

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 391/96

Date of Decision : 15th September 2011.

M.C.Dighe Applicant.

Shri S.P.Saxena Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.K.Shetty 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
Benches of the Tribunal ? no
- (iii) Library yes

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.391/96

Dated this the 17th day of September 2001.

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

Hon'ble Smt.Shanta Shastry, Member (J)

1. M.C.Dighe
2. R.D.Kharat
3. A.D.Kharat
4. N.M.Jagtap
5. Gopal Kumar

All are Civilian Switch-board
Operator, Gr.II, Military Exchange,
A.C.C. & School,
Ahmednagar.

...Applicants

By Advocate Shri S.P.Saxena

vs.

1. The Union of India
through the Secretary,
Ministry of Defence,
DHQ P.O. New Delhi.
2. The Director General
Mechanised Forces,
Army Headquarters,
New Delhi.
3. The Commandant,
A.C.C. & School,
Ahmednagar.

...Respondents

By Advocate Shri R.K.Shetty

Pl. Dr. -

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O R D E R

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking ^{the} ~~the~~ direction to the respondents to place the applicants in the scale of Rs.975-1660 (pre-revised scale of Rs.260-480) from the date of their appointments and to refix their pay in the above said scale accordingly by granting them the annual increment year to year and to pay the difference of arrears arising therefor.

2. The applicants are working at Ahmednagar under Respondent No. 3 as Civilian Switch Board Operator Grade II/Telephone Operator Gr.II. The Applicant No. 4 after seeking voluntary retirement from Air Force secured re-employment under Respondent No.2 w.e.f. 29.11.1987. The Applicant Nos.1, 2, 3 and 5 were appointed by Respondent No. 3 on various dates as Civilian Switch Board Operator Grade II/Telephone Operator Grade II. The applicants received the call letters from Employment Exchange wherein the scale of pay for the post of Telephone Operator Grade II was mentioned ^{as} Rs.975/- plus allowances. The post of Telephone Operator Grade II carries a pay scale of Rs.975-1660. After the appointment of applicants as Telephone Operator Grade II, they were placed in lower scale of pay of Rs.950-1500. They have orally requested Respondent No. 3 and also submitted written applications in this behalf. Shri G.H.Talekar, Telephone

S.L.Jain

Operator Gr.II under Respondent No.3 has been provided with the scale of Rs.975-1660. The Respondent No. 3 has orally informed the applicants from time to time that their case is forwarded to higher authorities and they will be informed about it when the decision is taken on their representation. Their request for proper pay scale of Rs.975-1660 was rejected by the respondents. Hence, this OA. for the above said reliefs:

3. The claim of the applicants is based on an order passed by CAT, Lucknow Bench in OA.NO.70/93, Avadesh Kumar Shukla vs. Union of India decided on 1.11.1993 and CAT, Jodhpur Bench in OA.NO.209/87 Mangilal Raj Purohit vs. Union of India decided on 28.1.1988.

4. The claim of the applicants is being resisted by the respondents on the ground that the post of Civilian Switch Board Operator carries the pay scale of Rs.950-1500, the applicants are claiming revision in the scale of pay on the ground that one of their colleagues Shri G.H.Talekar is being paid the said scale, while he was appointed before 1.1.1973, as such there is no discrimination. The CPRO 50 of 77 and 146 of 77 mentioned that Civilian Switch Board Operators Grade II who have been appointed before 1.1.1973 are being paid a scale of Rs.975-1600 whereas the Civilian Switch Board Operators who were appointed on or after 1.1.1973 are being paid the scale of Rs.950-1500. The higher scale to the persons appointed before 1.1.1973 is personal to them. The letters of appointment of the applicants have clearly set out. The applicants must agitate their grievance before the 5th Pay Commission.

