

(9)  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, "GULESTAN" BUILDING NO.6  
BOMBAY - 400 001

O.A. Nos. 923/88 & 924/88

Ashok Narayan Sapse  
Higher Grade D'man  
Office of General Manager  
(Telecom) Development  
Maharashtra Circle  
Phoenic Mill Compound  
Lower Parel  
Bombay 400 013

..Applicant in  
O.A. 923/88

Tatoba Janardhan Pawaskar  
Higher Grade D'man  
B-6/6 Raj Hans Cooperative  
Society, Linking Road;  
Near Bhatkopar Bus Depot  
Bombay 400075

..Applicant in  
O.A. 924/88

V/s.

Union of India  
through Director General  
(Posts & Telegraphs)  
Sanchar Bhavan  
Parliament Street  
New Delhi 110001

2. General Manager  
Telecom, Maharashtra  
Circle, GPO, Building  
Bombay 400 001

3. Telecom District Engineer  
(Bombay City Division)  
Mohatta Market Building  
4th floor; Palton Road  
Bombay 400 001

.. Respondents

CORA: HON. SHRI P S CHAUDHURI, MEMBER (A)

APPEARANCE:

Shri S R Atre  
Advocate  
for the applicant

Shri V S Masurkar  
Advocate / Counsel  
for the respondents

ORAL JUDGMENT: DATED: 6-9-91  
(PER: P S Chaudhuri, Member(A))

In both these applications under section 19 of the Administrative Tribunals Act, 1985 filed on 9.12.1988 the applicants are Higher Grade Draughtsman in the office of the Second Respondent who are seeking fixation of their pay in the scale of Rs.425-700 (RS) notionally with effect from 13.5.1982 with actual payments from 1.11.1983. As common facts and questions

of law are involved in both these applications, these may be conveniently disposed of by a common judgment and order.

2. By order dated 21.3.1983 passed in exercise of the powers conferred by Section 5(6) of the Act, the Chairman has authorised all the Members of the Central Administrative Tribunal to function as a Bench consisting of a Single Member and to exercise the jurisdiction, powers and authority of the Tribunal in respect of such cases or class of cases as are specified in the said order. Cases relating to fixation of pay has been so specified in the said order. Further Mr. S R Atre, learned counsel for the applicant and Mr. V S Masurkar, learned counsel for the respondents both submitted that there were no complex legal issues involved in deciding these cases. Besides, after being specifically asked as to whether the matter should go to a Bench of two Members, neither of the counsel appearing before me suggested that the matter should go to a Bench of two Members. Further Mr. Atre submitted that the Ahmedabad Bench of the Tribunal has already decided a similar case, viz., Bipinchandra N. Desai V. Union of India & others, OA No. 186/87 vide its judgment and order dated 13.11.87.

3. By an arbitration award given in the case of Draughtsmen working in the Central Public Works Department (for short, CPWD) on 20.6.80, their pay scales were revised. Subsequently, a committee of the National Council (Joint Consultative Machinery) was set up by the Government to consider the request of the staff side that these revised pay scales for Draughtsmen working in CPWD be extended to the Draughtsmen in all Government of India Offices. On receipt of the report of the committee, by order dated 13.3.1984 the President decided that the scale of pay of Draughtsmen, Grade III, II & I in the offices/departments of the Government of India other than CPWD be revised at par with that of the CPWD Draughtsmen provided their recruitment qualifications were similar to those prescribed in the case of Draughtsmen in CPWD. Those who did not fulfill the recruitment qualifications of CPWD Draughtsmen would continue in the pre-revised scales. The benefit of this revision of scales of pay would be given nationally with effect from 13.5.1982, the actual benefit being allowed with effect from 1.11.1983.

4. Both the applicants have passed the Surveyors Course of the Industrial Training Institute prior to their appointment as Higher Grade Draughtsmen -

- Ashok N. Sape, the applicant in OA 923/88 on 22.2.1977 and Tatoba J. Pawaskar, the applicant in OA 924/88 on 26.6.1975. The qualifications prescribed in the recruitment rules under which they were appointed as direct recruits were:

Matriculation or equivalent examination plus a certificate or diploma in Draughtsmanship or Civil Engineering or Surveying or an Overseers Certificate recognised by the Govt. of India.

