

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.
CAMP : NAGPUR

ORIGINAL APPLICATION NO.: 719/1996 to 727/1996.

Date of Decision : 31/8/2010

Shri Sanjay Sumantrao Sathe & 8 others, Applicants.

None present. Advocate for the applicants.

VERSUS

Union of India & others, Respondents.

Shri R. S. Sunderam, Advocate for Respondents.

CORAM : Hon'ble Shri Jog Singh, Member (J).

Hon'ble Shri R. C. Joshi, Member (A).

1. To be referred to the reporter or not ? Yes

2. Library ✓


(JOG SINGH)
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.
CAMP: NAGPUR

ORIGINAL APPLICATION NO.: 719/1996 to 727/1996 (Group of 9 OAs)

Dated this Tuesday the 31st day of Aug 2010.

CORAM : Hon'ble Shri Jog Singh, Member (J)

Hon'ble Shri R. C. Joshi, Member (A)

Sanjay Sumantrao Sathe, R/o. 84, Chocks Colony, Kamptee Road, Nagpur.	... Applicant in OA 719/1996
Bhaiyya Tulshiramji Bante, R/o. 469, Bharatnagar, New Kalmana Bazar, Nagpur.	... Applicant in OA 720/1996
Ramchandra Daryaji Raut, R/o. Plot No. 33, Old Subhedar Extn., Nagpur.	... Applicant in OA 721/1996
Prahlad Ankush Patil, R/o. Indora Anand Road, Nagpur.	... Applicant in OA 722/1996
Mrs. Mangala Fuldas Mahand, (Earlier Ku. Mangala D/o. Vitthalrao Panchpatkar), R/o. MHADA Flats, HIG Scheme, Nagpur.	... Applicant in OA 723/1996
Mrs. Sadhana Sudhir Godbole, (Earlier Ku. Sadhana Dadhav Phadke), R/o. A5, Vrindavan Flats, Bharatnagar Extn., Nagpur.	... Applicant in OA 724/1996
Mrs. Ujwal Gopal Pandke, (Earlier Kum. Chhaya D/o. Shri Krishnanrao Dolas), R/o. Wastu Swapna Apartments, Navnirman Colony, Ranapratapnagar, Nagpur.	... Applicant in OA 725/1996

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Mrs. Shailaja Chandrakant
 Narsinha, (Earlier Kum.
 Shailaja Prabhakarrao Joshi),
 R/o. MHADA Flats, HIG Scheme,
 Narandranagar, Nagpur. ... Applicant in OA 726/1996

Mrs. Vinda Dinkar Tole,
 R/o. 22-D, Tapovan,
 Nagpur. ... Applicant in OA 727/1996

(None for the applicant)

VERSUS

1. The Union of India
 through the Secretary,
 Department of Posts,
 Dak Bhavan,
 New Delhi.
2. Chief Postmaster General,
 Maharashtra Circle, GPO
 Building, Mumbai 400 001.
3. Senior Superintendent of
 Post Offices,
 Nagpur City Division,
 Giripeth, Nagpur. ... Respondents in all the
 9 O.As.

(By Advocate Shri R.S. Sunderam)

ORDER

Per : Shri Jog Singh, Member (J)

This bunch of nine O.As. has been remitted by the Hon'ble High Court vide order dated 11.06.2010 for fresh consideration after quashing the earlier order dated 16.06.2000 passed by a Division Bench of this Tribunal allowing the said O.As. with a direction to the respondents to grant the applicants benefit of regularisation, seniority, pay scales, etc. from the

(Signature)

initial dates when the applicants appointed as Postal Assistants under a Scheme called Reserve Trainee Pool, 1980. The Tribunal's order in question is based on an earlier order of Jabalpur Bench of this Tribunal in O.A. No. 82/86 dated 16.12.1986.

2. The challenge to the aforesaid order of the Tribunal dated 16.06.2000 by the respondents herein before the Hon'ble High Court in Writ Petition No. 570/2001, etc. is evident from paragraph 4 of the said order of the Hon'ble High Court, which reads as under :

"4. The only contention that Shri Sundaram raises is that the Central Administrative Tribunal, Mumbai, Nagpur Bench, had wrongly granted the relief from the date of appointment in R.T.P. Category. According to him, such relief was never granted by the Jabalpur Bench of the Administrative Tribunal although the Administrative Tribunal, Mumbai, relied upon the decision of the Jabalpur Bench."

3. While remitting the matters, the Hon'ble High Court has noted that if the Bombay Bench wanted to give the relief of regularisation, seniority and salary from the date of appointment under the Pool Scheme, the Bench of the Tribunal was required to give separate reasons.

