

(1) (2)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration(OA) no. 693 of 1987

K.D.Singh

... applicant.

Versus

General Manager Tele Com U.P.Circle
Lucknow and others.

... Respondents.

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

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

(Delivered by Hon'ble D.S.Misra)

In this application under Section 19 of the A.T. Act XIII of 1985, the applicant has challenged the order dated 29.9.1986 denying ^{him} the arrears of pay and all the service benefits w.e.f. 21.2.1984 and the orders dated 18.2.1984, 16.5.84 ~~and 23.6.85~~ ¹⁵ directing the applicant to work on hourly basis.

2. The admitted facts of the case are that the applicant is an ex service man and was selected as Tele Communication Office Assistant(TOA) under the 'Reserved Trained Pool' scheme against a reserved vacancy of ex serviceman; that after the completion of theoretical ^{et} training the applicant reported to the District Engineer Telegraph Allahabad for his practical training w.e.f. 4.1.1984 to 20.2.1984; that vide order dated 25.1.1984(CA 2) the applicant was posted in the Divisional Office at Allahabad in place of Sri R.K.Dwivedi TOA, who was transferred but was to be relieved only after completion of practical training of the applicant on 20.2.84; that

62

(2)

-2-

by the time the applicant completed his practical training and his case could be considered for regular absorption, orders were issued by the Government of India imposing ban on recruitment of staff in all cadres of the department; that vide orders dated 18.2.84 (copy annexure 3) and in partial modification of the order dated 25.1.1984(copy CA 2),the applicant was directed to report for duty in the D E T Office and it was also mentioned in that letter that he will be paid at the rate of Rs.2.75 per hour for six hours on each working day as salary; that the applicant sent a letter of protest on 21.2.1982(copy annexure 13) in which he challenged the order dated 18.2.1984 and claimed the regular scale of pay of TOA(ie.Rs. 260-480) in terms of the advertisement for recruitment ; that by an order dated 28.4.84, the applicant was relieved to join as a regular TOA under SDO(T) Banda; that in the order dated 28th April,1984(copy CA 7) ,the applicant along with four other persons were ordered to be absorbed provisionally as a regular TOAs in the scale Rs. 260-480 from the dates they joined at Banda; that by an order dated May 16,1984, the order dated 28th April,1984 regarding absorption of the applicant and 4 other persons as regular TOAs in the pay scale of Rs.260-480 was cancelled and it was ordered that they will be deemed working as RTP,TOAs and they shall be paid at the rate of Rs.2.75 per hour upto maximum of six hours per day and they ~~xxxx~~will be engaged upto 31st May,84 only;that by an order dated 11.5.84(copy annexure 17) the applicant along with three others was ordered to work in TRA unit without TA and DA at their own cost up to 17.5.85; that by an order dated 7.6.85(annexure 13),

HL

AM

3

-3-

the applicant was appointed as TOA in the scale of Rs. 260-480 w.e.f. 24.5.85; that an order, regarding pay fixation of the applicant was issued on 14th November, 85 (copy annexure CA 10); that feeling aggrieved against the pay fixation and deprivation of seniority, the petitioner made a representation for the arrears of his salary and fixation of his pay and seniority w.e.f. 21.2.1984, to the Director General Department of Tele Communications on 6.12.1985 (copy annexure 24) and the same was rejected vide letter dated 22.9.1986 (copy annexure 25). The applicant has sought the following reliefs :

1. to set aside the orders dated 18.2.1984, 16.5.84, and 22.9.1986;
2. to issue a direction to the respondents nos. 1 and 2 to treat the applicant's appointment on the regular post of TOA clerk in the basic scale of Rs. 260-480 w.e.f. 21.2.84 and to pay the arrears of salary with the current market rate of interest and other consequential benefits;
3. to fix the seniority of the petitioner above the name of Sri Ashok Kumar; and
4. to issue direction to the respondent no. 2 to fix the initial pay of the petitioner allowing 18 advance increments as the petitioner has rendered 18 completed years.

