

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 101 of 1992
~~T. A. No.~~

DATE OF DECISION 15-10-1992

Mr KO Aleyas & 6 others Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

Versus

UOI, represented by Secretary, Respondent (s)
M/o Communications, New Delhi & 2 others

Mr TPM Ibrahimkhan, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

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1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Ys*
4. To be circulated to all Benches of the Tribunal? *Ys*

JUDGEMENT

The short question that arises for consideration in this application filed under Section 19 of the A.T. Act by seven Assistant Superintendent of Telegraph Traffic (ASTT for short) in the Department of Telecommunication is whether the treatment of period of training before taking over the post^{to} which the incumbents are appointed as period spent on duty in the lower cadre in the case of persons appointed by promotion and as period spent on duty in the same cadre in the case of persons directly recruited for the purpose of fixation of pay and increment is justified. According the provisions of F.R-26, only duty in a post on a time scale count for increments in that time scale.

As the staff side raised the question of treating the period spent on training before taking over charge in all Departments of a regular post as duty for the purpose of fixation of pay and increment before the Nation Council of JCM, the matter was considered by the Government and the Department of Personnel & Training issued order on 22.10.1990 at Annexure-I wherein it is stated as follows:

"The matter has been considered in the National Counsel(JCM) and it has been decided that in case where a person has been selected for regular appointment and before formally taking over charge of the post for which selected person is required to undergo training, training period undergone by such a Govt. servant whether on remuneration or stipend or otherwise may be treated as duty for the purpose of drawing increments.

4. These orders take effect from the 1st of the month in which this O.M. is issued."

The applicants while working as Telegraph Assistants/Telegraphists in the scale of Rs.975-1660 were selected for appointment by promotion to the post of Assistant Superintendent of Telegraph Traffic in a competitive examination held on 17.9.1990. They commenced their training preparatory to the appointment as ASTT on 17.9.1990 and completed the same successfully on 16.6.1991 and all of them were appointed as ASTT w.a.f. 17.6.1991. According to the applicants, in the light of the Government order dated 22.10.1991 at Annexure-I, the period between 17.9.1990 to 16.6.1991 during which they ~~were~~ underwent training should have been counted for drawing of increments in the scale of Rs.1400-2600. / ^{When} the applicants and similarly placed other persons made demand for such fixation through their Union, The Department sought clarification in the matter and the third respondent on 23.8.1991 issued a clarification stating that the order dated 22.10.1990 would

apply only to the direct recruits who are compulsorily required to undergo training before taking up Government employment. On the basis of this clarification, the pay of the applicants were fixed treating the period of training as period of duty in the lower cadre. It is aggrieved by that/^{the}the applicants have filed this application seeking to quash the impugned order at Annexure-IV and for a declaration that the period of training from 17.9.1990 to 16.6.1991 in their case is liable to be treated as duty for the purpose of drawing annual increment in the scale of Rs.1400-2600 and for a direction to refix the pay of the applicants accordingly with all consequential benefits. .

2. The impugned order at Annexure-IV is sought to be justified by the respondents on the ground that the pay of the promotees is to be fixed under FR-22(I)(a)(i) and that the period spent on ^{training} in the case of direct recruits who would be appointed to Government service for the first time after training, alone is to be treated as period spent on duty in the scale of pay of the post to which they were recruited, according to the clarification issued by the Department in consultation with the Department of Personnel & Training.

3. The learned counsel for the applicant inviting my attention to the paragraph-3 of the order at Annexure-I argued that there is absolutely no justification for the narrow meaning given in the clarification at Annexure-IV. He argued that if the narrow meaning as given in Annexure-IV is allowed to be taken, it will lead to an anomalous situation where a promotee appointed on the same date as a direct recruit but placed ~~senior~~ may always

get a lower pay than a direct recruitee for the reason that direct recruitee may get the first increment earlier than the promotee. The clarification at Annexure-IV though purported to have been issued in consultation with the Department of Personnel and Training was issued by the Assistant Director General in the Ministry of Communications, whereas the order dated 22.10.1990 at Annexure-I is a general order of the Govt. of India, department of Personnel & Training and applicable to all the Departments. In this order it is made clear that where a person has been selected for regular appointment and before formally taking over charge of the post for which selected person is required to undergo training, ^{the period of} ~~training period~~ undergone by such a Government servant whether on remuneration or stipend or otherwise may be treated as duty for the purpose of drawing increments. Persons directly recruited before being appointed to the post are in receipt of stipend and those who are already in service but selected for appointment to the higher post, are in receipt of pay. A reading of paragraph-3 of Annexure-I would clearly show that both the classes of persons, direct recruits as well as promotees are covered and that there was no intention to restrict the benefit of treatment of this period as duty in the scale of pay of the post to which the training was held to the direct recruits alone. The clarification at Annexure-IV therefore do not appear to be just or reasonable. Whether directly recruited or selected for appointment on the basis of a limited competitive examination from among persons in the lower post, the recruittees are getting the same training and after the training, they would be absorbed in the same cadre. Therefore, the distinction

in regard to the treatment of the period of training of these two classes of trainees basing on the source of their selection also does not appear to be justifiable. For these reasons, I am of the view that the impugned orders at Annexure-IV is unreasonable and unjustified.

at Annexure-IV

4. In the result, the impugned order dated 23.8.1991 of the third respondent is quashed, it is declared that the applicants are entitled to have the period of their training from 17.6.1990 to 16.6.1991 treated as period spent on duty in the category of ASTT and I direct the respondents to refix the pay of the applicants accordingly and to pay them the monetary benefits flowing out of such refixation, within a period of three months from the date of communication of this order. There is no order as to costs.



(AV HARIDASAN)
JUDICIAL MEMBER
15-10-1992

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