

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 173/2001

Date of Decision: 27.8.2002

Shri M. Angamuthu

Applicant(s)

Shri K.R. Yelwe

Advocate for Applicant

Versus

Union of India & Ors.

Respondents

Shri R.S. Sunderam

Advocate for Respondents

CORAM: HON'BLE SHRI S.L. JAIN. ... MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. ... MEMBER (A)

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

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.173/2001

THIS THE 27 TH DAY OF AUGUST, 2002

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. .. MEMBER (A)

Shri M. Angamuthu,
at present working as
Chief Accounts Officer (C & W)
O/o General Manager (North),
under MTNL, Mumbai. .. Applicant

By Advocate Shri K.R. Yelwe.

Versus

1. The Union of India
through the Chairman
Telecom Compassion, Dept.
of Telecommunications,
Sanchar Bhavan, Ashoka Road,
New Delhi-110 001.
2. The Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House, Prabhadevi,
V.S. Marg, Mumbai-400 020.
3. The Chief General Manager,
Tamilnadu Telecom Circle,
Anna Salai, Madras-600 002. .. Respondents

By Advocate Shri S.S. Karkera.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

The applicant is aggrieved that the respondents
are not granting four additional incentive increments to
him on passing the ICWAI final examination and not
stepping up of his pay on par with similarly situated
Shri K. Jawahar, his junior. He is thus challenging
the order of the respondents dated 27.11.2000 whereby
his representation was rejected.

4
✓

...2.

2. The applicant joined the erstwhile Posts & Telegraph Department as postal clerk in 1968 and after various promotions, he came as Senior Accounts officer in 1997 to MTNL, Mumbai and is working since 13.8.1997 as such. In between the applicant had also been promoted on temporary and adhoc basis for 180 days in June, 1995 as Assistant Chief Accounts Officer and Chief Accounts Officer intermittently on various spells.

3. While so working, he had passed the intermediate examination of ICWAI held in June, 1990. As per the OM dated 03.8.1999 of the Department of Telecom, he was granted two advance increments. According to the aforesaid OM para 2.1, the officers would be entitled to six advance increments on qualifying ICWAI final examination. The official who qualify in the intermediate ICWAI examination would get two advance increments, which would be absorbed in six advance increments after qualifying in the final examination. Accordingly, those who passed the final examination of ICWAI were granted six advance increments and their pay was taken into consideration for fixation of pay in the higher grade. The applicant passed the final examination of ICWAI on 31st December, 1995.

4. A new incentive scheme was introduced vide DOP&T OM dated 28.6.1993 giving incentives in the form of one time lump sum incentive in place of increment

BNM

based incentives to those ^{who h} ~~who~~ acquired higher qualification useful in the discharge of higher official work. In this OM certain guidelines were laid down regarding the higher qualification to be acquired. The incentives were not ^{to} be considered for qualifications like M.B.A. or Degree in Humanities while they can be given for Engineering Degree, Accountancy, Computer Science and Post Graduate Degree in Medicine and likewise. The incentive was to be given only for acquiring the higher qualification after induction in to service and was not to apply for incentives that were being given in the existing scheme. Similarly, if an appointment was made in relaxation of educational qualification, the incentive would not be admissible. No stepping up of pay was also allowed in case a junior was drawing more pay by virtue of incentive increments under the scheme of advance increments. In this aforesaid OM, a further direction was given for formation of centralised committee comprising of JSE, DoT, TS (P), Ministry of Personnel and representatives of Railways, Defence, Education and Telecommunication for drawing up the list of lump sum incentive. Thereafter, according to the applicant, the department of Telecom issued an order on 09.5.1995 circulating DOPT OM dated 31.01.1995. According to the new incentive scheme a one time lump sum incentive in place of the existing increment incentive was provided starting with a minimum of Rs.2000/- to maximum of Rs.10000/-. The

same was circulated vide order dated 09.5.1995 and endorsed on 20.02.1996. The applicant, however did not get the benefit of the earlier incentive scheme and his lump sum incentive got restricted to Rs.6000/- as per the new scheme.

5. The respondents, in their reply have stated that since the earlier scheme of 1989 was replaced by the new scheme of 28.6.1993 and OM dated 31.01.1995, the applicant could not be given additional four increments as he had passed the final examination after the new scheme was introduced.

6. The applicant had filed OA No.1394/2000 on which the Tribunal had directed the respondents to grant the applicant personal hearing and pass a speaking order in detail. Accordingly, the respondents have passed the detailed speaking order on 22nd November, 2000. It has been stated in this letter that the applicant was granted two advance increments as per the instructions contained in DoT circular dated 03.8.1989 as the applicant passed the intermediate examination of ICWAI held in June, 1990. Since he passed the final examination only in December, 1995 he would be entitled to lump sum of Rs.6000/- as per DoT order dated 09.5.1995. The respondents have also pointed out in their letter that the pay disparity in between the applicant and his junior Shri K.Jawahar is due to

SLP/-

applicability of two different orders for the junior and senior in respect of incentive for qualifying higher professional examination of ICWAI. Shri Jawahar had passed the final examination of ICWAI in 1985, therefore, got four advance increments as per the order then existing while the applicant has passed the examination in December, 1995 and therefore, though the applicant is senior to Shri K. Jawahar, is not entitled for increment based on incentive scheme after 31.5.1995 and therefore, also no stepping up of pay shall be allowed in case the junior was drawing more pay under the scheme of advance increments.

