

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NOS.: 550 of 2001.

Date of Decision : 12-4-05

Indian Telecom Factories Engineers
Association (Group 'A') & 3 Others, Applicants.

Shri R. V. Sony, Advocate for the applicants.

VERSUS

Union of India & others, Respondents.

Shri V. S. Masurkar, Advocate for Respondents.

CORAM :

Hon'ble Shri Anand Kumar Bhatt, Member (A).

Hon'ble Shri Muzaffar Husain, Member (J).

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


(Anand Kumar Bhatt)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL

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ORIGINAL APPLICATION NO.: 550 of 2001.

Dated this Tuesday the 12 day of April, 2005.

CORAM : Hon'ble Shri Anand Kumar Bhatt, Member (A).

Hon'ble Shri Muzaffar Husain, Member (J).

1. Indian Telecom Factories
Engineers Assn. (Group 'A')
by its present General
Secretary, Mr. B. B. Bisoy,
C/o. Telecom Factory, Deonar,
Mumbai - 400 008.

2. Mr. B. B. Bisoy,
Sr. Engineer,
Telecom Factory,
Deonar,
Mumbai - 400 088.

3. Mr. Mahabir Singh,
Dy. General Manager,
Telecom Factory,
Deonar,
Mumbai - 400 008.

4. Mr. T. Kaliprasad,
Dy. General Manager,
Telecom Factory,
Deonar,
Mumbai - 400 008.

(By Advocate Shri R. V. Sony).

VERSUS

... Applicants.

1. Union of India through
The Secretary,
Deptt. Of Telecommunication,
Ministry of Communication,
Sanchar Bhavan,
20 Ashoka Road,
New Delhi - 110 001.

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2. The Secretary,
Ministry of Personnel,
Public Grievances & Pension,
Deptt. Of Personnel & Training,
(Cadre Review Division),
North Block,
New Delhi - 110 001.

... Respondents.

(By Advocate Shri V. S. Masurkar)

O R D E R

PER : Shri Anand Kumar Bhatt, Member (A).

The following reliefs have been sought by the
applicants in the present O.A.:

"(A) This Honourable Tribunal may be pleased to call for the records and proceedings of the present case and the prevalent guidelines issued by the DOP&T as to the criteria for declaring a Central Civil Services Group 'A' as an organised Group 'A' services and after examining the same, hold and declare that the applicants cadre is entitled to be declared as an organised Group 'A' services of the Union of India.

(B) The Honourable Tribunal may after examining the issues be pleased to hold and declare that the applicants cadre may be declared and conferred the status of an organised Group 'A' services and extend all benefits of an organized Group 'A' services to the members of this cadre w.e.f. the date on which the services with cadre of a lesser strength than the applicant was declared as organised services Group 'A'.

(C) To direct the Respondents to implement the recommendations of the Vth Pay Commission as to the merging of the applicants cadre with their counterparts the Indian Telecom Services in terms of para 50.89 of the Vth Pay Commissions' Report.

(D) Allow the applicants to file the present application as a joint application on behalf of its members viz. Indian Telecom Factories Engineers Association (Group 'A').

(E) For any such orders, reliefs or directions as this Honourable Tribunal may deem fit and proper in the facts and circumstances of the case.

(F) Cost of these proceedings."

2. The facts in brief are that the applicants were selected by U.P.S.C. through Combined Engineering Services Examination and joined Group 'A' services at Junior Times Scale. The grievance is that they are not given the benefits of organized Group 'A' services though they fulfill the requirements as per D.O.P.T. guidelines. The V-CPC has recommended the merger of the applicants' cadre into Indian Telecom Services. The applicants made a representation to Respondent No. 1 on 21.12.2000. However, vide order dated 22.03.2001 the applicants were informed that D.O.P.T. has advised ^{that it} L in view of the small strength of the cadre the service may continue as it is. They have admitted in the said letter that it has been examined a number of times and it has duly emphasized that the service has all the requisite attributes of an organized service.

3. The grounds taken by the applicants are that the services, with lesser cadre strength have been conferred the status of an Organized Group 'A' service and, therefore,

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the denial of such status on the basis of cadre being small is arbitrary. The Fifth Central Pay Commission (for short V-CPC) also recommended that the applicants' cadre be merged with the Indian Telecom Services. The guidelines issued by DOPT state that a service can be declared as organized provided it has the following major characteristics :

i) At group 'A' level, 50% of the officers are recruited through U.P.S.C. at J.T.S. level and 50% is promoted from Group 'B' level.

ii) It has got all the standard pay scales such as Rs. 2200-2800/-, Rs. 3000-4500, Rs. 3700-5000, Rs. 5900-6700 (All pre-revised scales).

iii) The cadre has promotional scope at least upto Rs. 5900-6700 (pre-revised).

