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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.1483 of 1987

R.K. Sinha and Others Petitioners

Versus

Union of India & Others..... Respondents.

Connected with

Registration O.A. No.927 of 1987

M.D. Ram & 9 Others Petitioners

Versus

Union of India & 2 Others..... Respondents.

Hon.D.S. Misra, A.M.

Hon.G.S.Sharma, J.M.

(By Hon.D.S. Misra, A.M.)

The first case No.1483 of 1987 (T) is an original writ petition No. 3503 of 1984 which has come on transfer under Section 29 of the Administrative Tribunals Act XIII of 1985. The 28 petitioners in the writ petition have sought particular interpretation of an order dated 17.8.83 passed by the Director General, Posts & Telegraphs, New Delhi, respondent No.1 and quashing the order of their reversion from the cadre of ATMs to that of Telegraphists.

2. In O.A. No.927 of 1987, 10 petitioners have sought the quashing of the two orders dated 23.9.87 passed by the General Manager, Tele-Communication U.P. Circle, Lucknow, respondent No.2 transferring them to various stations. As the facts of the two cases are

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inter-connected it would be convenient to dispose of the matter by a common judgement.

3. The admitted facts of Case No.1483 of 1987(T) are that the petitioners were working as Assistant Telegraph Masters from various dates prior to 1.1.73 and were receiving salary in the scale of pay of a Telegraphist and a special pay of Rs. 30/- per month; that with effect from 1.1.73 a new cadre of Assistant Telegraph Masters was created vide D.G. P & T letter No.4-8/74 dated 9.8.74 and a new scale of pay Rs.380-560 was prescribed; that by a separate order dated 6.10.75 the D.G. P & T decided that the appointment to the cadre of ATMs from the cadre of Telegraphists would involve assumption of higher responsibility and the pay of such officials on their promotion to the cadre of ATMs may be fixed under F.R. 22-C; that the D.G. P & T issued orders on 17.8.83 directing merger of the cadre of ATMs into that of Lower Selection Grade Telegraph Masters as per recommendation of the Committee on Tele-communications under the Chairmanship of Sri Sareen; that the above stated order dated 17.8.83 (copy Annexure-18) directed that 85% posts of ATMs be upgraded to the post of Lower Selection Grade Telegraph Masters and the remaining 15% posts be abolished; that in pursuance of the above stated order dated 17.8.83 the General Manager, Telecommunications U.P. Circle, Lucknow passed an order dated 20.12.83 converting 111 posts out of 131 posts of ATMs in the U.P. Circle into the posts of LSGTMs (copy Annexure-19); that on 2.3.84 orders have

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been passed by respondent No.2 whereby Telegraphists have been promoted and posted as LSGTMs against consolidated vacancies of LSGTMs (copy Annexure-CA.16). The grievance of the petitioners is that they have been excluded from consideration for promotion and posting on the upgraded posts and their apprehension is that they will be reverted from the cadre of ATMs to the cadre of Telegraphists. At the admission stage the Hon'ble Judges of the Division Bench of the Allahabad High Court passed an order on 15.3.84 as follows :

" Meanwhile the respondents are retrained from reverting the petitioners from the post of ATMs to those Telegraphists, if such orders for reverting them have not already been implemented."

An application for impleadment as respondents was filed on behalf of the 8 petitioners in O.A. No.927 of 1987 and the learned counsel stated that he did not want to file any counter reply and prayed for an opportunity being given for submitting arguments on behalf of these petitioners. The application was not opposed by the applicants as well as the respondents 1 to 8 and Shri B.P.Srivastava, learned counsel for the petitioners was allowed to advance arguments.