4. Pursuant to the above said directions of the Hon'ble High Court, we have reconsidered the pleadings and submissions of the parties. The O.As. were listed on 30.08.2010 but none appeared for the applicants despite second call. Having waited for the applicants



till about 1 O'Clock in the afternoon, we decided to proceed under Rule 15 of the C.A.T. (Procedure) Rules, 1987. However, respondents were heard at length and the pleadings and connected documents annexed therewith have been looked into.

5. It is noted that the nine applicants before us in the O.As. were considered and appointed under the Scheme of 1980, promulgated by the respondents and known as Reserved Trainee Pool Scheme (hereinafter referred to as 'RTP Scheme'), on different dates. It appears that the said Scheme was abandoned in the year 1986 but before that some such persons appointed under the RTP Scheme approached the Jabalpur Bench of this Tribunal, which allowed their case by an order dated 16.12.1986 in T.A. No. 82/1986. Para 10 to 12 of the said order constitute the operative portion of the said judgment and the net result of the analysis is given by the Learned Co-ordinate Jabalpur Bench in para 13 thereof. The said paragraphs are relevant for the present purpose and are hereby reproduced.

"10. Under the circumstances to end the unreasonable and unjust classification that has been introduced as the result of dual policy of the Government as reflected in the issue of the circular (Annexure R1) and the stopping of further recruitment and absorption to the cadre of posts of Postal Assistants, as affirmed in para 8 of the Respondent's return dated 24.6.1985, we direct that :-

(a) Government shall review their policy to stop recruitment/absorption of persons



against regular Postal Assistants.

(b) No person shall be inducted from other Departments like Railway Mail Service and Telecommunication Department to man posts of Postal Assistants until the petitioners are absorbed against regular posts.

(c) No fresh persons be taken and recruited against the R.T.P. (Reserved Trained Pool). Until the Government reviews their policy as under (a) above the operation of the circular dated 31.10.1980 (Annexure R1) in regard to recruitment of fresh persons to RTP other than the petitioners is struck down in exercise of this Tribunal's writ jurisdiction.

(d) The absorption of the petitioners against regular posts will be so phased on the basis of para 2 of circular of 30.10.1980, as if no restriction had been imposed on their regular recruitment/absorption earlier and shall be completed within a reasonable period from the date of this order, if necessary by creating supernumerary posts, and subject to screening of the unfit by a especially constituted Screening Committee to examine their record and performance. The Screening Committee shall also keep in view their seniority in the R.T.P.

11. As regards the question of equal pay for equal work claimed by the Petitioners, we have also to keep in mind Article 39 relating to Directive Principles of State Policy in Part IV of the Constitution while reading Article 14 and 16 in the present case. This provision together with other provisions of the Constitution contain one main objective, namely - the building of a Welfare State and egalitarian, social order as pointed out by Hon'ble Supreme Court in Keshavand Vs. State of Kerala [1973 (4) SCC 225]. If the State itself violates the directive principles and introduces inequality in the matter of equal pay for equal work it would be most unfortunate and cannot be justified. It is a peculiar attitude to take on the part of the respondents to say that they would pay only hourly wages to RTP employees and not the same wages as other similarly employed Postal Assistants when they are performing the same work as held by us in paras 6 and 7 of this



order. It cannot be justified also in the light of the following observations of Hon'ble Supreme Court, cited in the case of Surendra Singh Vs. The Engineers in Chief, CPWD, ATR 1986 SC 76.

"The arguments lies in the mouth of Central Government, for it is all too similar argument with the exploiting class and a welfare state committed to a Socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so much unemployment, the choice for the majority of people is to strive or take employment on whatever exploitative terms are offered by the employer. This fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get the same salary and conditions of service as other Class-IV employees cannot provide an escape to the Central Government to avoid the mandate of equality enshrined in Article 14 of the Constitution. This Article declares that there should be equality before law and equal protection of the law and implicit in it is the further principle that there must be equal pay for equal work for equal value."

In the matter of dearness and other allowance and the need for maintaining equality between wages of casual workers and salary, etc. of regularly appointed Telephone Operators, the order of Supreme Court dated 28.7.1985 in the case of All India Telegraph Engineering Employees Union Vs. Union of India & Another has also been cited by the Petitioners besides some other rulings.

