

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Original Application No.98/86

1. Shri Balkrishna Arjun Padwal
2. Shri Aleixo Baltazar Gomes
3. Shri Ramchandra Harichandra Worlikar
4. Shri Alvaro Estivao Manuel Fernandes
C/o. Shri Arvind V. Bandiwadekar,
'Ram Kripa', Block No.9, 2nd Floor,
Lt. Dilip Gupte Marg, Opp. Shree Cinema,
Mahim,
Bombay - 400 016. ... Applicants

v/s.

1. The General Manager,
Telecom Factory,
Sion-Trombay Road,
Deonar,
Bombay - 400 088.
2. The Asstt. Director General,
P&T Department (TF Section),
Sanchar Bhavan,
Parliament St.,
20-Ashoka Road,
New Delhi - 110 001.
3. The Chairman
P&T Board (TF Section),
Sanchar Bhavan,
Parliament St.,
20 - Ashoka Road,
New Delhi - 110 001. ... Respondents

Coram: Hon'ble Vice-Chairman B.C.Gadgil
Hon'ble Member (A) J.G.Rajadhyaksha

Appearance:

1. Mr. Arvind V. Bandiwadekar,
Advocate
for the applicant.
2. Mr. P.M. Pradhan,
Advocate
for the Respondents.

ORAL JUDGMENT

Date: 1st May, 1987.

(Per B.C.Gadgil, Vice-Chairman)

The applicants who were working in the Telecom
Factory at Bombay have a grievance about the regularisation

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of their service as clerks and the consequential reliefs based upon such regularisation.

2. It is not in dispute that the applicants No.1, 2, and 4 joined the service of Respondents in 1944 while the applicant No.3 entered the service in 1947. All the applicants are non-matriculates hence they were initially shown on the industrial establishment as Skilled 'C' category. However, they actually worked as Clerks. The respondents organisation had also engaged clerks who were matriculates. Thus there were two categories of clerks; (i) matriculate and (ii) non-matriculate. The duties of the clerks were identical but the pay scale of matriculate clerks was higher than that of the non-matriculate clerks. In 1959 the department intended to have a test for the non-matriculates so that after passing the test they would be regularised as Time Scale Clerks, but later on this contemplated test was abandoned and on 20th August, 1973 (vide Office Memorandum No.ES-5/9VIII/(17)) the respondents passed an order that all the clerks whether matriculates or non matriculates should be brought on regular establishment w.e.f. 1-11-1970. Two of such clerks viz. Shri A.B. Kamerkar and Shri D.L.Gawade made representation to the respondents requesting that they should be regularised from the date of their initial appointment. On 18-6-1982 (vide Exhibit 'D') their prayers were granted and that they have been regularised with effect from 1-10-1964 (i.e. the date of their initial appointment)

3. Some of the non-matriculate employees who were working with the organisation and some who have already retired filed two separate Writ Petitions in the High Court viz. Writ Petition Nos.521/83 and 522/83. Their grievance

was that they should have been regularised with effect from their initial appointment. These two Writ Petitions have been decided on 3rd July, 1985. A copy of the judgment is at Exhibit 'E' to the application. In substance the High Court allowed the Writ Petition and gave orders that the petitioners in those petitions should be regularised from the date of their initial recruitment; but it was directed that they should not get any pay and allowances on the basis of such regularisation prior to 18th June, 1982. Another direction of the High Court is that on the basis of such regularisation the petitioners before the High Court should get promotion to the higher posts; however, the difference of pay and allowances was ordered to be paid with effect from 18th June, 1982. The High Court further directed that the fixation of pay and allowances and the consequent promotion should be taken into account for retirement, gratuity and other pensionary benefits.

4. The applicants contend that in view of the decision of the High Court dt. 3-7-1985 they are entitled to have similar relief and hence they filed the present ~~petition~~ Application.

5. We have heard Mr. A. V. Handiadekar for the applicants and Mr. P. M. Pradhan for the respondents. The respondents have not filed any reply to the application. The main contention of Mr. Pradhan is that Gawade and Kamerkar were given regularisation from the date of their initial appointment. Mr. Pradhan contended that this took place in 1982 and that the applicants got a cause of action in 1982 when alleged discriminatory treatment was given to these two persons. According to him this Tribunal would have no jurisdiction to entertain the matter as the cause of action arose three years prior to the establishment of this Tribunal. It is however material to note

that the rights of the applicants have been crystallised on 3-7-1985 i.e. the date of decision of the High Court in Writ Petition Nos. 521 and 522 of 1983. The applicants contend that the cause of action for the claim clearly arose on this date when the High Court has decided the matter. We think that there is much substance in this contention and it would be very difficult for the respondents to contend that this Tribunal has no jurisdiction on the hypothesis that the cause of action has arisen three years prior to the establishment of the Tribunal.

6. On merits it will be very difficult for the respondents to oppose the claim of the applicants. This is more so when the above mentioned judgment of the High Court has granted relief to the non matric clerks and the present applicants are claiming similar reliefs.

7. In view of this position the application succeeds and we pass the following order :-

O R D E R

- 1) The respondents are directed to give to all the petitioners the benefit of conversion on regular establishment with effect from the date of their initial recruitment in 1944 and 1947 as mentioned in paragraph 1 of the judgment. However, these applicants would be entitled to arrears of pay and allowances from 18th June, 1982 and not earlier.
- 2) The respondents are further directed to determine the seniority of the applicants on the basis of the above mentioned regularisation and to fix the deemed date of promotion to the higher posts on the basis of such seniority. However, applicants would be entitled to have pay and allowances in the promotional posts only from 18th June, 1982 and not before.

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- 3) In addition the pay and allowances as fixed above shall be considered by the respondents while determining all the pensionary benefits including the pension, gratuity etc.
- 4) This order should be complied expeditiously say within a period of three months from today.

There is no order as to costs.

B.C.Gadgil
(B.C.GADGIL)
Vice-Chairman

(J.G.Rajadhyaksha)
(J.G.RAJADHYAKSHA)
Member(A)