5. OA.No.70/93 decided by the CAT, Lucknow Bench by the Single Bench was decided ex-parte against the respondents. Some of the employees also approached CAT, Chandigarh Bench in OA.No. 239/90 decided on 23.8.1995 the claim of the applicants was rejected. The Tribunal has no jurisdiction for revision of pay scales. The pay scale mentioned by the Employment Exchange in the call letters was incorrectly quoted but in appointment letters the pay scale was correctly quoted. It is alleged that the order passed by CAT, Lucknow Bench and CAT, Jodhpur Bench is no longer good law as the said decisions were considered in OA.NO.239/90 by CAT, Chandigarh Bench decided vide order dated 23.8.1995 and the OA. was rejected. Hence, prayed for dismissal of the OA. along with cost:

6. OA.NO.239/90 decided by CAT, Chandigarh Bench on 23.8.1995 Western Command Civilian Employees Union, Chandimundir & Ors. vs. Union of India & Ors., the applicants therein preferred SLP before the Apex Court which was converted into Civil Appeal No.11736/96 and said SLP was decided on 27.4.2000. Para 2 of the order of the Apex Court is as under :-

"At the time when the matter was taken up for hearing, learned Additional Solicitor General appearing for the respondents filed a copy of the letter dated 25th April, 2000 sent by the Legal Cell, Headquarters Delhi informing that the orders and judgements given by the Central Administrative Tribunal, Jodhpur and Central Administrative Tribunal, Allahabad have been implemented by the respondents and on the basis of the said letter stated that the matter being identical, same relief be accorded to the appellants. In view of the aforesaid statement, the appeal is allowed. The order and judgement under appeal is set aside."

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The learned counsel for the respondents argued that it is the concession made by the Additional Solicitor General, hence it cannot be treated as a decision on the said question. Hence, the said view deserves to be ignored. On perusal of the above order, we find that the learned Additional Solicitor General made the statement in view of the order passed by CAT, Allahabad and Jodhpur which were implemented and the appeal is allowed. Certainly, it is the statement of the Additional Solicitor General and not a decision in the matter by the Apex Court. We have to state that the said statement of the Additional Solicitor General is based on the facts that orders and judgements given by CAT, Jodhpur and Allahabad have been implemented by the respondents. The order of Lucknow Bench is based on the order of CAT, Allahabad. As the order of the CAT, Chandigarh Bench merged in the order of the Apex Court, the order of CAT Chandigarh Bench does not survive. Only it can be said that the matter was decided only on the basis of statement of the learned Additional Solicitor General in view of the earlier judgements of CAT, Jodhpur and Allahabad.

7. The learned counsel for the respondents relied on 2000 (2) All India Services Law Journal 395 S.T. Rooplal & Anr. vs. Lt. Governor through Chief Secretary, Delhi & Ors. and argued that a co-ordinate Bench is not expected to over-rule the decision of the earlier Bench. The said practice is bad in law and the Apex Court has observed as under :-

"At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgement of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law from the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system."

There cannot be any dispute regarding the proposition of law laid down by the Apex Court.

8. The learned counsel for the respondents relied on 1999 (2) A.I.SLJ 267 Sadhan Chandra Dey & Ors. vs. Union of India & Ors., which lays down the proposition that merely because one bench has given benefit by misinterpreting the orders, same benefits cannot be given to others. We agree with the said proposition of law and in the said situation, we have either to decide the case on merit and in case we differ from earlier orders, then to follow the case referred above S.T.Rooplal & Anr. vs. Lt.Governor through Chief Secretary, Delhi & Ors.

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9. The learned counsel for the respondents relied on 1998 (3) A.I.SLJ 30, Dr.Ashok Kumar Maheshwari vs. State of U.P. & Anr., which lays down the proposition that no promise against the law can be enforced. We agree with the said proposition of law.

10. The learned counsel for the respondents further relied on a decision of this Bench in OA.NOs.735/99 and other OAs., Prakash Dundappa Mogli, Tailor vs. Union of India & Ors. decided on 20.6.2001 wherein a reference was made by the Division Bench and the proposition of law was settled in respect of Tailors.

