

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

TRANSFERRED APPLICATION No.69 OF 1986.

Shri Gurunath N. Joshi & ors.,
 Telecom Accounts Clerk,
 O/C the General Manager,
 Telecommunication,
 Maharashtra Circle,
 Bombay - 400 001.

... Applicants

V/s.

Director General,
 Posts & Telegraphs,
 Directorate (STB),
 New Delhi.

And Others.

... Respondents

Coram: Hon'ble Member(J), Shri M.B. Mujumdar
 Hon'ble Member(A), Shri M.Y. Priolkar

Appearances:

Mr.P.L.Naik, Advocate
 for the Applicants

Mr.S.R.Atre, Advocate
 (for Mr.P.M.Pradhan)
 for Respondents Nos.1 to 3.

JUDGMENT:

Date: 17-1-1990

¶ Per: Shri M.Y.Priolkar, Member(A) ¶

This is an original Writ Petition (W.P.No.1356 of 1980) filed in the Bombay High Court which was subsequently transferred to this Tribunal and now bearing the number Transferred Application No.69/86. The applicant, who has filed this petition for himself and on behalf of all other deputationists now absorbed as Telecom Accounts Clerks in Telecom Wing under the General Manager, Telecommunications, Maharashtra Circle, prays for quashing and setting aside the gradation list as on 1.1.1977 and the letter dated 28.7.1976 from the Director General, Posts and Telegraphs, New Delhi on the ground that the guiding principles contained therein for fixation of seniority of Telecom Accounts Clerks are

unreasonable, arbitrary and discriminatory and give illusory seniority to persons who are juniors to the deputationists like the applicant.

2. The essential facts in this case are not in dispute and may be briefly narrated. The applicant was appointed in 1964 as a Time Scale Clerk in the Posts & Telegraphs (P & T) Department in the scale of pay of Rs.110-240. In 1968, for the first time, a new Telecommunication Accounts Organisation was set up in P & T Department with a separate cadre of Clerks for each circle. The source of recruitment to this cadre was to be 50% from the existing clerks in P & T and 50% from outside in terms of letter dt. 16.5.1968 (Annexure 'A') from Director General, P & T which also laid down the terms and conditions for transfer of willing staff from Audit Department, which was previously entrusted with these accounting functions. However, since even after transfer of such willing Audit employees, there was a large number of vacancies of clerks in the Telecom Accounts Wing, Post Master General, Maharashtra Circle, issued a letter dt. 25.4.1970 (Annexure 'B') inviting volunteers from time scale clerks from other wings of P & T Department for serving on deputation in Telecom Accounts Wing with the assurance that if they passed the aptitude test within two years, they could be absorbed permanently with two advance increments.

3. The applicant and 8 others who were already confirmed as Time Scale Clerks in other wings volunteered and joined the new Telecom Accounts Wing as Telecom Accounts (T.A.) clerks in 1970 and 1971. They were then permanently absorbed in the T.A.Wing after passing the aptitude tests. There was also direct recruitment of T.A. clerks almost every year from 1971 onwards after advertisements from time to time. Thereafter, Director General, P & T, by his impugned letter dated 28.6.1976

circulated the guiding principles to be adopted for fixing seniority of T.A.Clerks. Mr.P.L.Naik, learned advocate for the applicant, stated during the hearing that the applicant has no grievance regarding the protection given in this letter to the lower division clerks transferred from the Audit Department on the basis of the terms and conditions agreed with the Comptroller and Auditor General by the P.& T Deptt. at the time of the transfer, although this was also challenged as discriminatory in the original writ petition. We would, accordingly, exclude from our consideration the principles regarding seniority applicable to lower division clerks who came on transfer from the Audit Department. Para (iii) of the letter dated 28.6.1976, ^(Annexure D) which reads as under, alone stands challenged now in this transferred application, along with other related provisions:

"(iii)... The inter-se-seniority amongst the two groups i.e. outsiders and departmental candidates would be decided by the merit list at the recruitment stage for outsiders and by the marks in the competitive examination in the aptitude test for the departmental candidates."

4. The grievance of the applicant is that while laying down the above guiding principle of seniority, no consideration has been given to the fact that the deputationists were appointed in the other wings of the same department as early as 1958 to 1964 and had put in considerable service and experience as Time Scale Clerks and were confirmed in the same scale as T.A. clerks long before direct T.A. clerks joined the Telecom Accounts Wing. The applicant alleges that this guiding principle gives artificial and illusory seniority to such direct recruits who passed aptitude test first in point of time. The applicant claims that the

seniority of the deputationist T.A. clerks should have been determined with reference to the length of their continuous service in the P & T Department or at least from the date of their entry in the Telecom Accounts Wing.

5. In their written reply opposing the application, the respondents have stated that the applicant came on deputation to T.A. Wing on his own volition. During the period he was on deputation he continued to hold lieu and seniority in his parent cadre. Hence he cannot claim any seniority or even placement in the cadre of T.A. clerks prior to the date of his appointment in this cadre. As the applicant passed an aptitude test only in 1973, he could not be absorbed as a T.A. clerk prior to 1973. Had he qualified in the test earlier, he could have gained in seniority. In fact two of his fellow deputationists who joined the T.A. Wing later to him have been given higher seniority than the applicant as they qualified in the aptitude test earlier to the applicant. An official voluntarily asking for a change of cadre and subjecting himself to the aptitude test, therefore, can draw no benefit from his previous service in the parent cadre as far as seniority in the new cadre is concerned.