3. We have heard the arguments of the learned counsel for the parties and carefully perused the documents on record. The first contention of the applicant is that he was recruited against a vacant post reserved for an ex service man and that on the completion of his training on 20.2.1984 he was entitled for appointment as TOA in the scale of pay Rs. 260-480. It is also contended that by the order dated 25.1.1984, the applicant was actually

be

posted to work as TOA vice Sri R.K.Dwivedi, who was transferred and posted in Divisional Office. The respondents have contested this contention of the applicant and have stated that the order dated 25.1.1984 (annexure 6) was only an order in the nature of posting for practical training of the applicant with Sri R.K. Dwivedi TOA from the period 21.1.1984 to 20.2.1984 and this order can not be deemed as an order of appointment of the applicant as TOA. The applicant further contends that the order dated 18.2.1984 (copy annexure 12) directing the payment of the salary at the rate of Rs.2.75 per hour is an unilateral and illegal order as the applicant had successfully completed the theoretical as well as practical training on 20.2.1984 and was entitled to the regular scale of pay of the TOA w.e.f. 21.2.1984. The respondents' contention is that the applicant along with 4 other persons (in short RTP) was recruited as a Reserved Trained Pool/TOA under the scheme to have a panel of trained candidates with a view to meet the problem of absentism to avoid heavy expenditure being incurred on OTA and to man ~~XXXXXX~~ positions to maintain and improve the efficiency of the Tele-com service. The staff ~~was~~ recruited in the department under the said RTP scheme were engaged on hourly basis upto a maximum of six hour per day and their regular absorption in the respective cadre/grade in the department depends upon availability of regular vacancies in future. The respondents have referred to the details of the advertisements issued for making recruitment of RTP clerks vide letter dated 15.12.1982 (copy annexure CA 1). The advertisement no.5/1982 annexed to CA 1 states the subject as recruitment of clerks/.. This annexure gives

(Reserved Trained Pool)

the number of vacancies for the various divisions of U.P. circle and the vacancy against Allahabad Tele Com Division is shown as 10 and in the break up of these vacancies, there is the mention of one vacancy for ex service men. It provides for 3 months' training during which a stipend of Rs.130/- per month will be paid. It also mentions the scale of pay of the post as Rs.260-480. The main point of dispute between the applicant and the respondents is that after the completion of the training by the respondents, he was entitled to be appointed as a regular TOA in the scale of Rs.260-480. The respondents' contention is that the scheme of RTP clerk does not guarantee appointment on the completion of training. The respondents admit that regular vacancies were available and the applicant as well as ~~the~~ four other persons, selected with the applicant, could have been appointed against these vacant posts, but for the ban imposed by the Government of India on the filling of vacancies. They have filed copy of Circular letter dated 20th Jan.1984 issued over the signature of Secretary Ministry of communication imposing the ban on the creation of new posts and filling in of existing vacancies. These instructions were circulated vide General Manager Tele Com U.P.Circle's endorsement dated 25.4.84 (annexure CA 5). Learned counsel for the applicant contends that the letter does not impose any ban on the filling of vacancies where recruitment action had already been taken and the respondents should have given appointment to the applicant as the recruitment against the existing vacancy had already been completed. The respondents have justified their action on the following sentence in the

ML

Page 6

6

-6-

above mentioned circular"however, the offices will have flexibility to readjust their existing staff in a manner as to avoid dislocation of working due to vacancies remaining unfilled." The respondents contend that the action taken by them was in the best public interest and four other persons recruited along with the applicant were given similar treatment and there was no malafide or arbitrariness on their part. As the respondents were unable to absorb the applicant against the existing vacancies, all the 5 persons recruited and trained as RTP clerks were utilized on hourly basis at the rate of Rs. 2.75 per hour for six hours working in a day and there was no arbitrariness or illegality on their part. The applicant has pointed out ^{that} one Ashok Kumar, who was also recruited with the applicant was given preferential treatment by the respondents as he was offered appointment on regular basis w. e.f. 8th March, 1984. The respondents have explained that this was done under the scheme of giving compassionate appointment to the dependents of deceased government servant and such appointment did not attract the ban on filling up of vacancies imposed by the government of India. The respondents have also justified the cancellation of the order dated 28.4.84 issued by the D E T Allahabad under ignorance of the fact that there was a ban on the filling in of the existing vacancies and therefore, the order dated 16.5.84 was issued to rectify the mistakes. It is also contended that the order dated 28.4.84(annexure 14) was in the nature of a posting order and not a proper

bl

order
appointment// Although it did state that the applicant and 4 others would be given the pay scale of Rs.260-480. It is explained that as soon as this mistake came to notice, the same was rectified by the issue of order dated May 16, 1984.