11. On perusal of the order passed by CAT, Lucknow Bench in case of Awdhesh Kumar Shukla vs. Union of India & ors. decided on 1.11.1993 with the order dated 19.11.1992 in OA.NO.1079/89 and order dated 10.12.1987 in OA.NO.133/87 decided by CAT, Jodhpur we find that in the said OA. the applicants were appointed on 12.4.1988, i.e. after 1.1.1973, in the pay scale of Rs.950-1500 and the Tribunal awarded the pay scale of Rs.975-1660. On perusal of the order in OA.NO.209/87 decided by CAT, Jodhpur Bench in case of Mangi Lal Rajpurohit vs. Union of India & Anr., we find that the case was decided on the basis of principle of estoppel. The applicants in the said OA. were provided the scale of Rs.260-480 (pre-revised), revised scale Rs.975-1660 and thereafter the respondents placed them in the scale of Rs.260-400 (pre-revised), Revised Rs.950-1500, the Tribunal agreed that it was not a correction of an error but the respondents are estopped

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on the principle of estoppel. It is pertinent to note that the appointment orders of the applicants therefore mentioned the scale of Rs.260-480, in the present case the appointment orders do not mention the scale of Rs.260-480 pre-revised, revised Rs.975-1660 but only the letter issued by the Employment Exchange mentions the scale as Rs.975/- plus allowances. Hence, in the present case question of promissory estoppel does not arise. Hence, the said order passed by the CAT, Full Bench in OA. in case of Mangi Lal Purohit does not help the applicants.

12. The case decided by CAT Allahabad in OA.NO.174/89 Uma Kant & Ors. vs. Union of India & Ors. and by Lucknow Bench in OA.NO.70/93 Avadesh Kumar Shukla vs. Union of India and the case of CAT, Chandigarh Western Command Civilian Employees Union vs. Union of India & ors. who are being paid in the scale of Rs.975-1660, the applicants are similarly situated whether they can be deprived of the said scale at the hands of the respondents and whether the said action of the respondents does not infringe Article 14 of the Constitution deserves to be considered.

13. Pay scale and the orders in respect of pay scales decided by CAT and implemented by the State, i.e the respondents are the judgement in rem. The respondents cannot say when they have followed and implemented the said orders, they will not apply it to other similiary situated employees. Further, if the respondents deny the said benefits to other similarly situated

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employees certainly it offends Article 14 of the Constitution of India which is a guarantee to every employees including employee in the present OA. atleast at the hands of the state.

14. The respondents' reliance on an order of CAT, Chandigarh in OA.No.239/90 as it merges in the order of the Apex Court in Civil Appeal No. 1137/96, it cannot be said to be a decision at the most it can be said to be a concession based on correct facts. Hence, the question of referring the matter to Larger Bench does not arise.

15. The duties performed by the Switch Board Operators in the same Ministry are one and the same, in such circumstances, the applicants are entitled to "equal pay for equal work", on the said principle, the applicants cannot be denied the said benefit.

16. In the result, we do not find any merit in the defences raised by the respondents. OA. deserves to be allowed and is allowed but we restrict the arrears to one year before filing of the OA., i.e. date of filing is 8.4.1996.

17. In the result, OA. is allowed. The applicants are entitled to the scale of Rs.975-1660 from the date of their appointment, their pay should be fixed notionally accordingly with all consequential benefits but they would be paid arrears only commencing from 1.4.1995 and thereafter. The applicants are

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entitled to cost amounting to Rs.1,000/- payable by the respondents to the Applicant No. 1 for and on behalf of all the applicants. This exercise be completed within three months from the date of receipt of a copy of this order.

Shanta J

(SMT. SHANTA SHASTRY)

MEMBER (A)

S.L. Jain

(S.L. JAIN)

MEMBER (J)

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