

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:424/2000
AND 125/2001
DATED THE 3RD DAY OF May 2001

CORAM: HON'BLE SHRI JUSTICE ASHOK C AGARWA, CHAIRMAN
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

1. Shri J.H.Kamble
2. Shri P.D.Mane
3. Shri S.Y.Tapal
4. Shri P.P.Damse
5. Shri M.R.Bharmal
6. Shri D.G.Kashale
7. Shri V.Y.Yadav
8. Shri M.S.More

... Applicants in OA
424/2000.

By Advocate Shri G.S.Walia

Shri V.S.Duduskar,
Telegraph Overseer,
(Staff No.7327)

... Applicant in OA
125/2001

By Advocate Shri M.S.Ramamurthy

V/s.

1. Union of India,
through the Secretary,
Department of Telecommunications,
Government of India,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi - 110 001.

Chief General Manager(Telecom),
Maharashtra Circle,
Fountain Telecom Building No.II,
8th Floor, M.G.Road,
Mumbai - 400 001.

3. The General Manager (Telecom),
Raigad District at Mumbai,
Wireless Compound, Juhu Danda Road,
Santacruz (West),
Mumbai - 400 054.

4. The Chief Superintendent,
Central Telegraph Office,
Mumbai - 400 001.

... Respondents.

By Advocate Shri V.S.Masurkar

...2.

:2:
(ORAL) (ORDER)

Per Shri Justice Ashok C Agarwal, Chairman

Since the issues involved in both the OAs are common and facts are same, we proceed to dispose them of by a common order.

By the present OA, the applicants have impugned the action of the respondents in refixing their pay whereby their pay has been reduced. According to them they were persuaded to give their option on the understanding that their payscale will be increased. However, on their giving option, their payscales have been reduced instead of the same being increased. If the effect of giving option ^{is to reduce their pay}, ~~payscale is reduced~~, they are not interested in giving their option. ~~In that~~ They would be interested in withdrawing the option under the Biennial Cadre Review scheme. Shri V.S.Masurkar, arguing on behalf of Respondents states that the applicants have straightaway approached the Tribunal without exhausting the remedy of representation against their payscales.

2. In the circumstances, ^{present OA is disposed of by granting} liberty ~~is granted~~ to the applicants to submit their representations to the respondents within a period of two weeks from today. Respondents ~~will~~ take a decision thereon within a period of six weeks from the date of receipt of representation. No orders as to costs.

3. Pending decision of the respondents on the aforesaid representation, the ad interim order passed in the present OA will continue. The same will continue for a period of two weeks after service of copy of the order ^{on} ~~to~~ the applicant.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH,
MUMBAI.

~~M.P./C.P./P.P. NO.~~

~~499~~

IN

ORIGINAL APPLICATION NO. 125

~~499~~ of 2001

Shri. V.S. Dudarkar. Applicant

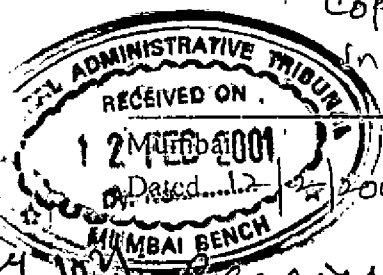
V/s

The Union of India & others.....

Respondents

INDEX

Sr. No.	Annexure No.	Particulars	Page No.
1.		Original Application.	1 - 13.
2.		Exhibit A	
		Copy of order dtd 22.4.99.	14 -
3.		Exhibit B	
		Copy of letter dtd 6.7.99.	15 16.
4.		Exhibit C	
		Copy of pay slips for the month of December 1999 and January 2000	17 -
5.		Exhibit D	
		Copy of Fixation statement as on 1.1.96 under V CPC.	18 -
6.		Exhibit E	
		Copy of order dtd 22.11.2000 Sno-A no. 61/2000	19 -



Received by 507-5/110
nos. 7F 710105 dtd. 6.2.01, M 207.
7F 669869 dtd. 6.2.01, M 207.
22E. 835583 dtd. 6.2.01/11/10/1

for 507

Reinca
Advocate for the Applicant.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. 125 OF 2001

