension of those benefits to the applicant also do not fall within that class is baseless.

4. Coming to the question of legality of the classification of the graduate Telecom Officers into two groups - one who had acquired a degree in engineering while in service and the other who acquired the degree before entering service for the purpose of granting the benefit of increments to one class only, The learned counsel for the applicants argued that the classification is irrational and therefore is violative of Article 14 and 16 of the Constitution. On

this point the learned counsel invited our attention to the decision of the High Court of Punjab and Haryana at Chandigarh in Subhash Kumari v. The State of Haryana & Others reported in 1986(2) All India Services Law Journal P. 175. In that case the High Court held that the condition in letter dated 24.2.1983 of the Director of Public Instructions, Haryana that only those teachers who had passed their B.A., B.T/B.Ed examination while in service alone would be eligible for promotion to the cadre of Masters was discriminatory and was struck down. The High Court observed :

"Teachers who possessed the B.A. and B.Ed/B.T degree at the time of joining the service as teachers were grouped in one category and the teachers who did not possess these qualifications at the time of joining service as teachers and who had acquired the qualifications of B.A.,B.Ed./B.T during the course of these service have been put in a separate category. Admittedly both of these categories belong to the same grade of teachers. Such a sub-classification within a class smacks of arbitrariness and discriminatory. It has not been shown that this sub-classification is based on any intelligible differentia. It has no nexus with the object to be achieved, viz., excellence of education. The teachers who possess the higher qualifications at the time of joining service are not in any way intellectually or professionally inferior to those teachers who attained these qualifications while in service of the Government, Rather former because of their experience and maturity may be able to teach better. The only justification for this discrimination, which can be spelled out from the written statement, is that an incentive was sought to be provided to the inservice teachers to improve their qualifications. This is undoubtedly a laudable object, but this benefit cannot be extended to one category of teachers at the cost of the other category of teachers, who possess higher academic qualifications while joining service".

The High Court has held that denial of promotion to those teachers solely on the ground that they had

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acquired the qualification required for the post even before they were recruited as teachers was unjustified and was against the equality provisions enshrined in the Constitution. Nevertheless the High Court observed that to grant incentives to those who are in service to acquire higher qualification is a laudible object though it held that the same cannot be done at the cost of those who possess higher academic qualification while joining service. In the case on hand the grant of advance increment to those officials who acquired degree in engineering while in service was not at all at the cost of those officials who had already acquired the engineering degree before they entered service. They did not suffer in detriment by grant of advance increments to those who acquired engineering degree while in service.

5. The learned counsel for the applicant referred to a number of rulings of the Supreme Court on the question of equal pay for equal work and argued that as the applicants are performing the identical duties and responsibilities as the JTOs who acquired degree in engineering while in service the denial to them of the benefit of two advance increments is violative of not only Article 39(d) of the Constitution but also Articles 14 and 16 of the Constitution. Our attention was specifically drawn to the following decisions: JT 1989(1) SC 512, AIR 1989 SC 19, 29 and 30, AIR 1982 SC 879 Randhir Singh vs. U.O.O. and P. Savita Vs. Union of India 1985 Sup. SCC 1994 and several other rulings where it was held that denial of equal pay for equal work is unjustified. The principle of equal pay for equal work though enshrined in Article 39(d) of the

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Constitution as a Directive Principles of State Policy, it has been held by the Supreme Court in a catena of the decision including those stated by the learned counsel for the applicant that the denial of equal pay for equal work violates the Articles 14 and 16 of the Constitution also. We have, no doubt, in our mind that if similarly situated persons performing identical duties and are members of the same cadre are not paid equally that will offend the Constitutional guarantee of equality enshrined in Articles 14 and 16 of the Constitution. There is no allegation that the applicants are not ^{being} paid the salary according to the pay scale of the post of Junior Telecom Officer. They are also getting annual increments. The qualification prescribed for direct recruitment to the post of JTO is a degree in engineering or B.Sc degree with first class. The applicants joined service as JTOs by way of direct recruitment, they cannot expect to be paid a salary higher than what is attached to the post. The scheme for grant of advance increments to the officials who has acquired or would acquire a degree in engineering while in service was conceived with the laudable goal of motivating the officials to acquire more knowledge and expertise in the field. Their acquiring higher qualification would apart from furthering their chance of advancement in career to benefit the department also because the acquisition of higher qualification would improve their efficiency in discharging the duties of the post. Such an incentive need not to be given to those who have already acquired the degree in engineering before they entered service. The promotees to the post of JTOs may be diploma holder in engineering

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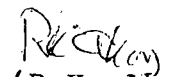
or even matriculate. If they acquire a degree in engineering while in service, the department also stand to gain by it. Therefore, it cannot be said that the idea of granting of two advance increments to those officers who acquired degree in engineering does not have a reasonable basis. The classification of the officials to those who have acquired in engineering while in service and those who had already acquired a degree before entering into the service is therefore based on an intelligible differential. When a classification is challenged, as illegal and hostile discrimination is alleged, it has to be seen whether the classification is based on an intelligible differentia and whether that has got a rational nexus to the objectives sought to be achieved. Here the classification is of graduate Telecom Officers into two classes (1) Those who even before joining service had acquired the degree in engineering and (2) those promotee officers who acquired the degree while in service. This classification is for the purpose of motivating those officials who would acquire the degree while in service. We are of the considered view that the classification is clearly based on an intelligible differentia which bears a rational nexus to the objective namely efficiency in service sought to be achieved. Therefore, we do not find any merit in the arguments of the learned counsel for the applicant that the denial of two advance increments to the applicants solely for the reason that they had acquired the engineering degree before they entered service is violative of Articles 14 and 16 of the Constitution.

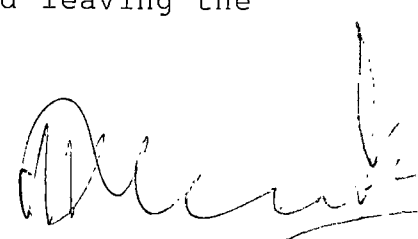
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6. The decision to grant two advance increments to those officials who had acquired or would acquire a degree in engineering while in service was taken on the basis of a settlement between the department and the Union of which the applicants are party. Therefore, it cannot be said that the decision is arbitrary.

7. In the light of what is discussed above, we do not find any merit in the contention of the applicants that the decision contained in the impugned order is discriminatory and violative of Articles 14 and 16 of the Constitution. We are also of the considered view that the applicants are not entitled to the relief of a direction to extend to them also the benefit of the two advance increments. In the result the application fails and the same is dismissed leaving the parties to bear their own costs.


(R.K. Ahooja)
Member (A)


(A.V. Haridasan)
Vice Chairman (J)

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