They have stated that the cadre strength of the Telecom Factories Group 'A' Service is 81 and the following Group 'A' services have been declared as organized service with small strength :

i)	Central Revenue (Excise Chemical Service)	50
ii)	Indian Naval Armaments Service	90
iii)	Indian Defence Estate Service	118

It has also been stated by them that Telegraph Traffic Service, which is a Group 'B' Service and not organized, has been given the following benefits by the Respondents:

- "1. The department will provide promotions to the officers of TTS Group 'A' from the grade they are holding on regular basis to the next higher grade when an officer in ITS Group 'A' with equal length of regular service in same grade is promoted.
2. TTS Officers will be deployed against Engineering/Telegraph posts by heads of circles without discrimination. This arrangement is also applicable to TTS Officers promoted till date.
3. Lateral advancement scheme is restored retrospectively for TTS Group 'B' Officers. Other facilities available to TES Group 'B' officers like pay scales, post upgradation, pay anomaly settlement and other promotional avenues are applicable to TTS Group 'B' Officers also."

However, these benefits have been denied to the applicants' service. In the oral submissions, Shri R. V. Sony, Counsel for the applicants, stressed on batch parity. He stated that this prayer has been made in the interim relief that members of the applicants' cadre be given the benefits of an organized Group 'A' service on batch parity basis along with members of ^{other} Group 'A' Engineering services within the D.O.T. i.e. The Indian Telecom Services. He stated that V-CPC has also recommended that this cadre be merged with the main I.T.S. The Telegraph Traffic Service has been given batch parity which is not given to the present applicants. The Counsel cited AIR 1973 SC 1146 [State of Mysore V/s. Krishna Murthy & Others] where it has been held

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by a four Judge Bench of the Apex Court that inequality of opportunity of promotion, though not unconstitutional per se, must be justified on the strength of rational criteria correlated to the object for which the difference is made. The batch parity in the case of Telegraph Traffic Service was given as an out of court settlement on condition that T.T.S. Officers shall withdraw the court case. This was done by I.T.S. as all promotions in I.T.S. Cadre were held up for many years. Shri Sony also stated that there is clear discrimination in the promotion given to I.T.S. And T.T.S. Officers. He produced a chart which showed the following position :

<i>S.No.</i>	<i>Level</i>	<i>Mainstream Batch Promoted</i>	<i>TF Batch Promoted</i>
1	HAG	1974	None
2	SAG	1984	1973
3	JAG	1994	1980
4	STS	1999	1997

3. In the reply submitted by the respondents it has been stated that for the issue, the nodal ministry in the Government of India is D.O.P.T. and their decision was duly conveyed to the applicants. The grant of organized service status is neither a matter of right nor a condition of service. It is a policy matter which has to be examined and granted only on fulfillment of certain criteria, one of

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which is that it should be a viable service capable of fulfilling the promotional aspiration of its member officers. They have further pointed out that the Telecom Factories are now part of Bharat Sanchar Nigam Limited (for short BSNL) which is a public sector undertaking ^(psu) and as the posts are now under P.S.U. and not in the Central Government, the Tribunal does not have jurisdiction to consider the present application. Consequent on the Telecom Factories becoming part of B.S.N.L., the U.P.S.C. have deleted this service from the list of services for which recruitment is done through the Combined Engineering Service Examination. Its status as Government service has been altered on its transfer to a Corporation. For I.T.S., candidates with degree in Engineering in Electronics/ Telecommunications Engineering are eligible whereas for the post of Factory Engineers candidates with Mechanical Engineering and Electrical Engineering qualification were also eligible. The batch parity may lead to litigation by the aggrieved officers in the I.T.S. As for the contention of the applicants that similar small cadres have been given the status of Organized Service, it has been stated that in the recent past it has not been done.

5. In the oral submission, Shri V. S. Masurkar, Counsel for the respondents, made a preliminary objection

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that the cause of action arose in Jabalpur, however, the present O.A. has been made in Mumbai. The representation at Exhibit-B dated 21.12.2000 was made from Indian Telecom Factories' Engineers Association, Group 'A' at Telecom Factory, Richhai, Jabalpur and the reply was also given by the Ministry of Communications at Jabalpur only. He has also stated that the grievance which has been raised in the representation of the applicants at exhibit-B is entirely different. The prayer is only for declaration of organized service and other matters like batch parity, etc. were not raised there. Therefore, raising the question on which the respondents have not applied their mind is not correct and cannot be considered by the Tribunal. B.S.N.L. has come into existence from 01.10.2000. The representation at Exhibit-D was made on 21.12.2000 and the impugned reply has been given by the respondents on 22.03.2001. The applicants have been asked to give option for their absorption in B.S.N.L. On being asked as to what steps would be taken in the case of those TFS Officers who do not opt for B.S.N.L., he stated that they would be sent to the Surplus Cell. Shri Masurkar stated that now there are only 45 officers left in the cadre.