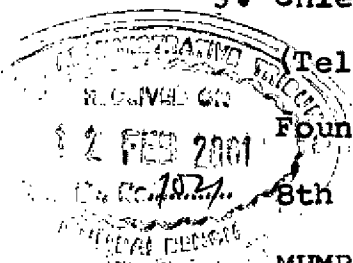
V.S. Duduskar,)
working as Telegraph Overseer)
(Staff No.7327) in the)
Telegraph Office, Dadar,)
HPO Building, Dadar,)
MUMBAI 400 014,)
and residing at 97-D,)
Sawant House, Mohan Nagar,)
Hill Road, Chunabhatti, Sion,)
MUMBAI 400 022.).. Applicant

V/S

1. Union of India,)
through the Secretary,)
Department of Telecommunications,)
Government of India,)
Sanchar Bhavan,)
20, Ashoka Road,)
NEW DELHI 110 001.)

2. The Chairman,)
Bharat Sanchar Nigam Ltd.,)
Sanchar Bhavan,)
NEW DELHI 110 001.)

3. Chief General Manager)
(Telecom), Maharashtra Circle,)
Fountain Telecom Building No.II,)
8th Floor, M.G. Road,)
MUMBAI 400 001.)



4. The Chief Superintendent,)
Central Telegraph Office,)
MUMBAI 400 001.) .. Respondents

MAY IT PLEASE THIS HON'BLE TRIBUNAL

DETAILS OF THE APPLICATION

1. Particulars of the Order against which
this Application is filed

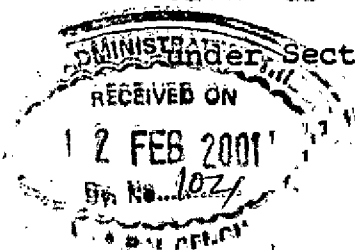
By this application, the Applicant is challenging the Orders of the Respondents in reducing his pay as Telegraph Overseer on his opting for the BCR scale of his basic cadre. Due to the reduction of the basic pay, the Applicant's basic pay has also come down by about Rs.1,000/- p.m. Added to the same, corresponding the D.A. and other allowances p.m. are also reduced resulting in the Applicant getting reduced pay by about Rs.2,000/- p.m.

2. Jurisdiction

The Applicant declares that this Hon'ble Tribunal has jurisdiction to entertain and try this application for the reliefs sought herein.

3. Limitation

The Applicant further declares that this Application has been filed within the period of limitation specified under Section 21 of the Administrative Tribunals Act, 1985.



4. Facts of the case

The facts of the case, briefly stated, are as follows:

- (a) The Applicant is a permanent employee of the Union of India. He is presently working as Telegraph Overseer in the Department of Telecommunications and working in the Telegraph Office at Dadar, Mumbai. The Applicant has about 9 years to superannuate.
- (b) The Applicant states that the Department of Telecommunications has two Schemes for promotion and/or reducing stagnation among employees viz. One Time Bound Promotion (OTBP for short) and Binneial Cadre Review (BCR for short). The promotions under the OTBP are granted to certain categories of employees after 16 years and 26 years of service in the department. Under the BCR Scheme also the employees are granted higher pay scale after completing certain length of service.
- (c) The Applicant states that the cadre of Telegraph Overseer was not covered by the OTBP or BCR Schemes. However,

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the staff side in the JCM put up the case of Telegraph Overseer and it was agreed by the Government that the Telegraph Overseer will be allowed to opt for the BCR of their basic cadre of Telegraph-Man. Accordingly, the Respondents vide Order dated 22.4.1999 allowed Telegraph Overseers to opt for the BCR scale of their basic cadre of Telegraph-Man on completion of 26 years of total service in the cadre of Telegraph-Man and Telegraph Overseer taken together. In the said order, it was also mentioned that the BCR scale of Telegraph-Man is more than the pay scale of Telegraph Overseer. A copy of the said Order dated 22.4.1999 is annexed hereto and marked Exhibit 'A'.

EX. 'A'

- (d) The Applicant states that pursuant to the said letter the Respondent No.4 herein issued an Order dated 6.7.1999 containing the names of 50 employees who were working in the cadre of Telegraph Overseer with a direction to them to give their options for coming over to the BCR scales of their basic cadre. Copy of the said letter dated 6.7.1999 is annexed hereto and marked Exhibit 'B'. The Applicant

EX. 'B'

states that pursuant to the said letter, he opted for coming over to the BCR scale. After the exercise of the said actions, a letter dated 1.11.1999 was passed by Respondent No.3 showing the names of persons eligible to get BCR scale. The name of the Applicant does not appear in the said list even though he is fully eligible for the same.

