

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 269/96

Date of Decision : 31st October 2000

W.A.Kotecha Applicant.

Shri S.M.Dharap/ Advocate for the
Shri V.G.Rege Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri P.M.Pradhan Advocate for the
Respondents.

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastri, Member (A)

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other No
Benches of the Tribunal ?
- (iii) Library yes

S.L.Jain —
(S.L.JAIN)
MEMBER (J)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.269/96

Dated this the 31st day of October 2000.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt. Shanta Shastri, Member (A)

Walchand Asaram Kotecha,
Telephone Technician,
Telephone Exchange,
Shrirampur, Dist.Ahmednagar.

... Applicant

By Advocate Shri S.M.Dharap/
Shri V.G.Rege

V/S.

1. Union of India through
Director General,
Deptt. of Telecommunication,
New Delhi.
2. The Chief General manager,
Telecom, Maharashtra Circle,
Fort, Mumbai.
3. The Telecom District Manager,
Market Yard Building,
Ahmednagar.
4. Divisional Engineer Telegraph,
Market Yard, Ahmednagar.
5. The Divisional Engineer (Operation),
Market Yard, Ahmednagar.
6. The Assistant Engineer (Group),
M.I.D.C. Exchange, Ahmednagar.
7. Shri Muttyal A.N.,
Telephone Bhavan, Auto Exchange,
Ahmednagar.
8. Shri Ransing P.A.,
Telephone Bhavan,
2 KC-DOT Exchange,
Shrirampur.

..2/-

P.C. Sharma -

9. Shri Suryawanshi S.S.,
Telephone Exchange,
Kopergaon, Dist. Ahmednagar.

10. Shri Khan R.M.,
Telephone Exchange,
Jamkhed, Dist. Ahmednagar.

... Respondents

By Advocate Shri P.M.Pradhan

ORDER

(Per : Shri S.L.Jain, Member (J))

This is an application under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

" (a) this Hon'ble Court may be pleased to hold and declare that the action/inaction on the part of the concerned authorities in not sending the applicant for T.T.A. Training at Ahmedabad is wholly unjust, illegal and is against the provisions of Article 14 of the Constitution of India.

(b) this Hon'ble Court may be pleased to call for the record and proceedings and after considering the same, quash and set aside the impugned order dated 29th March 1995 at Exhibit 'A' hereto and subsequent communications based on the same.

(c) this Hon'ble Court may be pleased to hold and declare that the applicant is entitled to be sent for training immediately to Ahmedabad or any training centre where new batch is being sent and that with-holding of the applicant from sending is totally against the rules and the law.

(d) this Hon'ble Court may be pleased to direct the respondents to treat the applicant as senior to Respondents 7 to 10 after he completes the training and further direct the respondents to pay the salary and emoluments equivalent to respondent No. 7 who is immediately junior to the applicant with all the back wages for the period from February 1994 till todate.

P.C. Jain — ..3/-

(e) in the alternative this Hon'ble Court may be pleased to hold and declare that the applicant is deemed to have passed the training within the prescribed period from February 1994 and that the concerned authorities be directed to consider the applicant to have passed the training and place him in the seniority list and grant him the benefit of revised pay scales.

(f) such other reliefs as deemed fit and proper in the interest of justice be granted.

(g) cost of this application be awarded.

2. Vide Office Order No.E-16/Trag/93-94 dated 18.1.1994 on the basis of result announced vide C.G.M.I., Bombay letter No. Rectt/4/Exam/91/TTA/Cont. dated 1.1.1993 the applicant was ordered to be deputed for training to the cadre of TTA at RTTC Ahmedabad-54 w.e.f. 14.2.1994 (F.N.).

3. The applicant was not sent for training for the reason that his presence was required in connection with preliminary enquiry at MIDC Ahmednagar as his involvement was suspected in revenue leakage case at the MIDC Ahmednagar. The order for deputation to training was subject to the condition that the official under going punishment or against whom disciplinary action is contemplated should not be relieved for training.

4. Vide order dated 1.5.1998, DIG of Police CBI ACB Mumbai no action is recommended against the applicant. ^{By order dated 4} ^{DA, 31.3.1999, of} the Divisional Engineer (A) Ahmednagar Telecom, the applicant was deputed for training which commenced from 5.4.1999 and the applicant completed the required training. The applicant is posted as Telecom Technical Assistant w.e.f. 1.4.1999.

J. S. M. —

..4/-

5. Now the grievance of the applicant is that due to the said enquiry by CBI, he was not sent for training while other person similarly situated was sent for training and thus he was debarred for promotional avenue for no fault of his own.

6. The learned counsel for the applicant argued that the applicant's case be treated as his promotion was considered and the consideration was kept in sealed cover who thereafter was found exonerated. Hence, as soon as he is exonerated, i.e. no action was proposed against him, he is entitled to the sealed cover open and get the benefit of the consideration, to which the respondents' counsel objected.

7. In our considered opinion, the principle of sealed cover cannot be applied in the present case but it deserves to be held that applicant was debarred from the training for promotional avenue on account of the fact that he was required for preliminary enquiry by C.B.I. in Revenue Leakage case and ultimately no action was proposed by the C.B.I. against the applicant. We agree to the submission of the respondents' counsel that the act of the respondents was not malafide but the applicant has suffered due to an action of the respondents for his rightful claim. Hence, he deserves to be placed in the same position as though no such event has happened.

S. C. Sharma —

..5/-

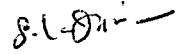
8. We do not propose to say that there was any discrimination by the respondents by sending another person similarly situated for training for the reason that such an act does not create a right in favour of the applicant, if it is done in contravention of the instructions. The case of the applicant is genuine and deserves to be considered.

9. In the result, O.A. is allowed. Respondents No. 7 to 10 who are juniors to the applicant, placed in higher rank and seniority, the applicant is ordered to be placed in higher rank and seniority above them on notional basis. The applicant shall not be entitled to any pecuniary benefit in respect of salary and emoluments for the said period except the fixation on the date of his next promotion, i.e. 1.4.1999. Thereafter, he shall be entitled to pecuniary benefits. No order as to costs.



● (SMT. SHANTA SHASTRY)

MEMBER (A)



(S.L. JAIN)

MEMBER (J)

mrj.