4. In O.A. No.927 of 1987 the admitted facts of the case are that they were promoted in the cadre of LSGTM against 20% promotional avenue scheme on various dates between 1981 and 1983; that a seniority list of LSGTM was issued on 24.5.84 (copy Annexure-1); that

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D.G. P & T by an order dated 16.12.83 introduced one Time Bound Promotion Scheme after completion of 16 years of service and at the same time abolished 20% promotion scheme with a decision that officials promoted under 20% Selection Grade Scheme will rank en bloc senior to others (copy Annexure-3); that the D.G. P & T vide his order dated 17.8.83 merged the cadre of ATMs with that of LSGTMs and abolished 15% posts of ATMs (copy Annexure-7); that consequent on the implementation of the merger scheme General Manager, Telecommunication U.P. Circle, Lucknow issued orders to fill up upgraded posts of LSGTM on 2.3.84 and the petitioners, who were also promoted joined their duties on the new posts on 10.3.84. The petitioners' grievance is that by the two orders dated 23.9.87 the respondents have treated them as having been promoted on adhoc basis and transferred them to far away places causing avoidable hardship. At the time of admission on 13.10.87 an order that status quo be maintained for a period of fourteen days was also passed by this Tribunal. This order is still continuing. In reply the respondents have denied the contention of the petitioners and have contended that these orders were simply transfer and posting orders and are not promotional orders and these transfer orders have been done to fill up vacant posts.

5. An application for impleadment was filed on behalf of 16 persons, who ^{are} working as reserve trained Telegraphists pool in the cadre of Telegraphists in the Telecommunication Department in a purely ad hoc capacity on hourly basis.

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These newly added respondents have stated that the claims of the petitioners are misconceived and they should be directed to join the post and honour the transfer orders which they are bound under the service conditions.

6. A rejoinder affidavit was filed on behalf of the petitioners reiterating the allegations made in the application.

7. We have heard the learned counsel for the parties and carefully perused the documents on record. For a proper adjudication of the issues involved in the two cases it would be relevant to recapitulate the broad outlines of the cases. Prior to 1.7.68 there were posts of ~~cor~~testing Telegraphists and Tele Printer Supervisors in Central Telegraph Offices and Assistant Telegraph Masters in the Metropolitan Cities. A reorganisational scheme came into existence with effect from 1.7.68 according to which ~~cor~~testing Telegraphists and Tele Printer Supervisors, who had done six months service were converted into the cadre of Assistant Telegraph Masters vide order dated 27.5.68 from the Post and Telegraph Board (copy Annexure CA-1). The procedure for selection and appointment of ATMs is contained in D.G. P & T No.208/8/69-I dated 18.3.69 (copy Annexure CA-2). According to these instructions the posts of ATMs were to be filled in from amongst volunteers working as Telegraphists after preparing a panel on the basis of seniority subject to the rejection of unfit. The officials brought on the panel were to be given training and after successful completion

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of their training they were to be appointed as ATMs strictly on the basis of seniority-cum-fitness. The duties and responsibilities of Assistant Telegraph Masters are given in D.G. P & T letter dated 23.9.69 (copy Annexure CA.4). The scale of pay of ATMs was the same as a Telegraphist with a special pay of Rs.30/- per month. The main duty of ATMs is

Testing, localizing faults on Telegraph lines and circuits, directing the line staff to the points of interruption and arranging for speedy restoration of the circuit. They also relieve the TMs of routine supervisory duty regarding disposal of traffic.

On the representation of the Assistant Telegraph Masters the Third Pay Commission recommended a new scale of pay which was introduced with effect from 1.1.73 vide D.G. P & T letter No.4-8/74-TE dated 9.8.74. No separate recruitment Rules were framed for the new cadre of ATMs and appointment to these posts were made from among Telegraphists. It is admitted by the respondents that ATMs were performing the duties and responsibilities of greater importance than Telegraphists (para 10 of the reply). The persons promoted as ATMs were given the benefit of F.R.22-C in the matter of fixation of their pay in the new scale of Rs.380-560 vide D.G. P & T letter dated 29.11.78 (copy Annexure-6). In the year 1974 20% promotional avenue scheme was introduced under which 20% of total sanctioned posts of Telegraphists and ATMs were upgraded to the post of Lower Selection grade Telegraph Masters (hereinafter referred to as LSGTMs). The D.G. P & T circular dated 29.11.78 (copy Annexure-6) provided that ATMs would be considered

