

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 597/1996

DATE OF DECISION: 15/06/2001

Shri K Ponambalam

Applicant

Shri A.I.Bhatkar

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

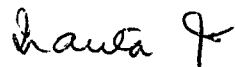
Shri R.C.Kotiankar

-----Advocate for
Respondents.

Coram:

Hon'ble Smt. Shanta Shastri, Member(A).
Hon'ble Shri Shakar Raju, Member(J)

1. To be referred to the Reporter or not? /p
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library. ✓


(SHANTA SHASTRY)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:597/1996
DATED THE 15th DAY OF JUNE, 2001

CORAM:HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)
HON'BLE SHRI SHANKAR RAJU, MEMBER(J)

K.Ponnambalam,
presently working as J.A.O.,
(Computer) in M.T.N.L.,
Malabar Hill Telephone Exchange Bldg.,
Mumbai-400

... Applicant.

By Advocate Shri A.I.Bhatkar

V/s.

1. Union of India,
through the Secretary,
Ministry of Communication,
Department of Telecommunication,
Sanchar Bhavan,
New Delhi - 110 001.
2. The Secretary,
Ministry of Personnel,
Public Grievances and Pension,
Department of Personnel & Training,
Block No.11, 2nd Floor,
CGO Complex, Lodhi Roadm
New Delhi-110 003.
3. Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House, Prabhadevi,
Mumbai - 400 028.

... Respondents

By Advocate Shri R.C.Kotiankar

(ORDER)

Per Smt.Shanta Shastri, Member(A)

The applicant who is now working as a Junior Accounts Officer in the Mahanagar Telephone Nigam Limited has prayed for his pay fixation under FR 22c or FR 35 on the analogy of the

...2.

Government of India DOP&T's OM dated 18/7/96 and 29/7/87 during the period he was appointed to officiate as Junior Accounts Officer on local arrangement i.e. during 24/3/93 to 4/8/94.

2. As per the recruitment rules for promotion to the post of Junior Accounts Officer, employees working in the Telecom Department and who have completed three years of service may appear for Junior Accounts Officer Part-I and Part-II examination. On passing both they are promoted as Junior Accounts Officer on regular basis. When the applicant was working as Telecom Office Assistant, he appeared for the Junior Accounts Officer Part-I Exam during October, 1992 and he qualified in the same exam. Since sufficient number of candidates who had passed Junior Accounts Officer Part-I and II examination were not available, the applicant who had passed only Part-I exam and many like him were promoted as Junior Accounts Officer on officiating basis and were paid a special pay of Rs.50/- per month. The applicant submits that he was promoted against the regular vacancy of Junior Accounts Officer and he carried out all the duties attached to the post during the period from 23/4/93 to 4/8/94. Later on, he was promoted as Junior Accounts Officer on regular basis w.e.f. 5/8/94.

3. It is the contention of the applicant that since he carried out all the duties and responsibilities of Junior Accounts Officer attached to the post, his pay was required to be fixed under FR 22(c) now 22(i)(a)(i) as if he was promoted to the said post on regular basis. Since he was not qualified to be posted as Junior Accounts Officer on regular basis, his pay ought to have been fixed in accordance with the instructions issued by the DOP&T vide OM's dated 18/7/86 and 29/7/87. In spite

:3:

of these instructions, the Department of Telecom did not fix the pay of the applicant as per the said rules. The applicant also was not aware of the instructions mentioned below FR-35 regarding pay fixation until the matter of similar nature came up before the Ahmedabad Bench of the Tribunal in OA 336/89. The Tribunal decided the matter on 6/1/95 after considering a number of judgements and directed the Department of Telecom to fix the pay of the applicants therein under FR-35 suitably on the analogy of Government of India, DOP&T OM's dated 18/7/86 and 29/7/87. Thereafter the Department of Telecom issued OM dated 15/1/96 with clear instructions to all concerned to fix the pay of JAOs on local officiating arrangement in terms of the OMs dated 18/7/86 and 29/7/87 of the DOP&T under FR-35. However, these orders were made effective from the date of issue of the said OM i.e. 15/1/96. Because of this the applicant was denied the benefit of the DOP&T OMs referred to above. The applicant submits that by the OM dated 15/1/96, no new benefit or new scheme was introduced by the Government and therefore prescribing the cut off date of 18/1/96 is rather arbitrary. The instructions were already in existence from 1986-87. The applicant had represented on 16/10/95 giving reference to the judgement of the Ahmedabad Bench of the Tribunal in OA 336/89. He made further representation on 29/2/96. He however did not receive any individual reply. The applicant submits that even those who had officiated during 1988 had been granted the benefit of the OMs dated 18/7/86 and 29/7/87. The applicant's case is therefore covered by the judgement of the Ahmedabad Bench of the Tribunal and therefore the benefit of the same should be extended to the applicant also.

...4.