4. We have considered the contentions of the parties and we are of the opinion that there is no arbitrariness on the part of the respondents in the matter of issue of order dated 16.5.84, which was in the nature of rectifying a bona fide mistake. Similarly order dated 21.2.1984 fixing the salary of the applicant and 4 others at the rate of Rs.2.75 per hour also does not suffer from arbitrariness taking into consideration the fact that there was a ban on filling in existing vacancies by the Government of India. There is also no arbitrariness in giving appointment to Sri Ashok Kumar under the scheme of appointment on compassionate ground as he was a dependent of a deceased government servant. The respondents have given the same treatment to 4 other persons recruited along with the applicant and there is no discrimination in the matter of ~~the~~ appointment of Sri Ashok Kumar. The applicant along with 4 others was given regular appointment w.e.f. 24.5.85 after the permission of the competent authority for filling in existing vacancies became available. For the reasons mentioned above, we are of the opinion that the applicant is not entitled to regular scale of pay of TOA prior to the date of his appointment along with 4 other persons recruited with him.

5. The second contention of the applicant is regarding his seniority over Sri Ashok Kumar who was
BL

appointed as TOA w.e.f. 8th March, 1984. Learned counsel for the applicant laid great emphasis on the fact that the applicant had rendered identical service in the Army for a period of 18 years and therefore, his seniority in the cadre of TOA should be fixed after taking into consideration his service of 18 years with the Defence Services. However, no such relief has been claimed by the applicant in this claim petition. The various representations filed by the applicant to the higher authority are regarding regularization of his service w.e.f. 21.2.1984 and seniority over Sri Ashok Kumar. In these representations he has also expressed his apprehension ^{that} / he may be transferred out of Allahabad. Learned counsel for the applicant cited several case law in support of the claim of the applicant for being given seniority of 18 years service in the Defence Services. However, it does not appear from the claim petition that he has filed any representation to the higher authority claiming this seniority. *the persons likely to be affected by this alleged seniority have also not been made parties to this case.* We are, therefore, refraining from giving any opinion on this matter and would leave it for consideration of the respondents in the light of instructions of the Government of India on this subject as and when a representation is made by the applicant. In the matter of seniority the applicant has claimed seniority over Sri Ashok Kumar. ~~Similarly~~ The claim of the applicant claiming seniority over Sri Ashok Kumar also has no merit as Sri Ashok Kumar was appointed w.e.f. 8.3.84 and the applicant and 4 others were appointed after about 1 year of the date of appointment of Sri Ashok Kumar.

6. Regarding the fixation of pay of the applicant

b2

respondents have contended that the pay of the applicant has been fixed correctly in accordance with the existing rules regarding fixation of pay of ex service men as per Government of India's decision no.7 below FR 27 by allowing 17 increments in his present scale of pay. The method of fixation of pay of the applicant is contained in the letter dated 14th November, 1985, of the Accounts Officer Office of DE Telegraphs Allahabad (copy annexure CA 10) in which it has been indicated that the applicant had completed 17 years of service and after adding 17 increments in the scale of Rs.260-480 the pay of the applicant was fixed at Rs.420/- w.e.f. the date of his regular appointment w.e.f. 1.5.86 raising his pay from Rs.420 to Rs.432 after the crossing of efficiency bar. The applicant has not contested the above fixation done by the Accounts Officer of the office of the Divisional Engineer Telegraph Allahabad and has merely reiterated fixation of pay w.e.f. 21.2.1984. His representation regarding fixation of pay made vide his letter dated December 6, 1985, was considered and rejected vide letter dated 29.9.86 (copy annexure 25). We have considered this contention of the applicant and we are of the opinion that in view of our finding that the applicant was appointed to the post of TOA only w.e.f. 24.5.85, he is not entitled to the fixation of his pay w.e.f. any earlier date.

For the reasons mentioned above, we are of the opinion that there is no merit in the petition and the same is dismissed without any order as to costs.

J. M.
J.M.

A. M.
A.M. 9.8.88