

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 182/99, 213/99 and 408/99.

Dated this Monday, the 6th day of November, 2000.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A)

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

D.V.S. Prabhakar Rao,
Assistant Manager,
T.C.I.L.

Applicant in O.A. No.
... 182/99.

1. K. Doraiswamy.
2. V. K. Pani.
3. L. Satyanarayana.
4. Suresh Chandra.
5. V.S.R. Sarma.
6. K. Narasimmalu Chetty.
7. R. Venkatakrishnan.

Applicants in O.A.No.
213/99.

N.C. Narayana Charyulu,
Working as C.A.O.,
Mahanagar Telephone Nigam Ltd.,
Mumbai.

Applicant in O.A.No.
... 408/99.

(By Advocate Shri A. I. Bhatkar)

VERSUS

1. Union of India through
The Secretary,
Ministry of Communication,
Department of Communications,
Sanchar Bhavan,
New Delhi 110 001.
2. Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House, Dadar (W),
Mumbai - 400 028.
3. The Deputy Manager (P & A),
Tele. Consultants India Ltd.,
TCIL Bhavan, Greater Kailash-I,
New Delhi - 110 048.

... Respondents in
all the three
O.As.

.. Respondent in
O.A.No. 182/99.

4. The Chief General Manager,
Maharashtra Telecom Circle,
Fountain Telecom Building,
Mumbai - 400 001.

5. The Chief General Manager,
Telecom Project,
Western Project Circle,
Mumbai.

6. The Chief General Manager,
Western Telecom Project,
Phonix Hill Compound,
Parel, Mumbai - 400 013.

... Respondent in
O.A.No. 213/99.

... Respondent in
O.A.No. 408/99.

(By Advocate Shri V.S. Hasurkar).

OPEN COURT ORDER

PER : Shri B. N. Bahadur, Member (A)

We are taking up for consideration three O.As. together and disposing them of through this common order. These O.As. bear Nos. 182/99, 213/99 and 408/99 and they have been filed by the respective Applicants seeking the relief in substance for the quashing of the impugned orders dated 13.02.1988. This order is made by Respondent No. 1. Thereafter, as a follow up on this order, orders have been made by the local authority in O.A. No. 182/99. However, the basic order impugned is the order dated 13.02.1988, as mentioned above.

2. At the outset, it must be stated that the matters are covered by other litigation, as will be pointed out in the subsequent paragraphs, and the orders in these cases have been taken due note of. The Applicants' case in these O.As. is that through the impugned order, the Respondents are seeking to take away the benefits already accrued to them. The ground of the Respondents in taking away this benefit is illegal and wrong. As contended by the Applicants, the ground flowing out of a subsequent judgement of the Supreme Court in the case of Union of India & Anr. v/s. R. Swaminathan, etc. etc. [1997 (2) SC

SLJ 383], the Applicants' contend that there was an anomaly in their pay and they had, therefore, approached this Tribunal by filing O.A.s. All these applications were decided by a common judgement dated 19.07.1994 in a batch of O.A. (exhibit-3). This judgement was to be implemented within four months and was accordingly implemented. In fact, it is stated that the Respondents had simultaneously taken up the matter through a S.L.P. before the Hon'ble Supreme Court and that this S.L.P. had come to be dismissed (exhibit - 4).

3. We have heard the Learned Counsel, Shri A. I. Bhatkar, for the Applicants in these cases. It was argued by Shri A. I. Bhatkar in the conspectus of the stand taken in the O.A. that the judgement of the Hon'ble Supreme Court in the case of Union of India V/s. R. Swaminathan cannot be applied in the cases of these Applicants whose cases have become final in view of the dismissal of the S.L.P. This was the main stand that the Learned Counsel for the Applicants had taken.

4. He had also brought to our notice the fact that in another case decided on 01.02.1999 by this Tribunal later in O.A. No. 935/98 the stand taken by this Tribunal was that a subsequent judgement cannot be used to set aside an order which had already become final. In fact, it was brought to our notice that the matter had gone upto High Court and the Writ Petition No. 3054 of 1999 had settled the issue in favour of the Applicants. The Learned Counsel for the respondents had depended on the written statement filed by the Respondents where the Respondents take support of the judgement of the Supreme Court in the aforesaid case of R. Swaminathan and make the point that this judgement is

applicable to all the employees, including those employees who had succeeded before this Tribunal, notwithstanding the fact that the S.L.P. filed against the judgement of the Central Administrative Tribunal was dismissed earlier on technical grounds.

5. We have considered all the papers in the case and the arguments made before us by the Learned Counsel on both sides. We have also carefully perused the judgements mentioned above.

6. The short point before us is, whether the later judgement of the Supreme Court in the case of R. Swaminathan can be made applicable and the impugned order made on 13.02.1998 is sustainable. It is clear to us on a reading of the order of this Tribunal dated 01.02.1999 in O.A.No. 935/98 that this cannot be the position. This very issue has been considered by this Bench of the Tribunal in this case and has been fairly decided. Further, this issue was taken to the High Court by the Respondents. The High Court, as mentioned above, has decided the issue in Writ Petition No. 3054/99 vide their order dated 16.10.2000. This has been discussed in detail in para 4 of the judgement of the High Court. It is stated, inter alia as follows :

"The Tribunal has rightly concluded that the subsequent judgement of the Supreme Court in another batch of matters, in which the Respondents herein were not parties, could not adversely affect their rights which stood determined by an earlier adjudication by the Judgement and Order of the Tribunal in their favour, and which attained finality by the dismissal of the petition for Special Leave to Appeal preferred against that Judgement and Order, particularly when the later judgement is not made expressly applicable to the cases of the Respondents."

The High Court has, therefore, dismissed the petition.

7. Now when this is the clearly concluded position on this issue, we find that the three O.A.s. before us clearly succeed and are, therefore, hereby allowed.

8. The O.A.s. are, therefore, allowed with the following orders :

The Respondents are directed not to refix the salary of the Applicants and not to take any steps to recover the amount already paid to them in pursuance of the judgement dated 19.07.1994 in O.A. No. 926/93 and connected cases. There will be no order as to costs.

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

(B. N. BAHADUR)
MEMBER (A).

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