

(5)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESOCOT ROAD; BOMBAY-1

O.A. NO. 581/87 TO OA NO. 586/87 (6 cases)

Shri Umesh Ganesh Deshpande
Lower Grade Draughtsman
Office of the Assistant
Engineer Cables (MHS)
Telecom Dist. Pune
616 Rastapeth
Pune 411011

APPLICANT IN
O.A. NO. 581/87

Shri Vijay Dnyaneshwar Narke
Kismat Building
15/16 Pune-Satara Road
Pune 411009

APPLICANT IN
O.A. NO. 582/87

Shri D M Bhuvad
15/16 Kismat Building
Kaka Halwai Estate
Pune Satara Road
Pune 411009

APPLICANT IN
O.A. NO. 583/87

Shripad Sumant Phanse
Lower Grade Draughtsman
Office of Assistant Engineer
Cables (Planning)
Telecom Dist. Pune
Telephone Bhavan
Bajirao Road
Pune 411002

APPLICANT IN
O.A. NO. 584/87

Shri Dattatraya Baban Kapre
Kismat Building
15/16 Kaka Halwai Estate
Pune Satara Road
Pune 411009.

APPLICANT IN
O.A. NO. 585/87

Shri Ashok Vishwanath Sathe
HAL Compound; Karadwadi
Pune-Bombay Road
Pune - 28

APPLICANT IN
O.A. NO. 586/87

V/s.

1. General Manager
Telecom, Dist. Pune
Telecom Bhavan, Bajirao Road
Pune 411002
2. Director General (Secretary)
Department of Telecommunications
Sanchar Bhavan
20 Ashoka Road
New Delhi 110001

RESPONDENTS IN
O.A. Nos. 581/87
TO OA NO. 586/87

Coram: Hon. Shri Justice S K Dhaon, V.C.
Hon. Ms. Usha Savara, Member (A)

APPEARANCE:

Mr. R.C. Ravalani
Advocate
for the applicants

Mr. P.M. Pradhan
Counsel
for the respondents

JUDGMENT: DATED: 11.6.1987
(PER: S.K. Dhaon, Vice Chairman)

This and the companion original Applications Nos. 582, 583, 584, 585 and 586 of 1987 involves the same controversy, they have been heard together and all of them can be conveniently disposed of by a common order.

2. The admitted facts in brief are these. Some of the applicants had been appointed as Draughtsman Gr. III before 13.5.1982 and some of them were appointed thereafter. All of them were employed in the Telecommunication Department. All of them were in the pay scale of Rs.260-430. In pursuance of the Office Memorandum dated 13.3.1984 issued by the Deputy Secretary to the Government of India, Ministry of Finance, and the communication dated 6.2.1985 and 23.4.1985 issued by the Director General, Posts and Telegraphs, the applicants were on 2nd July 1985 given the revised pay scale of Rs. 425-700 with effect from different dates. These dates were fixed as and when each of the applicants completed three years service as a Draughtsman. The placement of the applicants in the revised pay scale of Rs. 425-700 had taken place under the orders of the Assistant General

Manager (Administration). By communication dated 1.12.1986 issued by the Assistant General Manager (Administration) the applicants were placed in the pay scale of Rs.330-560 from different dates. They are aggrieved by their placement in the lower grade. Hence this application.

3. The aforementioned Office Memorandum dated 13.3.1984 provided, interalia, that the President has been pleased to decide that the scales of pay of Draughtsman Gr.III, II, I in the Offices / Departments of Government of India were being revised. However, it was made clear that the benefit of the revisional scales of pay would be given notionally with effect from 13.5.1982 and the actual benefit has been allowed from 1.11.1983. The scales of pay as revised were as follows:

Grade	Original scale	Revised scale on the basis of the award.
i) Draughtsmen Gr.I	Rs.425-700	Rs.550-750
ii) Draughtsmen Gr.II	Rs.330-560	Rs.425-700
iii) Draughtsmen Gr.III	Rs.260-430	Rs.330-560.

4. It is the applicant's own case that they hold Diploma Certificate in Draughtsmanship from a recognised institution. On 6.2.1985 Director General, Posts and Telegraphs sent a communication with regard to the revision of pay scales of Draughtsmen in P&T Telecommunication Wing. This communication made a reference to the aforementioned Office Memorandum dated 13.3.1984.

According to this communication the revision of pay scales of pay as stipulated in O.M. dated 13.3.1984 would be applicable to the Draughtsman of Telecom-Wing who were in service on 13.5.1982 and who satisfied the conditions stipulated below:

Conditions for a revision of pay scale	Present scale of pay	New scale of pay
1) All Draughtsmen holding diploma/ certificate in draughtsmanship from a recognised institution of not less than 2 years duration including practical training for 6 months	Rs.260-430	Rs.330-560
2)(a) In the case of Direct Recruits all the draughtsmen with educational qualifications and other qualifications as (1) above Plus practical experience of at least one year in an organization of repute after getting the diploma.	Rs.330-560	Rs.425-700
(b) In the case of draughtsmen promoted from the post of draughtsmen Lower grade all draughtsmen with educational and other qualifications as in (1) above plus three years service as draughtsmen lower grade (i.e., in the pay scale of Rs.260-430).	Rs.330-560	Rs.425-700

(2) Those who do not fulfil the above mentioned recruitment qualifications will, however, continue to be in the prrevised scales of pay. The benefit of this revision of pay scales may be given notionally with effect from 13.5.1982, the actual benefit being allowed with effect from 1.11.1983.