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for appointment to the grade of LSGTM based on their seniority in the gradation list of Telegraphists and such promotion will be considered as not involving higher duties and responsibilities. Their pay on appointment as LSGTM shall be fixed at the same stage at which their pay is drawn in ATMs cadre, if there is such a stage in the scale of pay of Lower Selection Grade Telegraph Masters or at the next higher stage if there is no such stage. The D.G. P & T vide his letter No. 213/36/79 dated 7.8.80 also clarified that the persons holding posts of ATMs should not be confirmed on the posts held by them as they will lose the right to have a lien on the posts of Telegraphists and hence cannot be considered for promotion to the cadre of LSGTM. The D.G. P & T vide his letter No.1518/81-T II dated 17.8.83 (copy Annexure CA.8) directed that the cadre of ATMs be merged with the cadre of LSGTM. The above instructions also provided for upgrading 85% of the existing sanctioned posts of ATM to the post of LSGTM and 15% of ATM posts were to be abolished. The upgraded posts of LSGTM were to be filled from the basic cadre of Telegraphists on the basis of seniority-cum-fitness and such of ATMs who could not be promoted as LSGTMs ^{to be} were reverted in the Telegraphists cadre. The incumbents from among the ATMs, who could not be accommodated in the select list of upgraded posts of LSGTM, were given protection of pay after their reversion to the Telegraphists cadre in the grade of Rs.260 - 480.

8. The 28 petitioners are the ATMs who are apprehending their reversion to the cadre of Telegraphist

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Their contention is that they should be promoted to the LSGTM grade (Rs.425 - 640) in accordance with their seniority as ATMs and by virtue of the fact that they were holding higher posts than the Telegraphists and were also drawing pay in the higher scale Rs.380 - 560. The respondents deny the claim of the petitioners on the ground that the ATM's was a temporary and ad hoc cadre which has been abolished and the petitioners have no right to continue on such a post. Their contention is that this has been done in accordance with the reorganization scheme for providing greater efficiency and administrative convenience. The learned counsel for the respondents has cited the decision of the Hon'ble Supreme Court in the case of N.Ramnath Pillai Vs. State of Kerala and two others AIR 1973 SC 2641, in which it has been held that abolition of post is not dismissal or removal from service and consequently termination of service does not attract Article 311. The Hon'ble Supreme Court also held that where exigencies of administration required alterations in establishment and creation of new Department and there was no colourable exercise of powers by the State there was no question of bias or male fides in regard to it. The learned counsel for the petitioner however contended that the upgradation of 85% ATMs post was due to the representations of ATMs and they should be deemed to have been promoted against the upgraded posts. The learned counsel for

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the respondents contested this contention of the petitioners and contended that merely by upgradation of the post the petitioners cannot claim automatic promotion to the upgraded posts. In support of his contention the learned counsel for the respondents cited a decision of the Karnataka High Court in Sampath Kumar M. Vs. Central Provident Fund Commissioner 1983(1) SLR 667. In this case the petitioner was working as a Head Clerk. There were several other persons who were also working as Head Clerks. There existed a post of Caretaker of Govt. Buildings and the question of granting special pay to the said post was under consideration of the Govt. In the meantime the petitioner was appointed to the post on the basis of option called from all Head Clerks. Subsequently one post of Head Clerk was upgraded and designated as Caretaker and it was decided to fill the post of Caretaker from amongst the Head Clerks. The petitioner represented that he was entitled to be treated as having been appointed to the upgraded post of Caretaker but the said representation was rejected. The Hon'ble Judge held that the petitioner cannot be deemed to have been promoted to the upgraded post unless seniors to the petitioner in the cadre of Head Clerks are considered and the petitioner has no right to promotion. Another case cited by the learned counsel for the respondents is Prem Lal Kapoor Vs. State of Punjab and Others 1982 SLR 13. In this case the petitioner was appointed on ad hoc basis to a temporary post of Artist (photographer in the scale Rs. 250 - 25 - 550) for a period of six months or till

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such time a recommendee of the Punjab Public Service Commission/Departmental Selection Committee reports for duty whichever event was earlier. The services of the petitioner were regularised on the recommendation of the Departmental Selection Committee. Sometimes later the pay scale of the post of Artist Photographer was revised from Rs. 250 - 560 to 350 - 900 and further revised to Rs. 825 - 1580. The petitioner was transferred to another post and respondent No.3, who was appointed against the upgraded post, was senior to the petitioner. The petitioner's claim to the upgraded post was rejected by the Hon'ble Single Judge of the Punjab and Haryana High Court with the observation that when the post was upgraded there was no question of the promotion of the incumbent of the post and persons senior to the petitioner had a better claim for appointment on the upgraded post. The ratio of the above mentioned case law cited by the learned counsel for the respondents is that on the upgradation of a post the persons holding the post do not get promoted automatically unless they are entitled to promotion under the Recruitment Rules prescribed for the post. The learned counsel for the petitioner however cited the following case law in support of his contention that the petitioners were entitled to be recruited to the upgraded post of LSGTM:

