

(B)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 186 of 1986  
~~XXXXX~~

DATE OF DECISION 13th November, 1987

Shri Bipinchandra N. Desai \_\_\_\_\_ Petitioner

Party in Person \_\_\_\_\_ Advocate for the Petitioner(s)

Versus

Union of India & Ors. \_\_\_\_\_ Respondents

Shri J. D. Ajmera \_\_\_\_\_ Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. P. M. Joshi : Judicial Member

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

Shri Bipinchandra N. Desai,  
20-B, Shree Society,  
Panchavati Second Lane,  
Ahmedabad - 380 006

.....  
... Applicant

(Party in Person)

Versus

Union of India  
through the Director General  
(Post & Telegraphs)  
Sanchar Bhavan, Parliament Street,  
New Delhi - 110 001.

The General Manager,  
Telecommunications,  
Gujarat Circle,  
Ahmedabad - 380 009

The General Manager,  
(Telecom.), Projects,  
Western Region,  
Phoenix Mills Compound,  
Senapati Bapat Marg,  
Lower Parel,  
Bombay - 400 013.

.....  
... Respondents

(Adv. : Shri J. D. Ajmera)

OA/186/87

Coram : Hon'ble Mr. P. M. Joshi : Judicial Member

O R A L J U D G M E N T

13th November, 1987.

Per : Hon'ble Mr. P. M. Joshi : Judicial Member

The petitioner Shri Bipinchandra N. Desai, of Ahmedabad, holding the post in the Higher Grade Draughtsman (in the Office of the Divisional Engineer, Telegraphs, Coaxial Cable Division, Ahmedabad), has filed the application under Section 19 of the Administrative Tribunals Act, 1985, on 9-4-1987. He has challenged the validity of the order dated 27-2-1987 issued by Asstt. Director, Telecome(s) for General Manager, Telecome. Gujarat Circle, Ahmedabad. The impugned order dated 27-2-1987 (Annexure 'G') reads as under :

"Approval of the General Manager, Telecom.Gujarat Telecom Circle, Ahmedabad is conveyed for revision of pay scale in the Cadre of Higher Grade Draughtsman in the Pay Scale of Rs.425-700 with effect from 9-4-1986 to Shri B.N.Desai, D/Man working under D.E.Telegraphs, Coaxial Cable Project Dvn.I with the condition that no Disc/Vig case pending or contemplated against the official. Pay is fixed w.r. to D.G. Telecom. New Delhi circular No.61-2/83/NCG dtd.9-4-1986.

This is in supersession of this office letter No.even dated 8-9-1986."

2. According to the case set up by the petitioner, he was initially appointed to the post of Draughtsman Lower Grade on 11-9-1969 in the scale of Rs.110-240 which was revised to Rs.260-430 in view of the recommendation of the Report of 3rd Pay Commission. According to him, he was promoted to the post of Draughtsman Higher Grade in the scale of Rs.330-560(R) on 3-4-1978 in the Project circle, which deals with the construction of underground S.T.D. and Microwaves lines under control of General Manager, Project. In the meantime, he was absorbed in Gujarat Circle with effect from 12-1-1986. It is further submitted that the post of Draughtsman Higher Grade was upgraded from 1.9.1975 having the pay scale of Rs.330-560(R). The plaintiff claims that he is entitled to the pay scale of Rs.425-700 with effect from 13-5-1982. In this regard, he has made several representations in the year 1977 and the same were also recommended by his higher authorities, as a result, he was promoted to the post of Draughtsman Higher Grade with effect from 3-4-1978. But he has not been given the said scale. He has therefore prayed that the aforesaid impugned order dated 27-2-1987 (Annexure 'G') be quashed and declared that he is entitled to the scale of Higher Grade Draughtsman of Rs.425-700 on and from 13th May, 1982 and the arrears be paid to him.

3. The respondents have resisted the petitioner vide their reply dated 18-8-1987, wherein they have denied the averments and allegations made against them. According to them, the decision taken by the authorities as contained in the impugned order is in consonance with the "Telecom Department Draughtsman Recruitment Rules 1986" which came into force vide notification dated 9-4-1986

(Annexure attached to the reply.) It is further submitted that the petitioner does not fulfill the required qualification and consequently earlier order regarding pay fixation issued vide order dated 8-9-1986 has been subsequently revised.