5. In rebuttal, Shri Sony stated that the impugned order states that status of organized service has been

refused on the ground of cadre being small and this should be decided by the Tribunal. As for the cause of action having been arisen at Jabalpur, he has stated that this has not been raised either initially before the Tribunal or before the High Court from where the case has been remanded. The Headquarters of the Association of Telecom Factory Engineering is at Bombay and therefore there is no technical mistake in filing the case at Mumbai. For declaration of a organized service, cadre being small or big does not matter and it is only to be seen whether the criteria prescribed by the D.O.P.T. in their guidelines are fulfilled by a particular service or not.

⑦ We have considered the case. As regards the preliminary objection that the matter should have been raised at Jabalpur instead of Bombay, as the Headquarters of the Indian Telecom Factories' Engineers Association Group 'A' is at Mumbai, there is no infirmity in the present O.A. having been filed in Mumbai, even though the representation was first given by the Association members of Telecom Factory at Rachhai, Jabalpur, on which the impugned order has been passed. The matter relates to merger of T.F.S. with I.T.S. and we agree with the respondents that it is a policy matter which is in the

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domain of the executive. It has also been contended by the respondents that as all the Telecom Factories have been transferred to B.S.N.L., the Tribunal does not have jurisdiction. However, admittedly the applicants are on deemed deputation to B.S.N.L. and they have not been finally absorbed in B.S.N.L. and on this ground the High Court has set aside our previous order. Therefore, this matter is no more res integra before the Tribunal. The main worry of the present applicants is that after they are absorbed in B.S.N.L. even though they would be belonging to the same batch, because of ^{to quicker} ~~the~~ promotions in I.T.S., as claimed and showed by the applicants, they will be probably placed much lower in the combined seniority list in B.S.N.L. as compared to I.T.S. Officers. In the oral submissions, the Counsel for the applicants argued at length about the point of batch parity and as has been shown by him in the chart in para 3 above, there is disparity in the time taken for promotion to various grades in T.F.S. as compared to I.T.S. Officers. It has also been stated by the applicants that some kind of batch parity has been given to T.T.S. Officers. The applicants have shown the 12th Report of the Standing Committee on Communications (1998-99) of Lok Sabha where in para 80 it has been mentioned that *"The Committee further notes that the Fifth Central Pay Commission recommended the merger of Group 'A' post of Telecom factories with Indian*

Telecom Service (ITS) and the matter is stated to be under consideration of the Department. The Committee expects an early decision in this regard keeping in view the interest of the workers of the Telecom Factories." This report was published in April 1999 and the Parliamentary Committee On Communications was informed that the matter is under active consideration and the Committee had hoped that early decision would be taken keeping in view the interest of the workers of the Telecom Factories. The impugned order is dated 22.03.2001 which is ~~obviously~~[^] of a later date. The said letter says that *"the matter has been examined a number of times and it has been duly emphasised that this Service has all the requisite attributes of an Organised Service. However, DOP&T has advised that in view of its small strength, the Service may continue as it is."* It is apparent that the Ministry is convinced that T.F.S. has all the requisites of an organized service. However, the D.O.P.T., the nodal Ministry in such matters has advised that in view of the small strength of the cadre, the service may continue as it is. We are conscious of the scope of judicial review. However, looking to the fact that some kind of batch parity has been allowed in the case of T.T.S. and now at the time of absorption of both I.T.S. and T.F.S. Officers in B.S.N.L., because of slow promotions in T.F.S. there could be some dissatisfaction in the T.F.S. Officers, in that, on the basis of the present grade held by them even though


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belonging to the same batch they may rank much lower than their counter parts in I.T.S., We feel that it would be appropriate for the respondents i.e. The Ministry of Communications and D.O.P.T. to reconsider the decision in the matter. The V-CPC also recommended the merger of the service into ITS and when the respondents state that such merger and batch parity would create the problem of grievance on the part of aggrieved people in I.T.S., the same kind of grievance of the present applicants is probably being not kept in mind ^{simul-}~~spont~~aneously. The guidelines for a service to be declared as Organized Group 'A' Civil Cadre which have been cited by the applicants, is contained in the Compilation issued by D.O.P.T. Cadre Review Division in the Cadre Management of Group 'A' Central Services 1993. We ⁱⁿ~~therefore~~ refrain from giving a ^{in looking to the limited scope of judicial review.} clear direction to the respondents in this regard. It would be appropriate that looking to the impending absorption of the present applicants and I.T.S. Officers in B.S.N.L., the grievance of the applicants is given a reconsideration. Accordingly, if the applicants so desire, they may give a detailed self contained representation to the respondents whereby their grievance is highlighted. Such representation may be given by the applicants within one month ^{of the date} ~~on~~ receipt of this order to Respondent No. 1 and

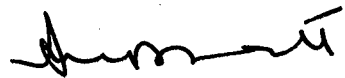
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Respondent No. 1, on receipt of such representation, shall consider the representation of the applicants within three months of the receipt of the representation so that on the absorption of the applicants in B.S.N.L. they are not discriminated against their counter-parts in other services who are also similarly being absorbed.

8. O.A. is disposed of as above. No costs.



(MUZAFFAR HUSAIN)
MEMBER (J).



(ANAND KUMAR BHATT)
MEMBER (A).

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