- (1) Bishen Swarup Gupta Vs. Union of India
Civil Appeal No.2060(N) of 1971 and
two Others reported in AIR 1972 SC 2627.

This case relates to inter se seniority between direct recruits and promotees to class I grade II posts

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of Income Tax Officers. In the year 1958 a decision was taken to upgrade a number of posts in class II grade III to that of class I grade II posts and appoint officers working in grade III to those upgraded posts. The Hon'ble Supreme Court held that the decision of the Govt. to fill in all the upgraded class I posts by promotees from class II was in accordance with one of the two methods prescribed in Rule 3 of the Recruitment Rules, 1945 and Rule 4 of the Recruitment Rules, 1945 which permit the Govt. to fill the vacancies either by direct recruitment or by promotion or both.

- (2) Bishan Swarup Gupta Vs. Union of India and Others and 3 other Cases reported in 1973(3) SCC 1.

This case also related to seniority between the direct recruits and promotees to class I post of Income Tax Officers as a result of upgradation of ~~upgradation~~ 214 posts from class II to class I. In this case also it was held by the Hon'ble Supreme Court that with the upgrading of a large number of posts and the appointments to that of the promotees, the quota Rule collapsed and with that the seniority rules also. In our opinion none of the above mentioned case laws cited by the learned counsel for the petitioner give any help to their contention for appointment against the upgraded post. According to the decision of the competent authority i.e. D.G. P & T, upgraded posts of LSGTM are to be filled by promotion from amongst the Telegraphists. The petitioners, although working as ATMs for several

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years continued to hold their lien on the post of Telegraphists and they will also be considered for promotion according to their seniority and fitness for promotion.

The next contention of the petitioners is that there cannot be any combined seniority of two different cadres and hence no promotion can be made on the basis of such seniority. In support of this contention the learned counsel for the petitioners cited State of U.P Vs. Sudershan Deo and another case reported in AIR 1963 Alld. 358. This case relates to the seniority of an officer who was working on the post of Supervisor which was an isolated post not born on any cadre and created in 1939 manned as a temporary measure. On 22.5.46 the Govt. issued an order merging the post in the cadre of Assistant Masters Govt. Higher Secondary Schools in the special Subordinate Educational Service. The learned Judge held that the seniority should be determined on the basis of the date on which the post was included in the cadre of Assistant Masters of Govt. Intermediate Colleges in the special grade of the Subordinate Special Service. In our opinion this case law is not applicable to the instant case as the petitioners were working on a temporary basis in the new cadre of ATMs while retaining their lien in the cadre of Telegraphists.

Another contention of the learned counsel for the petitioners is that the petitioners alone are

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entitled for promotion on the upgraded posts and the decision of the respondents to extend the field of promotion to Telegraphists, who are working in a lower scale of pay amounts to treating unequals as equals and is therefore discriminatory, arbitrarily unreasonable and violative of Article 14 of the Constitution of India. In support of this contention the learned counsel for the petitioners cited the following case law :

- (i) Sengara Singh and Others Vs. State of Punjab and Others 1983(4) SCC 225.
- (ii) A.L.Kalra Vs. Project and Equipment Corporation of India. 1984(3) SCC 316.

The first case deals with reinstatement of members of the Police Force in the State of Punjab who were dismissed for misconduct of participation in unlawful agitation. The Hon'ble Supreme Court held that once the order of dismissal was set aside by Court, the petitioners were entitled to be treated on par with the others in matters of reinstatement and consequential benefits in absence of any distinguishing features.

In the second case disciplinary proceedings were initiated for misutilization of advance taken treating it as misconduct. Hon'ble Supreme Court held that even after charging penal interests under the Rules the disciplinary proceedings initiated and punishment of removal inflicted without properly

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following the rules was arbitrary and motivated and liable to be quashed. In our opinion none of these two case law gives any support to the contention of the petitioners.

