

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 368 OF 2009

Friday, this the 6th day of November, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

1. A.S.Mani
Telephone Operator Gr.I (Retired)
H.Q Southern Air Command (Unit)
AF, Akkulam, Thiruvananthapuram – 695 031
Residing at Aleparambil House
Palliport P.O. Ernakulam – 683 515
2. K.G.Sudhir
Telephone Supervisor (Retired)
H.Q Southern Air Command (Unit)
AF, Akkulam, Thiruvananthapuram – 695 031
Residing at TC 8/822 'Surabhi'
50 Gowrinagar, Pongummoode
Medical College P.O
Thiruvananthapuram – 695 011 ... Applicants

(By Advocate Mr. P.M.Benzir)

versus

1. Union of India through the Secretary
Ministry of Defence
Sena Bhavan, Government of India
New Delhi
2. The Air Force Officer in Charge (Administration)
Air Headquarters, Vayu Bhawan
New Delhi – 110 001
3. The Joint Director
Personnel Civilian, Air Headquarters
Vayu Bhawan, New Delhi – 110 001
4. Air Officer Commanding in Chief
HQ, Southern Air Command
I.A.F.Akkulam,
Thiruvananthapuram – 695 031
5. Commanding Officer
Southern Air Command (Unit)
A.F.Akkulam,
Thiruvananthapuram – 695 031 ... Respondents

(By Advocate Mr.A.D.Raveendra Prasad, ACGSC)

The application having been heard on 06.11.2009, the Tribunal on the same day delivered the following:


ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Parity in pay is the issue involved in this case.

2. Briefly stated, the cadres of Civilian Switch Board Operators in Army Telephone Operators in Navy and Telephone Operators in Air Force are cadres identical to each other in functional responsibilities, qualifications and pay scales right from the beginning. When the Civilian Switch Board Operators of Army Wing approached the Chandigarh Bench seeking pay parity with Telephone Operators of Telecom Department, vide OA No.450/HR/02, the same was allowed by the Central Administrative Tribunal vide order dated 13.09.2002. Challenge of the said order in CWP No. 8759/03 was unsuccessful for the respondents. SLP No.CC143/04 against the dismissal order of the Hon'ble High Court of Punjab & Haryana was also dismissed as per order dated 19.01.2004. Thus the entitlement of Civilian Switch Board Operators of the Army have already been equated with their counter parts in Telecom Department having become final, Ministry of Defence vide order dated 27.02.2004 passed necessary administrative orders implementing the order of the Chandigarh Bench. Annexure A-1 refers.


3. While the Civilian Switch Board Operators of the Army has thus got their pay revised, the Telephone Operators of Navy had filed OA 380/04 before the Calcutta Bench for an identical benefit which was allowed as per order dated 20.07.2005 and the said order was



implemented vide Annexure A-7 order dated 02.12.2005.

4. In so far as Air Force is concerned some colleagues of the applicant who were working as Telephone Operators in Jodhpur filed OA No. 312/04 which was disposed of vide order dated 05.09.2006 with a direction to the respondents to consider the representation and to take a decision regarding upgradation of pay scale of Telephone Operators, in Air Force at par with their counter parts in GS Branch of Ministry of Defence. As the respondents were not inclined to extend the said benefits, two of the four applicants in the aforesaid OA again moved the Jodhpur Bench of the Tribunal in OA No.80/08 and the Tribunal took into account the decision by the Calcutta Bench as 871/06 (Mrinal Kanti vs. Union of India & Ors) vide order dated 06.03.2008 and allowed the OA. The said order of the Tribunal was implemented in respect of the two applicants vide Annexure A-13 order dated 01.04.2009.

5. As a matter of fact the applicants in this OA have been persistently representing for revision of pay scales as could be seen from Annexure A-3 and A-4 communications and the respondents had only stated that a proposal for extension of the pay scales to telephone Operators of General Branch and Telephone Operators of Air Force was taken with Ministry of Defence but the same was not accepted by them. Annexure A-5 refers. When again the matter was taken up vide Annexure A-6 as well as A-9, the Air HQrs have stated that the case was taken up in June, 2004 and the Ministry of Defence is considering a comprehensive proposal for Telephone operators of all the three services and the decision when received would be



implemented in IAF and all concerned be informed. Annexure A-10 refers. As no further action was taken, this OA has been filed seeking the following reliefs:-

"i, To declare that the applicants are entitled to be granted the pay scale of Rs.3200-4900 with effect from 01.01.1996 and time bound promotions to the scales of Rs.5000-8000 and Rs.5500-9000 with effect from 01.01.1996.

ii, To direct the respondents to grant the applicants the pay scale of Rs.3200-4900 with effect from 01.01.1996 and to grant them time bound grade promotions to the pay scales of Rs.5000-8000 and of Rs.5500-9000 with effect from 01.01.1996 with all consequential benefits including arrears of pay and allowances with interest at the rate of 18% per annum."

6. Respondents have contested the OA. They have stated that Ministry of Defence no doubt took up their case with Ministry of Finance but the Ministry of Finance in turn rejected the proposal stating as under :-

" The proposal has been considered in this department and it is observed that though the Telephone Operators in Army, Navy, AF, DGQA, OS Dte., E-in-C Branch have same educational qualification i.e matric or its equivalent with English as a compulsory subject plus proficiency in handling of private board exchange but their mode of recruitment is different which reflect that there is no wholesale parity between the Telephone Operators in different Hqrs/Dtes. Of MOD. The total financial implication involved in the instant proposal is also quite high. Further, though MOD has put forth a composite proposal wherein all the Telephone Operators working in different Hqrs/Dtes of MOD have been taken into account, however, there is possibility that similar demand may arise from civilian Ministries/Departments. Therefore, acceptance of the proposal will have wider repercussions. Further, the 6th CPC have also not made any recommendations in the matter. In view of the above, the proposal from MOD has not been agreed to."




