

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 512 **OF** 1989
~~XXXXXX~~

DATE OF DECISION 8-5-1997

Shri Bhavsingh B. Basaya and ors. Petitioner



Advocate for the Petitioner (s)

Versus

Union of India and others.

Respondent

Mr. Akil Kureishi

Advocate for the Respondent (s)

CORAM

• Hon'ble Mr. V. Ramakrishnan

• Vice Chairman

The Hon'ble Mr. T.N. Bhat

• Member (J)

1. Bhavsingh B. Pasaya,
2. Smt. Beena Vatsalya Bhatt,
3. Smt. Yogini Sudhirkumar Thambe,
4. Sandeep Shantilal Shah,
5. Padmanabh Vasant Ray Yagnik,
6. Smt. Usha Krishnakumar Nair,
7. Smt. Dipika Ushir Shah,
8. Thomas Mathew,
9. Naimesh Ramanlal Kansara,
10. Miss Pratibha Balkrishna Khare,
11. Ramesh Nanikram Tekchandani,
12. Smt. Sunmathya Ravindran,

All C/o Office of the Chief General Manager, Telecommunications, Telecom Accounts Unit, Gujarat Circle, Shah Building, Opp. Navrangpura Bus Stand,
AHMEDABAD - 380 009.

...Applicants.

TIW
(Advocate : Mr. M. R. Anand)

Versus

1. Union of India,
Notice to the petition to be served through Secretary, Department of Telecommunications, Sanchar Bhawan, 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)

JUDGMENT

O.A. NO. 512 OF 1989

Date : 08-05-97

per : Hon'ble Mr.T.N.Bhat : Member (J)

1. We have heard at length the learned counsel for both the parties and have also gone through the judgments cited by them in support of their respective contentions.

2. In this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicants, who are 12 in number, have assailed the notification No.19-1/87-SEA issued under G.S.R. 583 by the Assistant Director General (SEA) as also the notification No.19-8/88-SEA dated 1.5.1989, issued by the same authority. By the aforesaid impugned orders the recruitment rules called ~~by~~ the Department of Tele-Communications, Telecommunications Accounts (Lower Division Clerks, Junior Accountants and Senior Accountants) Recruitment Rules, 1988, have been notified and it has been laid down that persons holding the posts of Upper Division Clerk or Selection Grade Upper Division Clerk (Telecom Accounts) on ad hoc basis on the date of commencement of the said Rules shall also be deemed to have been appointed to the post of Junior or Senior Accountants, respectively, provided they are found fit by the appointing authority on the basis of the recommendations of the Departmental

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9
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promotion Committee prescribed under the Rules for appointment to the post of Junior or Senior Accountants, as the case may be. The applicants are particularly aggrieved by the fact that framing of the aforesaid Rules has adversely effected the applicants from a retrospective date. Giving the service histories of all the applicants, they have averred that after their initial appointment in the cadre of Lower Division Clerks and their subsequent promotion to the higher post of Upper Division Clerk or junior Accountant, which promotions were given by the competent authority and were in accordance with the "Rules and Regulations" existing then, are sought to be adversely effected by the basis of the rules framed after their initial appointment, in that, promotion is being denied the applicants merely on the ground that according to the new Recruitment Rules (of 1988) they are not eligible for promotion. It may be stated here that under the Recruitment Rules, ibid, promotion from the post of Lower Division Clerk to the higher post of Upper Division Clerk or Junior Accountant can be given only if the Lower Division Clerk has completed eight years of service while under the old "practice" promotion could be granted on completion of only three years' service as Lower Division Clerk.

3. The applicants further rely on the explanatory memorandum in the aforesaid new rules which reads as under:

The respondents further take plea that before the framing of the 1988 Rules ibid there were no rules in force which provided avenues of promotion to the Lower Division Clerks to the cadres of Upper Division Clerks in Telecom Accounts wing and that promotions of some of the applicants had earlier been made purely on adhoc basis subject to reversion at a later stage.

