

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

OA 1201/1996

MUMBAI, THIS THE 22TH DAY OF JUNE, 2001

HON'BLE SHRI S.L.JAIN, MEMBER (J)

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

1. Shri Dattatraya Shankar Mulay
S/o Late Shankar Ramchandra Mulay
Age : 55 years
Working as Junioir Accounts Officer
(Ad hoc & Temporary) (Senior Accountant)
Under Chief General Manager, Telecommunications
Maharashtra Circle, MUMBAI - 1.
R/at : D-15/1 P & T Colony,
Santacruz East, MUMBAI - 400 029.
2. Sou. Smita Chandrakant Ghadigaonkar
W/o Shri C.P.Ghadigaonkar
Age : 47 yrs
Working as Junior Accounts Officer
(Ad hoc & Temporary) (Senior Accountant)
Under Chief General Manager, Telecommunications
Maharashtra Circle, Mumbai -1.
R/at D-15/1, P & T colony, Santacruz East,
MUMBAT - 400 029.
3. Mrs. Jagadamma Parmeshwaram Pillai
W/o Parmeshwaram Pillai
Age - Adult.
Working as : Junior Accounts Officer
(Ad hoc & Temporary) (Senior Accountant)
Under Chief General Manager, Telecommunications
Maharashtra Circle, MUMBAI -1.
R/at : MUMBAI.

...Applicants

(By Advocate Shri S.P.Kulkarni)

V E R S U S

Union of India : through

1. Chairman
Telecom Commission, Sanchar Bhawan
20, Ashoka Road at P.O. New Delhi -1.
2. The Director General
Telecommunication
(Secretary, Department of
Telecommunications
Ministry of Communications
G.O.I., Sanchar Bhawan,
20, Ashoka Road, New Delhi -110 001.
3. The Chief General Manager
Telecommunications
Maharashtra Circle, Old G.P.O.Building

2nd Floor, Near C.S.T., Central Railway
MUMBAT - 400 001 (Fort).

4. Chief Accounts Officer (Telecom)
Maharashtra Circle, Prestige Chambers
Chinchbunder, MUMBAI - 400 009.

(By Shri S.S.Karkera, proxy for
Shri P.M.Pradhan)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Relief sought by the three applicants in this OA relates to the grant of benefits of pay and allowances and arrears thereof, attached to the post of Jr. Accounts Officers (JAO), to officiating JAOs.

2. Heard S/Shri S.P.Kulkarni and S.S.Karkera, learned counsel for the applicants and the respondents respectively.

3. All the three applicants are Sr. Accountants in the Telecom Deptt., who are officiating on ad hoc basis, as Jr. Accounts Officer for the last few years. They had also held the charge in shorter spells earlier as well. However, as they had not passed Parts I & II of JAO Examination, they have only been granted Rs. 50/- as a Special Pay, instead of the relevant scale of pay, in view of directions contained in DOPT's OM No. 110/89-Estt. (Pay I) dated 22-1-1990 for fixation of pay under FR 22 (I) (A) (i) subject to restrictions placed by FR 35, depending on the eligibility of the promotees. This has gone against the concept of 'equal pay for equal work', according to the applicants. It is pointed out that those like the applicants who have been transferred out of Indian Audit and Accounts Deptt. were permitted to retain their rights they had in their earlier

organisation, where persons were continuing to work as JAOs, though on ad hoc basis, without passing the examination. In terms of the relevant Recruitment Rules, only those who have passed both parts I & II of the J.A.O. Examination can be promoted to that post on a regular basis, but on account of a large number of posts remaining unfilled, Telecom Deptt. had permitted persons from different categories to take the J.A.O. examination, but directed ad hoc arrangements being made from non-qualified persons working as Sr. Accountants, Head Clerks etc. to officiate as J.A.Os, on their scale of pay with allowance of only Rs. 50/-. Subsequently on 21-4-1980, it was decided that in case unqualified officials working as L.S.G.Clerks/Head Clerks and Sr. Accountants with 5 years' service are not available for posting as JAOs, Part - I qualified officials if available could be appointed as JAOs in local arrangements. However, in 1996, Telecom Deptt. all of a sudden decided to fill up the vacancies in the same Division primarily by Part I qualified candidates. As the J.A.O. examination had not been conducted since 1992, the posts cannot be filled up in adequate numbers. Hence the posting of those like the applicants. Unqualified officiating J.A.Os perform the same functions as qualified JAOs. Still the unqualified officiating JAO, like the applicants are only given the special pay of Rs. 50/and not the scale of pay of JAO; against the concept of 'equal pay for equal work'. Respondents had attempted to revert the applicants from their officiating positions, but their interests have been safeguarded by the interim orders dated 1-11-1996 passed in OAs 1058, 1059 and 1060/1996 directing that they could be continued/appointed, if vacancies are not filled by Part I passed candidates. Presently what is being sought by the applicants is the fixation of their pay under FR 22 (I) (a) (i) read with FR 35 Note 2 i.e. orders (2) & (3) under FR 35 are also applicable in the case, plead the