4. According to the respondents, the applicant was posted to perform the additional work of JAO on local officiating basis from 24/3/93 to 4/8/94 and not on a regular basis. He did not fulfill the eligibility conditions prescribed for promotion to JAO as per recruitment rules and therefore he was paid special pay of Rs.50/- per month as laid down under para 41(1) of the Manual of Appointment and Allowances of Officers of P&T Department as per provisions under FR 9(25)(a). The appointment order clearly stipulated that during the period he was posted as JAO on local arrangement basis, he would be paid the special pay of Rs.50/- per month and such adhoc appointment will not bestow on him any claim for regular appointment to the post of JAO.

✓ The applicant accepted the terms and conditions as above. He cannot now claim for his pay fixation under FR 22(c) or FR-35. Further the pay fixation under FR-22(c) (now FR 22(1)(a)(i)) or under FR 35, arises only in cases of appointment on promotion in the normal line within the cadre and when the promotee fulfills the conditions of eligibility prescribed under the relevant rules for promotion and not when a Government servant is ordered to perform additional duties of a higher post. Further the cadre of JAO is not a normal line of promotion for the Technical Office Assistant. They are different cadres. The Ministry of Communications laid down revised procedure on local officiating arrangement in the JAO cadre in Postal and Telecom Wings of vide orders dated 14/6/79 & 21/4/1980. These orders relate to appointment on officiating basis against the post of JAO when fully qualified candidates are not available. Earlier they were entitled to a special pay of Rs.25/- per month, the same was

raised to Rs.50/- per month. further, the Government of India instructions issued by DOP&T OMs dated 18/7/86 and 29/7/87 under FR-35 were adopted only w.e.f. 15/1/986 by the Department of Telecom. It is a policy decision and cannot be termed as arbitrary or discriminatory merely because it is prospective in its effect.

5. We have heard the learned counsel for both the sides and have given careful consideration to the pleadings and have perused the judgement produced by the applicant. It is a fact that the applicant was posted as JAO against the existing vacancy with a special allowance of Rs.50/- per month on a purely temporary and local officiating basis till regular arrangement was made. It was also stipulated that this arrangement will not bestow on him any right to the post of JAO. However, DOP&T OMs were issued to deal with such local officiating arrangements and in the DOP&T instructions it has been laid down that wherever the employees are not fully qualified and they are asked to officiate by way of local arrangements in a higher post, their pay should be restricted so as not to exceed by a certain percentage of basic pay by grant of amounts shown in para-2 therein. Accordingly, for employees in respect of basic pay up to Rs.2,200/-, 15% of basic pay or Rs.200/- whichever is more is to be paid. The applicant was drawing basic pay of Rs.1,360/- when he was appointed to officiate in April,93 as JAO. Therefore, he should have got Rs.204/- in addition to his basic pay instead of which he was only paid Rs.50/- as special pay.

6. The entire contention of the Department of Telecom is that the applicant's pay fixation was covered by the provisions

...6.



in the Manual of Appointment and Allowances of Officers of P&T Department as per provisions under FR-9(25)(a) and therefore the applicant is not entitled to the benefit of the instructions of DOP&T dated 18/7/86 and 29/7/87. We have perused these provisions. We find that while the respondent department did not want to give the payscale of post of JAO to those who were officiating as JAOs the department had accepted that some extra remuneration had to be given to such Officers for officiating purposes and accordingly special pay of Rs.50/- was given. Later on, the department has accepted the instructions of DOP&T in the matter. The only thing is that the orders have been made prospectively.

7. In our view if we take into consideration the spirit behind granting of special pay or extra remuneration then the cut off date has no sanctity. The DOP&T instructions apply to all Government employees and therefore even the employees of Telecom Department are entitled to such benefit. That apart, in the judgement of the Ahmedabad Bench of this Tribunal in OA-336/89, the Tribunal held the officiating JAOs as entitled to the benefit of the instructions of DOP&T. The case of the present applicant is on an identical footing and is clearly covered by the aforesaid judgement of the Tribunal. It has also been noted that the respondents had given the benefit to those who had officiated in 1988 also but they have denied the benefit to those who officiated between 1989 to 1996. This is discriminatory. Further the judgement of Ahmedabad Bench of the Tribunal does not appear to have been challenged. It has been implemented. We

...7.



therefore hold that the present applicant is also entitled to the benefit of the OM dated 18/7/86 and 29/7/87 under FR 35. Accordingly, the OA is allowed. The respondents are directed to fix the pay of the applicant for the period from 22/4/93 to 4/8/94 in terms of the instructions of DOP&T under FR 35 and to pay him the arrears. This be done within a period of two months from the date of receipt of copy of this order. We do not order any costs.

S. Raju

(SHANKAR RAJU)
MEMBER(J)

Shanta K

(SHANTA SHASTRY)
MEMBER(A)

abp