8. In the rejoinder the applicants have reiterated the contentions raised in the O.A.

9. The main question that arises for adjudication is as to whether the applicants had acquired any right to get promotion before the Recruitment Rules came into force and whether retrospective effect given to the rules from 1.4.1987 had adversely affected the said right of the applicants. On this question the learned counsel for the applicants lays much emphasis on the argument that since under the "practice" prevalent in the respondents-department earlier, persons holding the post of L.D.C. were eligible for being considered for promotion to the higher post of Upper Division Clerks on completion of three years' service and that, therefore, the applicants must be held to have acquired the right to promotion. In reply, the learned counsel for the respondents has argued before us that there is a distinction between the right to promotion and a mere chance to get promotion. We find ourselves in agreement with this contention of the respondents' counsel, as this contention finds support from a judgment delivered by the Apex Court in the case of

*The retrospective effect being given to these Rules will not effect adversely any employee to whom these Rules apply".

It is contended by the applicants that in view of the above quoted specific provision the chances of promotion of the applicants cannot be adversely effected by the new rules and, therefore, the applicants continued to be eligible for promotion if they had completed three years of service as Lower Division Clerks before the 1988 Rules were framed.

4. The applicants had made representations and some effected employees had also filed one O.A. No. 500/87 which was decided on 27.7.1988. The aforesaid O.A. was filed by those persons who were already holding the post of Senior Accountants but who were reverted to the Lower post of Junior Accountants. It is, however, admitted by the applicants that in the aforesaid O.A. the question of validity of the new Rules, *ibid*, was not adjudicated upon.

5. Another important fact that needs to be noticed is that under Rule-1 (2) the new Recruitment Rules are deemed to have come into force on 1.4.1987 though, according to the applicants, the Rules were published only in the month of July, 1988.

6. The applicants have assailed the impugned notifications mainly on three grounds ; firstly, it is stated that retrospective effect could not be given to such rules which would adversely effect the rights of the applicants. Secondly, it is contended that in view of the clarificatory memo the eligibility criteria fixed under the rules could not apply to the cases of the applicants. Lastly, it is contended that the rights to get promotion acquired by the applicants before the publication of the new Recruitment Rules cannot be taken away by the said Rules.

7. The respondents have contested the claims of the applicants by filing detailed reply statement and the applicants have filed a rejoinder thereto. In the reply statement the respondents have taken the plea that no right which had accrued to or vested in the applicants before coming into force of the new Recruitment Rules have been taken away by the aforesaid rules and that it is open to the employer to change the eligibility criteria at any time. As regards the explanatory memorandum the respondents have averred that while framing the new rules the protection of service conditions of all the employees have been ensured and the benefit of promotion to the higher grade has been extended from retrospective effect to a large number of employees.

The respondents further take plea that before the framing of the 1988 Rules ibid there were no rules in force which provided avenues of promotion to the Lower Division Clerks to the cadres of Upper Division Clerks in Telecom Accounts wing and that promotions of some of the applicants had earlier been made purely on adhoc basis subject to reversion at a later stage.

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paluru Ramkrishnaiah and others Versus Union of India and another, reported as AIR 1990 Supreme Court, 166. In that case, supervisors in Grade-A working in the ordnance factories were promoted to the post of Chargeman-II on completion of two years service on the basis of a circular issued by the competent authority on 6.11.1962. However, subsequently, an order dated 28.12.1965 and circular dated 20.1.1966 were issued, which required three years of service for promotion to the aforesaid post of Chargeman-Grade-II. It was further provided in the circular dated 20.1.1966 that promotion should be made in accordance with the rules, and Rule-8 contemplated that promotions should be made on the basis of the selection list prepared in the manner provided under the Rules. The supervisors who sought promotion after the coming into force of the order dated 28.12.1965 and circular dated 20.1.1966, complained that they were discriminated against by denying promotion on the basis of the circular dated 6.11.1962. The Apex Court held that supervisors who had been promoted before the coming into force of the order dated 28.12.1965, and circular dated 20.1.1966, constitutes a different class altogether and did not fall in the same category and that, therefore, no question of discrimination would arise in such circumstances. Similarly, in the instant case, the mere fact that some persons were promoted to the higher grade on the basis of the "practice" prevalent before coming into force of the 1988 Recruitment Rules

cannot be sufficient to give a similar benefit to those who though eligible for promotion under the old "practice" were not eligible to claim promotion under the new Rules.

10. Another Judgment that has to be noticed is the one reported as AIR-1981-SC 1699 (Reserve Bank of India, Bombay Versus C.T.Dighe and others). It was held as follows :

"Where the Reserve Bank of India altered the conditions of eligibility of Stenographers and Personal Assistants for appearing at the test passing of which was necessary for being empanelled for promotion, during the pendency of a reference, the Bank could not be said to have contravened the provisions of section-33 (1) (a) by altering the conditions of service of employees belonging to certain other cadres who were already empanelled, and those who hoped to be empanelled, merely because the alteration in the conditions of eligibility affected the chances of promotion of the employees belonging to those other cadres..... Further, it is well settled that a rule which affects the promotion of a person relates to his conditions of service but this is not so if what is affected is a chance of promotion only. AIR 1974 SC 1631, Rel.on".