applicants. The applicants also point out that the benefit of the decision of Ahmedabad Bench of the Tribunal in OA 336/89, granting the benefit of pay fixation as JAO (M.B.Patel & Anr. Vs. UOI - 1995 (2) ATJ 53-60) to unqualified officiating JAOs be extended in their case as well. Their representations in this regard have not been responded to. They also point out that their claim is not at all hit by limitation, as pay fixation is a continuous cause of action as laid down in M.R.Gupta's case (1995 (2) ATJ 337). It is also the case of the applicant that as there is no category of "Passed Part-I JAOs" they are only 'unqualified individuals' like the applicants who infact have greater experience. Still they have been given preference at the cost of the applicants, which was wrong. Applicants and J.A.O. Part I passed candidates being from the same category-unqualified fixation of their pay under FR 22 I (a) (i) read with FR 35, would alleviate discrimination against them, pray the applicants. The distinction practised between themselves and J.A.O. Part I passed candidates in terms of Department's order dated 15-1-1996 was illegal and discriminatory and against the principle of 'equal pay for equal work' as well as the decision of the Hon'ble Apex Court in D.S.Nakara's case. In fact, the said principle has become a fundamental right as shown by the decision in G.K.K. Workers Union Vs. Union of India - (1991 AIR SCW - 194). Besides, as the applicants had not given any undertaking not to claim higher pay for shouldering higher responsibilities, they were entitled to the benefit of higher pay of the higher post as held by the Madras Bench of the Tribunal in the case of P. Srinivasan Vs. UOI (1994 (1) ATJ CAT - 232). The applicants also refer to the decisions of the Apex Court in K.S.Private College Stop Gap Lecturers Association Vs. State of Karnataka (1992 ^{A.I.R} ~~(46)~~ ^{SC} ~~514~~ ⁶⁷⁷), Kaushlaya Chauhan Vs.

State of Himachal Pradesh (1996 (3) CAT (FB) 365) passed by the Himachal Pradesh Administrative Tribunal and M.B. Patel & Anr. Vs. U.O.I. 1995 (2) ATJ (CAT) 53⁶⁰ etc. in support of their pleas. In fine, the applicants reiterate that they are put to inconvenience on account of invidious and improper discrimination being practised against them by the respondents, as there was nothing different between themselves and the Part I passed J.A.Os and the provisions of FR 22 (I) (a) (i) are equally applicable to all who are not qualified but are appointed as JAOs on ad hoc basis. Hence the need to rectify the mistake and render full justice to them, plead the applicants. The above was forcefully reiterated by Shri S.P. Kulkarni, learned counsel for the applicants in his oral submissions.

4. In the detailed reply filed on behalf of the applicants, reiterated during the oral submissions by Shri S.S.Karkera, proxy counsel for Shri P.M.Pradhan, the respondents point out that the application was mis-conceived as they were trying to challenge the policy of the Govt. issued by the order dated 15-1-1996. The applicants were posted to officiate as JAOs on certain terms and conditions prescribed in the order and only after accepting them, they had taken up the jobs. They were posted to officiate only on a stop-gap arrangement for want of regular candidates passed the requisite Parts-I & II of JAO ^{Examination} and the question of fixing of their pay under the Provisions of FR SR did not arise. In terms of relevant Recruitment Rules, 1958, only those who had passed both parts of the examination could be promoted on regular basis and allowed to draw the relevant scale of pay. At one stage when the organisation was facing accute shortage of qualified candidates for promotion as JAOs to carry out day to day work, unqualified officials working as Sr. Accountants (like

the applicants) Head Clerks, LSG Clerk etc, who had five years service in the respective grades were asked to perform the duties on a local officiating arrangements on payment of special pay of Rs. 25/- which was later enhanced to Rs. 50/-. At the same time, as a number of JAOs Part I qualified candidates were available, they were ordered to be given posting for making officiating arrangements vide respondents' order dated 21-4-1980. It was not correct to hold that JAO part examination has not been held for quite some time. The fact that they were performing certain duties does not alter the situation that local officiating and stop gap arrangement only were made and persons were given the posting as JAOs, for which they were compensated by the special allowance of Rs. 50/-. That was all what they were entitled to. It was not correct for them to say that they were working as JAOs, as they were only Sr. Accountants, who were given the officiating appointments. Therefore, the question of promoting them as JAOs or permitting the fixation of their pay in the scale of JAO did not arise. The respondents also point out that the applicants did not appear and qualify in the examinations conducted during 1992,93,94,95,96 & 97. They could only have been placed in officiating arrangements with the special allowance and nothing more. As the applicants were only performing the jobs on purely officiating arrangement, fixation of their pay under the Provisions of FR 22 (I) (a) (i) read with FR 35 did not apply in their case. They further pointed out that the reliance placed on the judgement in the case of M.B.Patel & Anr. was not relevant as the applicants were not appointed as regular JAOs, but only for officiating working and could not, therefore, have been granted any benefit other than the special allowance. The respondents further point out that those who have passed JAO part examination are definitely in

a better position than others like the applicants to officiate in the post of JAO as with passing part II, they could be employed as JAOs on regular basis in terms of the Recruitment Rules. This was not the position of Sr. Accountants, who were only attending to the clerical nature of work and granting them the benefit of fixation of pay under the Provisions of FR 22 (I) (a) (i) did not at all arise. There was nothing arbitrary about the decision and the alleged violation of equality did not occur. The application, therefore, deserves to be dismissed, pray the respondents.