4. The petitioner is heard in person. Mr. P.N.Ajmera for Mr.J.D. Ajmera the learned counsel on behalf of the respondent is also heard. The documents and materials placed on the record are considered carefully. The petitioner, in support of his claim, has mainly relied on the instructions contained in the memorandum No.15-1-/84-TE dated 6-2-1985 issued by the Director (Indian Posts and Telegraphs Department) and the subsequent clarification issued by the Director vide letter dated 23-4-1985. It is borne out from the memorandum dated 6-2-1985 that the scale of the Draughtsman were revised. The different categories of the Draughtsman are enumerated therein who are entitled to the revised scale of Rs.425-700 for which certain criteria regarding possession of Diploma and/or the length of service was envisaged as shown in column 1 and 2(A) &(B) as shown in the memorandum dated 6-2-1985 and even though those who were not covered under the said items but who are working as Draughtsman and have not fulfilled the recruitment qualification, and were allowed to continue in the pre-revised scale of pay, the benefit of fixation of revised scale were extended to them also. The revision of pay scale was given to all of them, notionally with effect from 13-5-1982 and the actual benefits were allowed with effect from 1-11-1983.

5. The fact that the petitioner being eligible for the revised scale, was granted the benefit of the pay of Rs.425-700 with effect from 1-11-1983 vide memorandum No.SE.10-3/VII/75 dated 8-9-1986, is not in dispute. The said memorandum is reproduced in extenso as under :

"Approval of the G.M.Telem., Gujarat Circle, Ahmedabad-9 is hereby conveyed for Higher Grade Draughtsman in the pay of Rs.425-700 with effect from 1-11-1983 to Shri B.N.Desai Draughtsman working under D.E.Telem., Coaxial Cable Project Dn.I, Ahmedabad with the condition that no disciplinary/Vigilance case is pending or contemplated against the officials. He is posted at the same station/division."

6. It has been pointed out by the petitioner, during the course of his argument, that he was not even given notional benefit of the revised scale with effect from 13-5-1982. It is quite possible that it might have been escape the notice of the authorities. But since the benefit is conferred upon the petitioner in pursuance of the instructions contained in the memorandum dated 6-2-1985, he cannot be deprived of the same. It is significant to note that the respondent, after conferring the benefit of the revised pay scale vide memorandum dated 8-9-1986, has preferred to deny him by virtue of the impugned order on the basis of sole plea that the petitioner is not fulfilling the qualifications as prescribed under the "Telecommunications Department (Draughtsman) Recruitment Rules, 1986." Admittedly, the said rules have come into force from 9-4-1986. The rules are prospective in operation and they cannot have any effect on the acts or deeds done in pursuance of the "Post and Telegraphs Draughtsman Recruitment Rules, 1979 which were in force at the relevant time. It was submitted by the petitioner that the pay scale is attached to the nature of work done and not necessarily based on the basis of qualification prescribed for that post. Now when a person with different qualifications perform the same task,-do the same work, they cannot be discriminated solely on the ground that some of them have a lower qualification than the others. There is a considerable force in the submission made by the petitioner in this regard. (See B.R.Narayan Prasad V/s. Union of India and others 1986 Lab.I.C.230). The Tele. Dept. (Draughtsman) Recruitment Rules are not retrospective in operation. The respondent's action in superseding the order dated 8-9-1986 (Annexure 'F') is discriminatory and bad in law.

(10)

7. In this view of the matter, the impugned order dated 27-2-1987 (Annexure 'G') cannot be sustained and accordingly, it is quashed and set aside. The respondents are directed to give the benefit of the revision of pay and fix the pay of the petitioner in the scale of Rs.425-700 with effect from 13-5-1982 notionally and the actual benefit including all the monetary benefits which are admissible to the petitioner from 1-11-1983. The respondents are further directed to work out the arrears on the said basis and pay the same to the petitioner within three months from the date of this order, in default, the interest shall be payable at the rate of 12% per annum on the amount due to the petitioner.

8. With the aforesaid observations, the application is disposed of. The parties are left to bear their own costs of the application.

  
( P M JOSHI )  
JUDICIAL MEMBER

GHS/-