

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 443 OF 1989.

~~FILE NO.~~

DATE OF DECISION 7.4.1997

Jayantibhai R. Gandhi & Ors. Petitioner

Mr. A.M. Raval for
Mr. M.R. Anand, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent s

Mr. Akil Kureshi, Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

The Hon'ble Mr. T.N. Bhat, Judicial Member

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? *rb*
2. To be referred to the Reporter or not ? *rb*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *rb*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *rb*

7

1. Jayantibhai R. Gandhi
2. Vinodchandra Dargashankar Pandya
3. Francis Benjamin Parmar
4. Smt. Heena Vipin Nair
5. Mahendra Rabijibhai Rajput
6. Narendrasingh Mahendrasingh Chhasatia
7. Mehbood Valibhai Patel,
C/o. Office of the Chief General
Manager, Telecommunications,
Telecom Accounts Unit,
Gujarat Circle, Shah Bhilding
Opp: Navrangpura Bus Stand
Ahmedabad - 380 009.

.... Applicants.

Mr. A.M. Raval for
(Advocate: Mr. M.R. Anand)

Versus

1. Union of India
Notice of the petition to served
through Secretary, Department of
Telecommunications, Sanchar Bhavan,
New Delhi - 1.

2. Chief General Manager
Gujarat Telecom Circle
having office at
Ambica Chambers, Near High Court
Navrangpura, Ahmedabad-9.

.... Respondents.

(Advocate: Mr. Akil Kureshi)

ORAL ORDER

O.A.NO. 443 OF 1989

Date: 7-4-1997.

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

The applicants in this case, who are employees in the Telecom Department have challenged the order dated 24.5.89 at Annexure A-4 which reverts them from the level of UDC to that of LDC. They have also prayed for a direction that the Rule 1(2) of the Recruitment Rules for Lower Division Clerks, Junior Accountants and Senior Accountants, 1988 while giving retrospective

effect to the Rules with effect from 1.4.87 (when the Rules were published in the Gazette only on 16.7.88) should be struck down.

2. We have heard Mr. Raval for the applicant and Mr. Kureshi for the respondents.

3. These applicants who were functioning as LDCs were promoted on adhoc basis to the level of UDCs(TA) on various dates after 1.4.87 and continued as such as on 16.7.88 when the Recruitment Rules were published in the gazette. Prior to the promulgation of the statutory rules, promotions in the Department were regulated by certain executive instructions. It is not in dispute that as per the pattern then followed persons who had put in three years of service as LDC were eligible for promotion as UDCs and the applicants having put in the requisite eligibility period were appointed on adhoc basis as UDCs. However, ^{will} ~~that~~ the promulgation of statutory recruitment rules in July 1988 which retrospectively took effect from 1.4.1987 (vide Rule 1(2)) the mode of promotion ^{was} ~~are~~ changed and only these employees who had put in eight years continuous service as LDC on 1st July of the year of recruitment were eligible for consideration for promotion as UDCs. The applicants, who as stated earlier were promoted on adhoc basis after 1.4.1987 but before the actual publication of the rules in the gazette were reverted by the Department on the ground that they did not fulfil the ^{revised} eligibility norms, by the impugned order dated 24.5.89 at Annexure A-4.

AB

However, we are informed that the Department reconsidered the matter and issued an office memorandum dated 21.8.91 (enclosed as at Annexure R-1 to the further reply on behalf of the respondents) under which LDC who were promoted and working as adhoc UDC(TA) during the period from 2.4.87 to 15.7.88 were regularised as Junior Accountants which is the new designation given to UDCs in the Recruitment Rules after issue of this circular. The first six of the applicants herein were retained at the higher level of Junior Accountants (UDC) and their adhoc service as UDC was taken into account for further promotion. They were also paid arrears of pay and allowance as Junior Accountants when they were reverted as LDCs after 15.7.88. So far as these six applicants are considered, they can have no grievance as the reversion has been revoked by the Department and they were continued in the higher post of Junior Accountants and they were given pay and allowance as Junior Accountants for the period during which they were reverted as LDC after 15.7.1988.

4. However, in the case of seventh applicant Shri M.V. Patel, the department had not extended the same benefit for the reason that this adhoc service¹² as UDC/Junior Accountant after 2.4.87 upto 16.7.1987 was not continuous as there was a break. The reasons for not giving this benefit to the seventh applicant are contained in paras 6 & 7 of the further reply dated 15.9.92 of the respondents, which reads as follows:

102

m 6. It is further submitted that the applicant No.7 M.V. Patel has not been accorded benefit of the above mentioned instructions dated 21.8.1991 on account of the fact that he was reverted on 28.3.1988 and that is how the officiating arrangement on adhoc basis of the applicant M.V. Patel was terminated on 28.3.1988. I further say and submit that the applicant M.V. Patel, who was promoted as adhoc UDC was reverted to the post of LDC vide on 28.3.1988 as his senior Shri V.D. Pandya was promoted in his place as adhoc UDC. I, therefore, seek to clarify that the applicant M.V. Patel has not been given advantage of the instructions dated 21.8.1991 as he is not covered by the same on account of the reasons stated above.