- (e) The Applicant states that after the Order dated 1.11.1999, he was shocked to receive emoluments from the month of January 2000 less than what he was drawing in the previous month amounting to Rs.2,000/- (approx.). On enquiries, the Applicant was orally informed that due to his opting for BCR scale, his pay would be fixed in the lower scale till he completed 26 years of service when he would be again placed in the scale of Rs.4000-6000 (scale of Telegraph Overseer) in which he was being paid ~~fixt~~ till date. The Applicant was further informed that there may be recoveries made in his case due to the refixation of the pay (on his opting for the BCR scale) from 1.1.1996 onwards. This position is common to all the Telegraph Overseers who had opted for BCR scales.

The Applicant states that all the Telegraph Overseers were fixed in the pay scale of Rs.4000-100-6000 as on 1.1.1996 as per the recommendations of the V Pay Commission. Therefore, it was shocking and surprising to them to have their pay suddenly refixed in a lower scale. In the case of the Applicant, he is drawing Rs.1000/- less in his basic pay and after adding allowances about Rs.2000/- p.m. less from the month of January 2000 onwards. Copies of the Pay Slips for the month of December 1999 and January 2000 are annexed hereto and marked Exhibit 'C'.

EX.'C'

A copy of the fixation of pay of the Applicant under the V Pay Commission w.e.f. 1.1.1996 is annexed hereto and marked Exhibit 'D'.

EX.'D'

- (f) The Applicant therefore, submits that the entire action of the Respondents is illegal and liable to be quashed and set aside. Hence this application.

5. Grounds for relief with legal provisions

The Applicant submits that the refixation of his pay on opting for BCR scale is not proper and further the recovery effected from his salary by way of reduced pay by about Rs.2000/- every month is also illegal. The said

actions are required to be set aside on the following among other grounds which are without prejudice to one another:

- (a) that the Respondents, while granting the benefit of BCR Scheme to the Telegraph Overseer had mentioned in the letter dated 22.4.1999 that the BCR pay scale of Telegraph-Man is more than the pay scale of Telegraph Overseer. It is submitted that the normal interpretation of the said statement is that on getting BCR scales of the basic cadre of Telegraph-Man, the Telegraph Overseers would be placed in a higher scale than the scale of Rs.4000-100-6000 in which they are drawing their pay on date. The action, therefore, of the Respondents to fix the pay of the Applicant in a lower scale purportedly for not completing 26 years and at the minimum of the scale for the employees who had completed 26 years who had been granted BCR scale ignoring the fixation done on 1.1.1996 in the scale of Rs.4000-6000 is totally illegal, arbitrary and is required to be quashed and set aside..
- (b) that while approving the extension of grant of BCR scale of his basic cadre

of Telegraph-Man to Telegraph Overseer, the Respondents did not put the Telegraph Overseer on notice that his pay would be refixed in the scale of Rs.4000-6000 and/or be placed in a lower scale as the case may be on his opting for BCR scale. Therefore, the Respondents cannot refix the pay of the Applicant and/or recover any amount from the Applicant. It was not also indicating in the letter dated 22.4.1999 that the BCR scale of the basic cadre of Telegraph-Man was also Rs.4000-6000, which was the pay scale of Telegraph Overseer, because then the Applicant or the other Telegraph Overseers would not have opted for the said BCR Scheme. The Respondents cannot keep the Applicant in the dark and then illegally refix his pay. The entire action is therefore, to be set aside. The Respondents cannot by suppression of material facts and misrepresentation, reduce the pay of the Applicant.

- (c) The Applicant further submits that one of the conditions of eligibility for opting for the BCR scale was that the Telegraph Overseer should have completed 26 years of service as Telegraph-Man and Telegraph Overseer taken together.

Therefore, if a Telegraph Overseer is placed in a lower scale of pay on his opting for the BCR scale of basic cadre of Telegraph-Man than the purpose of granting the benefits of BCR to Telegraph Overseers is defeated.

- (d) it is further submitted that the Applicant is drawing his pay in the scale of Rs.4000-6000 from 1.1.1996 onwards for the last more than 3 years. By fixation in the said scale of pay, the Applicant has acquired rights to get the same scale of pay unless the same is refixed in accordance with the due process of law. In the present case, Respondents have resorted to illegal means to refix the pay of the Applicant without due process of law.