7. Counsel for applicant after succinctly bringing the entire facts, submitted that right from the beginning pay parity has been maintained by the respondents in respect of Civilian Switch Board Operators of Army Hqrs on the one hand and Telephone Operator of the Navy and Air Force on the other. The qualifications and other conditions of service have all been the same throughout. The Civilian Switch Board Operators have got their pay parity under Annexure A-1 order dated 27.02.2004 and the Telephone Operators of the Navy have all got the pay parity vide Annexure A-7 order dated 02.12.2005. However, in respect of IAF Telephone Operators, the order of Jodhpur Bench has been implemented only with respect to applicants concerned there and the reasons given vide Annexure R-1 (c) is thoroughly illegal.

8. Counsel for respondents submitted that 6th Pay Commission has not made any recommendations and as such the applicants cannot be granted the benefits they claim.

9. Arguments were heard and documents perused.

10. Admittedly, the qualifications etc. of the Switch Board Operators of Army, Telephone Operators of the Navy and Telephone Operators of Air Force are identical and comparable. The only reason given was that the mode of recruitment was different which reflected that there is no whole sale parity. It is seen from the pleadings that when Chandigarh Bench passed its order which has been implemented not with reference to the applicants' alone but to the entire cadre of Switch Board Operators of the Army. Similarly when Calcutta Bench allowed the OA filed by a few Telephone Operators of the Navy the order of the Tribunal was




implemented uniformly to all the Telephone Operators of the Navy. However, when the Jodhpur Bench allowed the OA filed by two Telephone Operators of Air Force instead of implementing the order of the Tribunal to all the Telephone Operators similarly situated as the applicants in the OA, the implementation was restricted to the two applicants only. And, justification given is that the mode of recruitment is different. It cannot be that the mode of recruitment is different with reference to the applicants in the OA before the Jodhpur Bench on the one hand and the applicants of this OA. The mode of recruitment is the same in so far as Telephone Operators of Air Force is concerned. As such, the rejection by the Ministry of Finance, Department of Expenditure is purely for the sake of negation of the claim of the applicant and the same is without due application of mind. In fact such a contention does not seem to have been raised before Jodhpur Bench by the respondents when parity was sought with reference to other two wings. When the Jodhpur Bench has rendered its finding that the Telephone Operators in the Air Force are entitled to parity with their counterparts with Navy it will be illogical to hold that within IAF the Telephone Operators cannot enjoy parity in pay scales.

11. The Apex Court in the case ***In Inder Pal Yadav v. Union of India, (1985) 2 SCC 648***, the Apex Court has held as under:-

"... those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court."

12. The Apex Court as early as in 1975 in the case of ***Amrit Lal Berry v. CCE, (1975) 4 SCC 714***, held as under:-

"We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to



rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to court.

13. The Vth Central Pay Commission in Para 126.5 has held as under :-

"126.5 – Extending judicial decisions in matters of a general nature to all similarly placed employees. - We have observed that frequently, in cases of service litigation involving many similarly placed employees, the benefit of judgment is only extended to those employees who had agitated the matter before the Tribunal/Court. This generates a lot of needless litigation. It also runs contrary to the judgment given by the Full Bench of Central Administrative Tribunal, Bangalore in the case of C.S. Elias Ahmed and others v. UOI & others (O.A. Nos. 451 and 541 of 1991), wherein it was held that the entire class of employees who are similarly situated are required to be given the benefit of the decision whether or not they were parties to the original writ. Incidentally, this principle has been upheld by the Supreme Court in this case as well as in numerous other judgments like G.C. Ghosh v. UOI, [(1992) 19 ATC 94 (SC)], dated 20-7-1998; K.I. Shepherd v. UOI [(JT 1987 (3) SC 600)]; Abid Hussain v. UOI [(JT 1987 (1) SC 147], etc. Accordingly, we recommend that decisions taken in one specific case either by the judiciary or the Government should be applied to all other identical cases without forcing the other employees to approach the court of law for an identical remedy or relief. We clarify that this decision will apply only in cases where a principle or common issue of general nature applicable to a group or category of Government employees is concerned and not to matters relating to a specific grievance or anomaly of an individual employee."

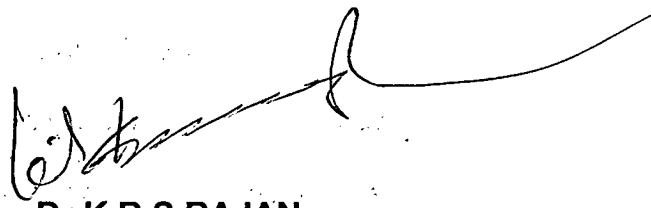
14. Considering the above decisions of the Tribunal, the law laid down by the Apex Court and the recommendations of the 5th Central pay Commission, we have no doubt that the applicants are similarly situated as those before the Jodhpour Bench, and as such, the benefits extended to the applicants before the Jodhpur Bench vide Annexure A-13 order dated 01.04.2009 are equally applicable and should be extended to them.



15. In view of the above, **OA is allowed**. Respondents are directed to extend the same benefits as provided in Annexure A-13 order dated 01.04.2009 to the applicants as well as all the other Telephone Operators of the IAF who are similarly situated as the applicants. The applicants are entitled to all consequential benefits thereof. This order shall be complied with, within a period of four months from the date of communication of a copy of this order. No costs.

Dated, the 6th November, 2009.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

vs