12. Under the circumstances, for reasons stated in the preceding paragraph, we find the provisions of the circular dated 30.10.1980 (Annexure R1) in so far they relate to payment of hourly rates of wages to employees in the RTP discriminatory and violative of Articles 14 and 16 of the Constitution and are struck down. We direct respondents that the RTP employees performing the same duties as Postal Assistants, shall be paid the same salary and emoluments per mensem as are being received by Postal Assistants w.e.f. the date of their appointments. As regards other conditions of service, facilities demanded by the

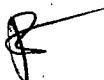


Petitioner, this is subject to their regular absorption as directed in para 10."

6. It is a matter of record that the S.L.P. No. 11313 of 1987 preferred by the respondents against the said judgment of this Tribunal was also dismissed by the Hon'ble Supreme Court by order dated 11.05.1988. Consequently, the respondents complied with the above said order of the Tribunal and absorbed the applicants therein as well as other similarly situated persons like the applicants, in the regular cadre.

7. The applicants, however, approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, by filing these nine O.As. in question in the year 1996, seeking a direction to the respondents to extend them all the benefits, including the benefit of seniority and salary from the date of their initial appointment under the RTP Scheme. This relief, in toto, was granted by the Tribunal by fully relying upon the judgment of the Ld. Co-ordinate Bench of this Tribunal at Jabalpur in T.A. No. 82/1986. The operative portion of the said order is to be seen in para 11 of the order of this Tribunal in its earlier order dated 16.06.2000 and the said paragraph is reproduced herein below for the sake of convenience :

"11. For the above, we do not hesitate to adopt the order passed by Jabalpur Bench in T.A. No. 82 of 1986 and direct the respondents to treat the applicants as regular Postal Assistant from the date of their appoints as



R.T.P. along with all consequential service benefits including the seniority and pay fixation but they shall be allowed monetary benefits only from the date of filing the O.A. The O.As. are disposed of accordingly. No order as to costs."

8. On a careful reading of the earlier order of this Tribunal dated 16.06.2000, including the operative portion reproduced herein above, it is noted that the relief granted to the present nine applicants is not in pari materia with the relief granted by the Ld. Jabalpur Bench in T.A. No. 82/86. In respectful agreement with the observations made by the Hon'ble High Court, we also note that there appears no other independent reasoning in granting the relief of regularisation, seniority, salary, etc., that too retrospectively from the date of initial appointment of the applicants which was only under the RTP Scheme. We also pertinently note that the Jabalpur Bench has only directed that the RTP employees performing the same duties as Postal Assistants shall be paid the same salary and emoluments per mensem as are being received by the regularly appointed Postal Assistants with effect from the date of their appointment. This direction appears in para 12 of the order dated 16.12.1986 of Jabalpur Bench of this Tribunal in TA 82/86 and as regards other service conditions regarding regular absorption of the employees in question, appropriate directions are to be seen in paragraph 10



thereof, which has been reproduced herein above.

9. Thus, there appears to be a minor conflict in the order passed by the Learned Co-ordinate Bench of this Tribunal at Jabalpur in TA 82/1986 and the order passed by this Tribunal in the nine cases in hand on 16.06.2000. Jabalpur Bench has granted same salary and emoluments to be paid to the Postal Assistants appointed under RTP Scheme at par with salary and emoluments being received by Postal Assistants from the date of their appointment. Whereas, the Bombay Bench has directed the respondents to treat the 9 applicants in the present case in hand as regular Postal Assistants from the date of their appointment under RTP Scheme with all consequential benefits, including seniority and pay fixation. To this extent, there is a contradiction in the order of the Bombay Bench.

10. The absorption of the applicants as Postal Assistants, which took place long back, is not disputed by the Respondents. Evidently, all the applicants have also been granted all the consequential benefits from the date of absorption. Therefore, keeping in view the admitted position that the applicants in the O.As. in hand are similarly situated as the applicants were in T.A. 82/1986 and on a total reconsideration of the issues involved in the present nine cases and after minutely perusing the directions and observations of

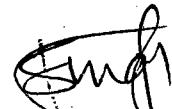


the Hon'ble High Court in its order dated 11.06.2010, we allow this nine O.As. by directing the respondents to extend to the present nine applicants same reliefs as granted to the applicants in TA 82/1986 decided by the Jabalpur Bench on 16.12.1986 and as upheld by the Hon'ble Supreme Court in its order dated 11.05.1988 by dismissing the SLP No. 11313 of 1987 preferred by the Union of India against the order of Jabalpur Bench in question.

11. All the nine O.As., accordingly stand partly allowed in terms of above directions. No order as to costs.



(R. C. JOSHI)
MEMBER (A)



(JOG SINGH)
MEMBER (J)

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