11. In the instant case as well what has been affected is a mere chance of promotion of the applicants ; and according to the law laid down by the Apex Court, the eligibility criteria can be altered any time by the competent authority.

12. The contention of the applicants that they had acquired a right to promotion cannot be accepted on another ground also. The applicants have not been able to point out any rule or even any instructions on the basis of which they can be held eligible for promotion to the post of Senior Accountant. As already mentioned, the respondents have taken the plea that there were no Rules or even instructions relating to promotion in the Telecom-Accounts-Wing prior to the framing of the 1988 Rules. The learned counsel for the applicants has not been able to rebut this assertion of the respondents. All that he was able to state was that there was some practice in vogue in the department according to which a person holding the post of Lower Division Clerk could be promoted to the post of Upper Division Clerk if he had three years service as Lower Division Clerk. Nothing has been stated as regards the eligibility criteria for recruitment to or promotion in the Accounts Wing of the Telecom Department.

13. The next question which falls for determination is as to whether the explanatory memo could in any way help the applicants. The last two sentences of the explanatory memorandum may be extracted hereinbelow :

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".....accordingly these Rules are being given retrospective effect from 1.4.1987. It is certified that the retrospective effect being given to these rules, will not affect adversely any employee to whom these rules apply".

14. It is a doubtful proposition whether the explanatory memorandum can be said to be a part of the Rules. Quite clearly, this explanatory memorandum has been appended to the rules only to show that the Rules were validly framed and that these are not likely to adversely affect any employee already in service. This memorandum can by no stretch of reasoning be held to be a provision in the Rules providing that the Rules cannot have adverse effect upon the interest of any employee ~~not~~ to whom the rules apply. Furthermore, as already held above, the Rules do not have any adverse effect upon any right that had accrued to the applicants before the Rules came into force.

15. The learned counsel for the applicants also cited some judgments, but on going through the same we find that these are not at all relevant to the point ~~in~~ in controversy in this O.A. In the judgment reported as AIR 1994 SC 55, for example, it has been held that retrospective operation of rules which is used as camouflage for appointment of Junior Engineers from a back date would be discriminatory and violative of Articles 14 and 16. In that case, Rules was framed in 1985 permitting appointment by transfer and making it

operative from 1976 subject to the availability of vacancy. The aforesaid retrospective operation of Rules had resulted in appointment of a Junior Engineer with effect from 1976. It was on these facts that the Hon'ble Supreme Court quashed the Rule so far as its retrospective operation was concerned. It was held that appointing a person to a higher post in a different cadre in which he has never worked is violative of constitutional guarantee of those who are working in the cadre and that ~~this~~ ~~it was against basic principles of recruitment to any service.~~ It was further held that no Rule can be made retrospectively to operate unjustly and unfairly against others. The facts of the instant case are clearly distinguishable and the ratio of the Apex Court's Judgment (supra) would not apply to this case.

16. Another Judgment to which our attention has been drawn is the one delivered by the Apex Court in the case of P. Ganeshwar Rao and others versus State of Andhra Pradesh and others, reported as AIR 1988 SC 2068. In that case, amendment was made to the Recruitment Rules by permitting 37½ % of only substantive vacancies to be filled up by direct recruitment to the post of Assistant Engineers, and not temporary vacancies. The Apex Court held that the amendment would not apply to the vacancies which had arisen prior to the date of amendment. The question at issue before the Apex Court in the said case was not as to whether retrospective operation of a rule would in all cases be invalid and liable to be struck down.

In the facts and circumstances of that case, the Apex Court held that in view of the introduction of the word "arising" in explanation to Rule-2, the aforesaid provision restricting direct recruitment to only substantive vacancies was applicable only to those vacancies which came into existence subsequent to the date of amendment. Thus, quite clearly the principle enunciated in the said judgment would not apply to the instant case.