The petitioners have further contended that their reversion was violative of Article 311 of the Constitution of India. It is contended on their behalf that their appointment to the post of ATMs was after a proper selection through the examination followed by training and they were working on these posts in a regular manner. In support of this contention the learned counsel for the petitioners has cited the following case law :-

- (i) Surya Narain Yadav & Others Vs. Bihar State Electricity Board and Others.
AIR 1985 SC 941.
- (ii) Narendra Chadha and Others Vs. Union of India and Others.
AIR 1986 SC. 638.

The first case relates to the case of Trainee Engineers of the Bihar State Electricity Board in which it was held that the Trainee Engineers formed a specific class and by virtue of their having been continued for long they were entitled to be regularised on the post held by them.

The second case relates to the persons promoted to the posts included in the Indian

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Economic Service and continued to work on such posts for a long time. Even though such promotions were in excess of posts available for promotion the Hon'ble Supreme Court directed these appointments to be regularised. In our opinion the principle enunciated in the two cases mentioned above is only partially applicable to the present case.

9. We have examined the various contentions of the parties and we are of the opinion that the petitioners were promoted as ATMs in the scale Rs.380-560 which is in a higher scale of pay than the scale of pay of Telegraphists (Rs.260-430) ^{and} that the petitioners 1,2 and 3 have been working as ATMs since January, 1968 which is a long period. As held by the Hon'ble Supreme Court in N.Ramnath Pillai Vs. State of Kerala (supra) the Union of India are competent to create, continue or abolish any civil post and to make necessary alterations in the establishment and creation of new Departments in the exigencies of administration, we do not find any illegality in abolishing the cadre of ATMs from a prospective date. However, such an arrangement should take care of preserving the existing rights of the individuals. In the instant case the scheme envisages reversion of ATMs who failed to get promoted to LSGTM grade due to their lower seniority in the

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cadre of Telegraphists. We are of the opinion that the reversion of such ATMs to a lower post for no fault of their own due to the new administrative arrangement justifies judicial interference. We are not impressed by the petitioners contentions that by virtue of holding the post in the higher scale of pay than that of Telegraphists they should be promoted to the LSGTM grade without any reference to their seniority in the cadre of Telegraphists. It must be said to the credit of the Department that they have made it clear more than once that promotion to the post of LSGTM shall be made on the basis of seniority in the Telegraphists cadre and not on the basis of a person holding the post of ATM. We are further of the opinion that the reversion of the petitioners to the lower post of Telegraphists ~~is~~ in accordance with the instructions of the D.G. P & T contained in their letter dated 17.8.83 is against the principles of natural justice. The petitioners were promoted to the post of ATM on the basis of their seniority and fitness for the post and there is no allegation that they are being reverted due to any fault on their part. In these circumstances the order of their reversion is not sustainable in law and must be quashed. The petitioners are entitled to continue as ATM and draw the scale of pay of the post.

10. In O.A. No.927 of 1987 the respondents have admitted that the petitioners were regularly promoted under 20% promotion scheme and there is no question of

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12. We have given careful consideration to these contentions and we find that the main grievance of the petitioners is the dislocation and inconvenience caused to them and the members of their family due to their shifting residence to other places. Their contention is that they are senior in the cadre of LSGTM and are entitled to stay at their present place of posting and that according to the practice followed by the Department persons junior to them and persons who are promoted afresh should be sent to outside stations. For persons in Govt. service transfer is an incidence of service, and personal inconvenience can hardly be a good ground for cancellation of transfer order. We are of the opinion that there is no merit in the contention of the petitioners that the two orders dated 23.9.87 have the effect of changing their status from permanent to temporary or ad hoc. For the reasons mentioned above, the application is liable to be dismissed.

13. On the facts and circumstances of the case, O.A. No.927 of 1987 is dismissed without any order as to cost. The stay order granted earliest is vacated. Registration T.A No.1483 of 1987 is disposed of as indicated in para 9(supra). We also direct that in both cases the parties shall bear their own cost.

[Signature]

J.M.

[Signature]

A.M.

Dated the 28th Feb., 1989.

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