- (e) the Applicant submits that by the said illegal refixation he is losing about Rs.2000/- per month from January 2000 onwards. The said action of the Respondents is done without following the due procedure laid down by law and therefore, the same is required to be set aside, and the recoveries stayed, and refunded.
- (f) the Applicant states that in an identical case filed by 10 Telegraph Overseers

being O.A. No.61 of 2000 (S.S. Shelkhande & Ors.), this Hon'ble Tribunal was pleased to pass orders on 21.1.2000 inter-alia that the pay drawn by the said Applicants as on 1.5.1999 shall stand protected till the next date of hearing. The said stay order is still operating and the said matter is placed for admission and hearing on interim relief on 26.2.2001. Copy of the interim Order passed on 21.1.2000 in the above matter is annexed hereto and marked Exhibit 'E'. The Applicant submits that he is entitled to similar orders as granted to the Applicants in the said O.A. No.61 of 2000.

EX. 'E'

6. Details of remedies exhausted

The Applicant has exhausted all the remedies available to him in the matter.

By 7. Matters previously filed or pending
No matter has been previously filed or pending in any Court or Tribunal
 8. Relief(s) sought for
 The Applicants pray for the grant of the following reliefs:

- (a) that it be declared that the action of the Respondents in re-fixing the pay of the Applicant as Telegraph Overseer on his opting for BCR scale of his basic cadre of Telegraph-Man and the proposed action to recover the difference of

-11-

emoluments on account of such illegal refixation, is illegal, bad in law and liable to be quashed and set aside.

- (b) that it be declared that the category of Telegraph Overseer like the Applicant are entitled to be granted a higher pay scale than Rs. 4000-6000 drawn by him on opting for the BCR scale of his basic cadre of Telegraph-Man in view of the letter dated 22.4.1999 (Ex. 'A').
- (c) that it be declared that the Applicant is entitled to be paid in the scale of pay of Rs. 4000-6000 as per the fixation done under V Pay Commission as on 1.1.1996 before grant of BCR scale.
- (d) that the Respondents be directed to restore the pay of the Applicant to the level and amount of pay which he was drawing prior to 1.11.1999, with all consequential benefits.
- (e) that the Respondents be permanently restrained from in any manner refix the pay of the Applicant as Telegraph Overseer, presently being paid in the scale of Rs. 4000-6000, on his opting

for BCR scale or in any manner recovering any amount on account of the said illegal fixation done by the Respondents.

- (f) that this Hon'ble Tribunal be pleased to direct the Respondents to refund to the Applicant all the amounts recovered from him so far, on ~~his~~ account of the said wrong fixation.
- (g) that such other and further order or orders be passed as the facts and circumstances of the case may require.
- (h) that costs of this Application be provided for.

9. Interim reliefs, if any, prayed for

The Applicant prays for the grant of the following interim reliefs:

- (a) that the Respondents be restrained from paying the Applicant lesser emoluments than ~~what~~ what was drawn by him prior to January 2000 in the scale of Rs.4000-6000, as Telegraph Overseer and continue to pay him in the said scale until further orders.
- (b) that the Respondents be restrained from ~~in~~ any manner recovering any further amounts on account of the said illegal refixation of pay of the Applicant as Telegraph Overseer.
- (c) that ad interim reliefs in terms of prayers (a) and (b) above be granted.

10. Not Applicable

11. Details of I.P.O.

I.P.O. NO. ^{7F.670105}
^{7F.660869}
^{22E.835583}

dated 10/2/2001

for Rs.50/- in favour of The Registrar, Central Administrative Tribunal, Mumbai Bench, Mumbai.

12. List of Documents

Exhibits 'A' to ^E

Mumbai, dated this the 12th day of February 2001

V. S. Duduskar

(V. S. Duduskar)
 Applicant

VERIFICATION

I, V. S. Duduskar, the Applicant abovenamed do hereby verify that the contents of Paragraphs 1, 4, 6, 7, 10 to 12 are true to my own knowledge and the contents of Paragraphs 2, 3 and 5 are based on information and/or legal advice received and believed by me to be true and that I have not suppressed any material facts.

So verified at Mumbai this the 12th day of February 2001.

V. S. Duduskar

(V. S. Duduskar)
 Applicant / Deponent

Ramech

Advocate for the Applicant