5. As it is relevant, it would be necessary to mention here that at that time the recruitment rules for direct recruitment of Draughtsman in the same grade in the Central Public Works Department (CPWD) were:

"For Draughtsman (Civil)"

Certificate or diploma in Draughtsmanship (Civil) from a recognised institution of not less than two years (including 6 months practical training) plus practical experience of at least one year in the line in an organisation of repute, after getting the diploma."

6. Based on this order <sup>dated 13.3.1984</sup> the respondents revised the pay scale of their Draughtsmen by order dated 6.2.1985 as amended by order dated 23.4.1985. Subsequently they also issued revised recruitment rules dated 9.4.1986 which were published in the Gazette of India on 3.5.1986.

7. The Applicants submitted representations that they should be fixed in the revised scales notionally with effect from 13.5.1982 with actual payment from 1.11.1983. But these representations were not allowed in full. Instead, the respondents gave them the benefit of pay fixation with effect from 3.5.1986 i.e., the date from which the revised recruitment rules came into force. Being aggrieved, the applicants filed the present applications.

8. The respondents have opposed the application by filing their written statements.

9. I have heard Mr. S R Atre, learned counsel for the applicant and Mr. V S Masurkar, learned counsel for the respondents.

10. The applicants based their case on three alternative submissions. The first submission is that as they met the qualifications prescribed in the recruitment rules under which they were recruited they should, automatically, be deemed to be qualified as per the rules applicable to Draughtsmen in CPWD. I have no hesitation in rejecting this argument. The two sets of qualifications have been detailed earlier and it is quite clear that the qualifications required for the appointment in the respondents' office <sup>was</sup> ~~is~~ different to those required for appointment of Draughtsmen in the same grade in CPWD. Further, the order dated 13.3.84 makes it clear beyond any doubt that the benefit of revised scales will only be available to those Draughtsmen whose recruitment qualifications are similar to those prescribed for their counterparts in CPWD. Against this background, this line of argument must fail.

11. The applicant's next line of argument was that the benefits claimed by them had been given to one Bipinchandra N. Desai by the Ahmedabad Bench in their judgment dated 13.11.1987 in OA 186/87. But this judgment can be readily distinguished. The applicant in it was not a direct recruit as a Higher Grade draughtsman but was a promotee. Further, his qualifications were not at all in issue. Against this background this line of argument, too, must fail.

12. The applicant's final submission was that the note to the revised recruitment rules which was gazetted on 3.5.86 reads as follows:

"The present incumbents of the post of Draughtsman (High Grade) in the scale of Rs.330-560 who do not possess the qualifications specified in column 7 shall be placed in the scale of Rs.425-700 after completion of five years of service in the scale of Rs.330-560."

It was their submission that, based on this, even assuming that they did not possess the qualifications required for similarly placed Draughtsmen in CPWD, they

were entitled to the benefit of the higher scale of pay on completion of five years of service. The respondents sought to contend that as the recruitment rules came into force from the date of notification viz., 3.5.86, the applicants were entitled to the revised scales of pay only from that date and they had given them the benefits from that date. I am unable to go along with the submission of the respondents. It is true that recruitment rules will not have retrospective effect, but this note specifically deals with people who were appointed prior to the coming into force of the new recruitment rules. There is no qualifying clause that the benefits given in this note shall <sup>be</sup> restricted to the date of notification in the Gazette. There is, of course, another lacuna in this note, inasmuch as it has not been restricted to 13.5.1982/1.11.1983 as is the case with the Draughtsmen who possess the same qualifications as required by CPWD, <sup>which the respondents may like to correct in due course</sup>. In other words, it is possible to end up with the situation in which qualified Draughtsmen will get the benefit from a later date than the unqualified Draughtsmen get the benefit. The only harmonious construction possible is that this note gives the existing Draughtsmen the benefit of revised scales on completion of 5 years service or notionally from 13.5.1982 but with actual payments from 1.11.1983 which ever is later. As the applicants were appointed on 22.2.1977 and 26.6.1975 they complete five years of service on 22.2.1982 and 26.6.80 respectively. Hence, they, too, will become entitled to the benefit of revised scale notionally with effect from 13.5.1982 <sup>but</sup> with actual payments from 1.11.1983.

13. In this view of the matter, I am of the opinion that both these applications deserve to be allowed.

14. Both applications are accordingly allowed.

(19)

-6-

The respondents shall complete the pay fixation and payment of arrears within a period of four months from the date of receipt of a copy of this order. In the circumstances of the case there would be no order as to costs.