6. *argued by* Mr.P.L.Naik, ~~agreed~~ that the letter dated 25.4.1970 calling for volunteers from other wings of the P & T Department to work in the T.A. Wing did not explicitly state that passing of the aptitude test was essential for absorption in the new cadre and the applicant was all along under the impression that the aptitude test was only by way of an incentive, the passing of which would entitle him to two advance increments. The relevant clause in the communication dated 25.4.1970 from the Post Master General, Bombay is as follows:-

"... If they passed the aptitude test within two years they could be absorbed permanently

with two advance increments.."

The wording of this clause leaves no scope, in our view, for any doubt that passing of the aptitude test was essential not only for earning two advance increments but for permanent absorption itself in the new cadre.

7. In fact, Mr.S.R.Atre, learned advocate appearing for the Respondents, drew our attention to the note at the end of Annexure 'A' (Director General, P & T's letter dated 16.5.1968) which reads as under:-

"... it has since been further clarified by the DG P&T that ~~the seniority of an existing clerk of the~~ P & T Department is recruited to the new cadre of Accounts Clerks in accordance with the conditions laid down therein, his seniority in that cadre will be fixed with reference to his date of appointment in the new cadre."

As a doubt was raised whether this Note was part of the original letter dated 16.5.1968 or whether this clarification was given subsequently after the circular dated 25.4.1970 calling for volunteers, the respondents filed an additional reply dated 28.9.1989 enclosing the copy of a communication dated 13.3.1968 (Annexure '1') of the office of the Director of Audit and Accounts, P & T Stores, Workshop and Tele Check, Calcutta, which incorporates the same Note. The respondents have also stated in this additional written reply that the final terms and conditions were issued after consultation with Audit by Member Administration of P & T Department along with this Note by his letter dated 16.5.1968, extracts of which have been correctly produced by the applicant (Annexure 'A') to the application). This, therefore, leaves no doubt in our minds that the condition that the seniority in the new cadre will be fixed with reference to the date of

appointment in that cadre had been circulated much earlier to the circular dated 25.4.1970, in terms of which the applicant had volunteered to come on deputation to the Telecommunication Accounts Wing. Since there were thus specific executive instructions laying down the principles for determination of seniority in this cadre, the applicant's contention that his seniority should have been determined on the basis of his total length of service or at least after taking into account his service in T.A. Wing before passing the aptitude test, has to be rejected.

8. Lastly, the learned advocate for the applicant placed much reliance on the Supreme Court judgment in the case of K.Madhavan Vs. Union of India (AIR 1987 SC 2291). In para 2 of that judgment, Supreme Court has observed as follows:-

"There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed ~~as~~ transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisdiction, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service ~~that~~ their present existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre."

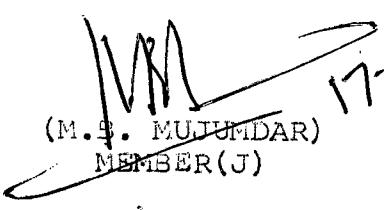
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9. These observations of the Supreme Court will not, however, be applicable, in our view, to the present case before us, as the facts are easily distinguishable. In the case decided by the Supreme Court, the petitioner as well as the other officials involved in the dispute, were all Police Officers who were already trained and experienced in the investigation of criminal cases and there was no requirement of passing an aptitude test before permanent absorption in the new cadre. In the present case, however, the applicant and other deputationists were earlier working in other wings of the Posts & Telegraphs Department like Engineering and Telegraphs Wings, with no training in or exposure to Accounts work and had volunteered to go on transfer to the newly formed Telecommunications Accounts Cadre on the specific condition that their absorption in the new cadre would be subject to their passing an aptitude test. Secondly, and what is more important, in paragraph 20 of the Supreme Court's judgment referred to above, it is mentioned that there was nothing in the relevant rules to militate against the view that seniority should be counted from the date of regular appointment in a particular grade. In fact, as indicated in the subsequent paragraphs of that judgment, efforts made in that department (C.B.I.) later on to ensure that the seniority of the deputationists will be counted only from the date of their absorption were found unworkable and a final decision was yet to be taken. In P & T Department, on the other hand, the instructions specifically provided that if an existing clerk from other wings was recruited to the new cadre of Accounts clerks, his seniority in that cadre will be fixed with reference to his date of appointment in the new cadre. While the normal rule, undoubtedly, is to determine seniority on the basis of length of service in a grade, it will be applicable only

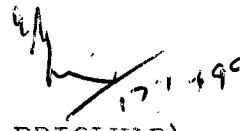
in the absence of any statutory rule or executive memorandum or order laying down any other ~~national~~ basis for determination of seniority of deputationists in the new cadre.

10. In the present case before us, there were specific executive instructions that seniority in the new cadre will be fixed with reference to the date of appointment in that cadre, which in turn would be subject to passing of the aptitude test. Since the applicants were earlier in other wings like Engineering and Telegraphs where the ~~nature~~ of their work was different, there was nothing unreasonable, arbitrary or discriminatory, in our view, in prescribing an aptitude test for absorption in the new Accounts cadre and in providing that seniority in the new cadre would be based on the date of such absorption. Since these instructions had been circulated well before the applicant and other deputationists had volunteered to come on deputation to the new Accounts cadre and they had also subjected themselves to an aptitude test for eventual absorption in the new cadre, we find that the contention of the applicant regarding discrimination against deputationists is without any foundation.

11. On the basis of the foregoing discussion, we see no merit in this application, which is accordingly dismissed, without any order as to costs.


(M.S. MUJUMDAR)
MEMBER (J)

17-1-1990


(M.Y. PRILKAR)
MEMBER (A)

17-1-1990