17. Similarly, the judgment of the Apex Court reported as 1993 (SC) 155, is also clearly distinguishable. In that case, the Apex Court had the occasion to consider the doctrine of "legitimate expectation". It was held that the said doctrine imposed duty on public authority to act fairly by taking into consideration all relevant factors and to give a reasonable opportunity to the effected persons to make representations if they were likely to be effected by any change of consistent policy. We are of the considered view that the doctrine of legitimate expectations has no relevance to the question involved in the instant case. It cannot be held that an employee who joined service has the legitimate expectation of promotion to the higher post irrespective of the eligibility criteria that have already been laid down or that may be laid down in future. The case before the Apex Court (Supra) did not relate to any service matter.

It related to a memorandum containing certain guidelines in the matter of allotment of land to the society.

18. Not a single authority has been cited by the learned counsel for the applicants to support the view that the retrospective operation of a rule should not effect a mere chance of promotion.

19. In view of what has been held and discussed above, we are convinced that the applicants have not case and that there is no merit in this O.A. filed by them. Accordingly, this O.A. is hereby dismissed, but without any order as to costs.

sd/-
(T.N.Bhat)
Member (J)

sd/-
(V.Ramakrishnan)
Vice Chairman

ait.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
AHMEDABAD BENCH, AHMEDABAD.

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O.A./T.A./M.A./R.A./C.A. NO. MA/716/97 IN RA/81/97 IN
OA/512/89

Smt. D.V. Shah

APPLICANT (S)

Mr. M.S. Tejreli

COUNSEL

VERSUS

U.O. / E. Aor.

RESPONDENT (S)

COUNSEL

DATE

OFFICE ORDER

ORDER

21/8/97 ① Condonation of delay.

② m.t. alongwith R.A.

Submitted:

On scrutiny, MA is found to be in order. If approved, MA will be registered and placed before the Hon'ble Bench for orders.

15/9/97 3.04 P.M. 15/9/97
S.O.(S) S.O.(S) DR(J)
15/9/97 15/9/97

RECORDED (S)

RECORDED

ORDER

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH, AHMEDABAD.

..... by Mr. M.S. Tariqali
Learned Advocate for Petitioners
with second set & TWO copies
copies copy served/not served to
other side

.....

Dt. 11/08/97 By Register C.A.741
A'bad Bench

Smt. D. U. Shah
working as U.D.C.
V/s.

M.A./ 716 /1997
IN RA/81/97
RA/st/166 /1997
IN

OA/512/1989

1) Union of India,
Notice of the petition to be
served through Secretary,
Department of Telecommunications,
Sanchar Bhavan,
NEW DELHI -I.

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

REVIEW APPLICATION OF
ORDER DATED 8/5/1997 IN
OA/512/1989.

The applicant herein, most respectfully submits :-

1) That the applicant had approached this Honourable
Tribunal along with other employees regarding her
grievances of non-regularisation of promotion as U.D.C.
by the respondents. The said application, bearing
OA/No/512/1989 is decided by the Hon'ble Tribunal on
8/5/1997, copy of decision is annexed herewith and
marked as Annexure A-1 to this application.

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2) It is further stated that copy of order was ready as on about 12/5/1997 and the same is received by the applicant immediately thereafter but there was vacation in CAT during the period from 5/5/1997 to 9/6/1997. Not only that there are group of employees as applicants in the case and had decided to take guidance and advice about the decision in their case. During the said process there is some delay in filing the review application before this Tribunal.

3) The applicant further state and submit that in view of the facts mentioned hereinabove and looking to the facts and circumstances of the case the applicant was not careless, negligent and was stopt over for his right and this delay occured deserves to be condoned in the interest of justice. Not only that there is not much/more delay except delay of one and half month which is not gross delay and in view of the facts explained hereinabove the delay seems to be just, reasonable, justified and explained and requires to be ignored/condoned to meet with ends of justice.

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4) The applicant, therefore, pray as under :-

A) That the Honourable Tribunal be pleased to allow this application.

B) That the Hon'ble Tribunal further be pleased to condone delay in filing review application in OA/512/89 and register the R.A. as regular application.

C) Any other and further reliefs that the Hon'ble Tribunal may deem fit and proper may be given to the applicant.

Date : 8/8/1997

Place : Ahmedabad.

Shah

APPLICANT

D. U. Shah
DEPOSITION

I, Smt. D. U. Shah, adult, occupation service residing at Ahmedabad, do hereby solemnly affirm and state that what is stated hereinabove are true and I had not suppressed any material facts.

Solemnly affirm before me.

M. S. TRIVEDI

ADVOCATE

Shah

APPLICANT