(3) Pay in the revised pay scale shall be fixed under F.R.22(a)(ii) read with Audit Instruction(1) below F.R.22.

(4) Interse seniority of the officials will not be affected by the pay revision.

(5) This issues with the concurrence of P&T Finance Branch vide their U.O. No.886/FA-I/85 dated 5.2.85.

5. On 23.4.1985 the Director General of P&T sent another communication to all the heads of Telecom Circles / Telephone Districts in relation to the pay scales of Draughtsmen in Telecom wing of P&T. This made a reference to the earlier communication dated 6.2.1985 issued by him. Paragraphs 2 and 3 of the said communication are relevant and the same are extracted:

2. Regarding Para 2(b) it may be mentioned that all D.Men with qualifications as indicated in sub-para 1(1) of this office letter of even number dated 6.2.1985, with three years service as D/men in Lower and or Higher Grade(s), will be eligible for revised pay scale of Rs.425-700, with effect from 13.5.82 but the actual benefit will be from 1.11.1983.

3. However such D/Men who have not completed three years service in the pay scale of Rs.330-560, including service in the lower grade, on 13.5.82, will be placed in the revised pay scale of Rs.425-700 from the date on which they complete three years service but the actual benefit will be allowed from 1.11.1983 or from the date on which they complete three years service, as stipulated in para 2 above, whichever is later.

6. We will now again turn to the order dated 2-7-1985 issued by the Assistant General Manager (Adm.) referred to above. According to it, the applicants completed three years as Draughtsmen on different dates ranging from the year 1971 to the year 1981. They were shown to be in the pay scale of Rs.330-560. They were also shown that they would be treated in the revised scale

Rs.425-700 with effect from different dates ranging from 13.5.1982 to 13.9.1984.

7. On 22.5.1986 the Assistant Director General (T.E.) issued a communication to all heads of circles/districts in relation to the revision of pay scale of Draughtsmen in Telecom wing. This communication purported to be a clarification to the communication dated 6.2.85 and 23.4.85 referred to above. We are only concerned with the query (b) which reads:

(b) Whether an employee who was working as lower grade/D/Men on 13.5.82 would automatically become eligible to the pay scale of higher grade D/men viz., Rs.425-700 after he had completed 3 years service in the lower grade."

8. The answer given was :

"No. The lower grade D/Men in the pay scale of Rs.330-560 will become eligible for pay scales of higher grade D/Men (Rs.425-700) when he becomes eligible for promotion, through DPC etc., in the usual manner and also availability of vacancy".

9. It is true that on account of the operation of the O.M. dated 13.3.1984 read with the communication dated 6.2.1985 and 23.4.1985 issued by the Director General (P&T), the applicants who were Draughtsmen Gr.III automatically found their place in the revised scale of Rs.330-560. There is no difficulty so far as this position is concerned as this is acceptable to the respondents also.

10. The argument of the applicant's counsel is that on account of the communication dated 23.4.1985 issued by the Director General of P&T the applicants automatically became entitled to the

the
benefit of conditions for/revision of pay
scales as contained in paragraph 2(b) in the
communication dated 6.2.85 of the Director
General P&T, and therefore, they have been
rightly given a placement in the grade of
Rs.425-700 by the Assistant General Manager
(Adm.) by his order dated 2.7.1985. The argument
is that on 6.2.1985 the applicants had already
been put in the grade of Rs.330-560 on account
of the office memorandum dated 13.3.1984. The
argument, in substance, is that all the Draughtsmen
in Grade III would automatically be entitled to
the grade of Rs.425-700, even without any selection
for promotion or even without being promoted to
the post of Draughtsmen Gr.II. If this contention is
accepted, it will not only lead to an anomalous
position but would also be violative of the
provisions of Article 16 of the Constitution.
We are saying so because the applicants who are
Draughtsmen Gr.III would automatically be put
at par with the Draughtsmen Gr.II. This means
that unequals would be treated as equals.
We are saying so because there is a clear dis-
tinction between Draughtsmen Gr.III and Draughtsmen
Gr.II and between Draughtsmen Gr.II and Gr.I. It
appears to us that the Assistant General Manager
misconstrued and misapplied the communication dated
6.2.1985 and 23.4.1985 and, therefore, the appli-
cants were shown in the pay scale of Rs.425-700 by a
sheer mistake or inadvertance.

(12)

11. We have given due consideration to the communication dated 6.2.85 and 23.4.85 and we are satisfied that the condition of a promotion of a Draughtsman of the lower grade (Gr.III) was not modified or diluted by communication dated 23.4.1985. We have already taken ^{the} view that, in law, this could not be done. The position was, therefore, clarified by clarification dated 22.5.86 issued by the Assistant Director General (T.E.). We are satisfied that the Assistant Director General took a correct stand. The applicants, therefore, cannot derive any advantage from the apparent mistake committed by the Assistant General Manager when he issued the order dated 2.7.1985.

12. Learned counsel for the applicants has vehemently argued that, in any view of the matter, the applicants were entitled to an opportunity of hearing before their pay scales were reduced to Rs.330-560. The applicants acquired no right whatsoever on account of a mistaken order passed on 2.7.1985. Moreover, as already held by us, such an order even if passed consciously would be hit by Article 16 of the Constitution and will therefore, be void. We are satisfied that, having regard to the peculiar facts and circumstances of the instant case, the applicants were not entitled to an opportunity of hearing.

(13)

-9-

13. The applicants are not entitled to any relief.

14. These applications are rejected with no order as to costs.