7. The contention of the applicant is that the new scheme of DOP&T does not apply automatically. The new scheme of DOP&T vide OM dated 28.6.1993 and 31.01.1995 could not be made applicable to employees of the Telecom department because the department has to adopt the same. The earlier OM dated 03.8.89 had not been cancelled and was continuing and therefore also the applicant ought to have been given the four additional incentive increments as per the old scheme of 03.8.89. More over, before the new scheme was made applicable, the applicant was already in due course of the final examination. Therefore, the withdrawal of the advance increments scheme from the cut-off date of 31.01.1995 has resulted in substantial pecuniary loss to the applicant. The applicant's several representations also were of no

avail. The applicant submits that even as per the order dated 09.5.1995 the applicant is entitled for grant of four additional incentive increments since he had already been granted two advance increments. The applicant has also further questioned the statement of the respondents that he had already been granted a lump sum of rs.6000/- as per the DoT order. According to him, he has not been granted any incentive. The amount had not been paid to him as his claim was pending.

8. The respondents have struck to their stand that since the applicant had passed his final examination in December, 1995, he was governed by the new scheme and therefore, he would be entitled only for lump sum incentive. It was through inadvertence that it had been mentioned that he had already been granted the lump sum incentive amount of Rs.6000/-. The applicant can claim the lump sum incentive at any time and he shall be paid the same immediately, according to the respondents.

9. The respondents have also produced an order of the Principal bench of the Tribunal in OA No.1005/96 wherein the applicant was similarly placed as the present applicant. It was held in this judgment that the applicant therein was not entitled to the additional advance increments because he had not passed the final examination before January, 1995, when the new orders came into effect. In fact, the Government of India's

decision regarding replacement of the scheme of advance increment by lump sum had been issued as far back as in June, 1993 and it was stated therein that from the current financial year, the present system of giving advance increments shall be replaced by granting lump sum amount as incentive.

10. The applicant has filed rejoinder bringing on record the DOPT OM dated 09.5.1995. The question of finalising fresh qualification (in addition to the one which a person qualified for grant of the incentive) which would merit grant of lump sum incentive was considered by the central committee and after taking into account the recommendations of the 5th Pay Commission, grant of lump sum incentive on acquiring were clarified as listed in annexure to the said OM. According to the applicant reading of para 3 with item 9 of the annexure to the OM dated 09.4.1999 makes it clear that the earlier OM of 31.01.1995 did not consider the qualification acquired by the applicant and therefore, that the OM is not applicable to the applicant. It is the OM dated 09.4.99 which for the first time considered the qualification acquired by the applicant and therefore, the OM of 28.6.1993 would be applicable from the date of issue of the orders of 09.4.99, therefore, the applicant is entitled for the additional four incentive increments. The applicant has also referred to judgment of Hyderabad Bench of the Tribunal dated

27.3.1998 which was dismissed. However, the applicant distinguishes the same by stating that the applicant in that OA had accepted the one lump sum payment and had approached the Tribunal thereafter; whereas in the present case, the applicant is yet to accept the lump sum payment. Further, the OA was decided by the Hyderabad Bench prior to the issue of the order dated 09.4.1999 which clearly establishes their earlier OMs of 1993 and 1995 were not applicable to the applicant. Also the question of parity of pay (stepping up of pay) with that of similarly placed junior employee was not an issue there.

11. We have heard the learned counsel for the applicant as well as the respondent. Initially the scheme of 03.9.89 was applicable to the applicant, according to which he received two incentive increments on passing the intermediate examination of ICWAI. Thereafter, however, the applicant took five years to pass the final examination of the ICWAI, by which time the OM dated 28.6.93 and 31.01.1995 had replaced the ^{new} scheme of 03.9.89. The argument of the applicant that since the qualification acquired by the applicant came to be included under the new incentive scheme only by OM dated 09.4.1999 and therefore, the earlier OM of 28.6.1993 and 31.01.1995 are not applicable to him is not acceptable. Also the contention that even though the DOP&T had issued OM of 28.6.1993 and 31.01.1995 the

same had to be accepted and adopted by the DoT is also not tenable. It is seen from the OM dated 28.6.1993 that when the centralised committee was constituted for drawing up the list of lump sum incentive, this committee included a representative of the Ministry of Telecommunications. Further the OM also made it clear in the guideline that incentives would be given for engineering degree, accountancy, computer science etc. Thus Accountancy was also included. The OM dated 09.4.1999 only confirmed the earlier categories by further specifying the exact nature of the examination.

12. He cannot also compare his case with his junior Shri Jawahar, because Shri Jawahar had passed final examination in 1985 itself, whereas the applicant had passed the examination in December, 1995 after the new incentive scheme had been introduced. In our considered view, therefore, the applicant has no case. The respondents have rightly rejected his request for grant of four additional incentive increment in terms of the old scheme of 03.9.1989 and the respondents have already offered to him the lump sum incentive as admissible under the OM dated 28.6.1993 and 31.01.1995. Also the applicant's case is identical to the case of the applicant in OA No.1005/96 decided by the Principal Bench, New Delhi. We agree with the judgment and hold that the applicant is not entitled to the four additional increments as claimed by him under the old

PLM -

scheme of 03.9.1989. He is entitled only to lump sum incentive scheme in terms of the new OM dated 28.6.1993 and 31.01.1995. Accordingly, the OA is dismissed without any order as to costs.

Shanta F

(SMT. SHANTA SHAstry)
MEMBER (A)

S.L. JAIN

(S.L. JAIN)
MEMBER (J)

Gajan