7. It is further submitted that Mr.M.V.Patel was reverted to the post of LDC on 28.3.1988. Subsequently said Mr. M.V. Patel was promoted to officiate as adhoc UDC vide order dated 27.4.1988 vide Smt. M.J.Dixit, Junior Accountant, who was promoted as Special Pay UDC vice Smt. D.R. Shah, Special Pay UDC who was in turn promoted to officiate as selection supervisor vice one Shri B.B.Shah, who was promoted to officiate as JAO in the office of the A.O.T.A. vice Shri Rajaram Jat. It is submitted that promotion of said Shri M.V. Patel on 27.4.1988 was on temporary local officiating arrangements and not on adhoc promotion as UDC against regular vacancy. His temporary officiating arrangement was on account of the chain of events stated above and the above arrangement was terminated on 31.5.1989."

15/ In otherwords the benefit of the circular dated 21.8.91 has been denied by Mr. M.V. Patel solely on the ground that there was a break in service in his officiation at the level of UDC. It is admitted by the

Department that he ^{was} functioning as UDC as on 16.7.1988 when the recruitment rules were published in the gazette.

5. The circular dated 21.8.91 referred to (supra) reads as follows;

"A number of representations were received from LDCs working in TA units of various circle offices and also from the All India Administrative Employees Union requesting for regularisation of such LDCs working as adhoc UDCs from 2.4.87 to 15.7.88 (till the date of publication of recruitment rules) as Junior Accountants (TA). The case was also taken-up in the Departmental JCM. The Government have considered the matter in detail and is now pleased to order that LDCs (TA) who were promoted and working as adhoc UDC (TA) during the period from 2.4.87 to 15.7.88 may also be regularised as Junior Accountants in the same manner as has been prescribed for regularisation of adhoc UDCs in para 2 of OM No. 54-41/86 SEA dated 4.8.88. They may also be allowed the arrears of pay and allowances as Junior Accountants for the period, if any, during which they were reverted as LDCs after 15.7.88 till their date of promotion as Junior Accountants. Such of these persons approved for regular appointments as Junior Accountants are eligible to count their services rendered continued on an adhoc basis as UDCs (TA) for the purpose of promotion to the grade of Senior Accountants(TA)."

6. This circular says that such persons may also be regularised as Junior Accountants in the same manner as has been prescribed for regularisation of adhoc UDCs in para 2 of OM dated 4.8.88. Para 2 of OM dated 4.8.88 states that persons holding the post of UDC(TA) on adhoc basis as on 1.4.87 and was approved by the DPC and

appointing authority for regular appointment to the post of Junior Accountants (TA) are eligible to count their services rendered continued on an adhoc basis as UDCs (TA) for the purpose of promotion to the grade of Sr. Accountants (TA). It is an admitted position that Shri Patel, even though he was reverted earlier had been promoted on adhoc basis as UDC with effect from 27.4.88 and was holding such post on 16.7.88. While his adhoc service from 27.4.88 only will count for the purpose of promotion to the next higher level, there is no justification to revert him as LDC merely because he was once reverted to that level earlier on 28.3.88. We do not find from this circular that there is any stipulation that there should be continuous officiation after 1.4.87 to 15.7.88 for being given the benefit. We, therefore, hold that the action of the respondents in reverting Shri Patel to the level of LDC is ~~in~~ not *in* consonance with their own instructions dated 21.8.1991. We, accordingly direct the Department that subject to availability of vacancy in the level of UDC/Jr. Accountant to restore him to the level of Jr. Accountants/UDC from the date of his reversion as LDC subsequent to 15.7.88 and give him all consequential benefits including arrears of pay and allowance and also count his adhoc service with effect from 27.4.88 as UDC/Jr. Accountant for the purpose of further promotion as laid down by the circular. In order to facilitate this process we quash the Department letter dated 24.5.89 as at Annexure A-4


67


13

in so far as it reverts the present applicant as LDC from the level of UDC. The respondents shall implement the above direction within four months from the date of the receipt of a copy of this order.

7. In view of the present direction in respect of Shri Patel, applicant No.7 and the action taken by the Department in respect of Applicant No.1 to 6 the main relief sought for by the applicants has been granted. In the present OA it is not necessary for us to go into the vires of Rule 1(2) of the impugned rules including the effect of the certificate in the explanatory memorandum to the rules that retrospective operation will not adversely affect the interest of any employees.

8. The O.A. stands disposed of accordingly.
No order as to costs.


(T.N. Bhat)
Member(J)


(V. Ramakrishnan)
Vice Chairman

vtc.

D

Office Report

RECORD

ORDER

14

22.8.97

No one came
to remove (obj)
we may place
this matter on
11-9-97

5-9-97 *[Signature]*
DR (J)

Two weeks time is permitted for removing
office objections in M.A.

Registry to fix the matter accordingly.

[Signature]
(V.Radhakrishnan)
Member (A)

npm

11.9.97.

objection have
been removed.

[Signature]
19-9-97

One week time is allowed for removing the
office objections in M.A.

Registry to fix the matter accordingly.

[Signature]
(T.N.Bhat)
Member (J)

[Signature]
(V.Radhakrishnan)
Member (A)

ait.

26.9.97

Seen M.A.722/97. For the reasons brought out
in the M.A., time extended upto 31.10.1997.
M.A.722/97 is disposed of accordingly.

[Signature]
(V.Ramakrishnan)
Vice Chairman

vte.