5. We have carefully examined the matter and perused the relevant records. All the three applicants in this case are Sr. Accountants posted to officiate as JAOs on purely temporary and local basis on payment of special allowance @ Rs. 50/-. The relevant appointment orders have also made it clear that the above arrangement did not bestow on the individuals any right for regular appointment to the post of JAO and that ad hoc service so rendered by them as JAOs would not count for the purpose of seniority in the grade of JAO or for the purpose of promotion to the next higher grade. In terms of the relevant Recruitment Rules, only those persons who have passed Part I and II of the JAO examination can be posted on regular basis as JAOs and placed on the relevant grade. Obviously the applicants could not have been posted on the regular basis. As at that time as a large number of posts were lying vacant for want of qualified hands the Govt. had decided to permit unqualified persons of different categories like Sr. Accountants like the applicants, Head Clerks etc. with five years service to function as JAOs. Subsequently on


21-4-1980, it was indicated that when such unqualified persons with requisite five years, are not available for being asked to functions as JAOs, Part I qualified officials, if available could be considered for being appointed on ~~local~~ local arrangement. Originally all of those who were officiated as JAOs were only ~~granted~~ granted a special pay of Rs. 25/-, subsequently raised to Rs. 50/- whether they were Sr. Accountants like the applicants or Part I Exam qualified. This was the correct position to take as the applicants as well as Part I qualified individuals were infact unqualified persons permitted to perform the duties of JAOs on a temporary basis and performing so. They were therefore equal in their basic equipment and functions though qualifying in part I examination would have placed the latter in a slightly better position and nearer to promotion on regular basis when they passed Part II examination.

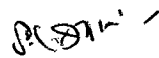
6. Only in 1996 a decision has been taken to fill up the vacancies primarily by those who have passed Part I examination with a direction that their pay be fixed in the grade in accordance with the instructions issued by the Govt. from time to time. This meant the fixation of their pay and allowances under FR 22 (I) (a) (i) subject to restrictions under FR 35. This benefit, however, was not granted to those like the applicants. Hence their grievance. The applicant's invoke the principle of 'equal pay for equal work' and rely upon the decision of the Ahmedabad Bench of the Tribunal in the case of M.B. Patel and Ors. OA 336/89 decided on 6-1-95 (1995 (2) ATJ 53-60) where it was directed that the pay of the applicants in that case also should be fixed under FR 35

on the analogy of OM No. 18/12/85-Estt.(Pay-I) dated 18-7-86. Respondents on the other hand, state that the Ahmedabad Bench's decision was clearly distinguishable as the applicants in the instant application were not appointed as regular JAOs and having agree to work in the officiating arrangement as JAOs with the Special Pay of Rs. 50/-, they cannot ask for anything more. We are unable to agree. Normally Tribunal will not stray on to turfs which are better left to experts like Pay Commission and offer opinions on issues like 'equal pay for equal work', as the Supreme Court has in the case of Union of India Vs. P.V. Hariharan & Ors. deprecated such tendencies on the part of the Courts and the Tribunal. However, in a case like this where the applicants and the Part I qualified individuals all for all purposes, unqualified candidates performing same duties on the same basis, there cannot be any distinction in approach as far as payment of pay and allowance is concerned. It would therefore, follow that the facility of fixation of pay granted to the part I qualified individuals in terms of FR 22 (I) (a) (i), subject to restrictions under FR 35 could be extended to the applicants, who are also officiating as JAOs as well. Otherwise it would be a case of creating a class within a class and differentiating between them, when no such differentiation was logical or permissible. The various decisions relied upon by the applicants would also come to their assistance to have their case endorsed. The respondents' action in differentiating the applicants and placing them at a disadvantage vis-a-vis those who have qualified part I examination amounts to hostile discrimination and cannot be endorsed. And that, in short is our finding.

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7. In the above view of the matter the application succeeds and is accordingly allowed. The respondents are directed to extend ^{to} the applicants also, the facility of fixation of pay under the Provisions of FR 22 (I) (a) (i) subject to FR 35, as has been done in the case of Part I qualified candidates and grant them all consequential benefits including arrears of pay and allowances from 1-1-1996. This exercise shall be completed within three months from the date of receipt of a copy of this order above. No costs.


(GOVINDAN S. TAMPI)
MEMBER (A)


(S.L.JAIN)
MEMBER (J)

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