

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(8DA)
Indiranagar
Bangalore - 560 038

Dated : 24 JAN 1989

APPLICATION NO (S) 1146 / 88(F)

W.P. NO (S)

Applicant (s)

Shri B.N. Maisale

To

1. Shri B.N. Maisale
No. 267, Agarkar Road
Tilakwadi
Belgaum
2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bangalore - 560 009
3. The Superintendent
Central Telegraphs Office
Belgaum

Respondent (s)

V/s The Superintendent, Central Telegraphs Office,
Belgaum & 2 Ors

4. The Director General
Department of Telecommunication
Sanchar Bhavan
New Delhi - 110 001
5. The Secretary
Ministry of Communication
Sanchar Bhavan
New Delhi - 110 001
6. Shri M. Vasudeva Rao
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STAY/INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 17-1-89

Handwritten signature
DEPUTY REGISTRAR
(JUDICIAL)

Handwritten initials
d/c

Handwritten signature
K. M. M. S.
24-1-89

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE

DATED THIS THE 17TH DAY OF JANUARY, 1989

PRESENT: HON'BLE SHRI P.SRINIVASAN

... MEMBER (A)

APPLICATION NO. 1146/1988

SRI B.N. MAISALE,
Aged 47 years,
Son of Sri.S. Ningappa,
No.267, Agarkar Road,
Tilakwadi,
BELGAUM

... APPLICANT

(Dr. M.S. Nagaraja.....Advocate)

Vs.

1. The Superintendent
Central Telegraphs Office,
BELGAUM
2. The Director General
Department of Tele Communication
NEW DELHI
3. The Union of India
by its Secretary,
Ministry of Communication,
NEW DELHI.

... RESPONDENTS

(Shri M. Vasudeva Rao.....Advocate)

This application having come up for
hearing before this Tribunal to-day, Hon'ble Shri P:
Srinivasan, made the following :-

O R D E R

The applicant who rendered 7 years
service in the Army from 1962 to 1970 was re-employed
in civilian service on 8.10.1973 as a Telegraphist

[Signature]



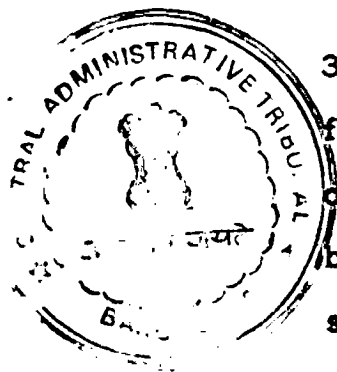
in the Post and Telegraphs Department. At that time an Office Memorandum dated 11.4.1963 issued by the Ministry of Finance regulated the fixation of pay of ex-combatant Clerks retired or released from the Armed Forces and re-employed in civilian posts. However, that order was applicable only to Clerks and Lower Division Clerks. Therefore, the benefit of that order was not extended to the applicant as he was appointed as a Telegraphist and not as a Lower Division Clerk or as a Junior Clerk. However, by a subsequent O.M. dated 22.1.1987 (Annexure-A1 to the application), the Government conveyed the decision of the President that the benefits envisaged in the O.M. dated 11.4.1963 may also be granted to those who were re-employed in the civilian service as Telegraphists and Telephone Operators. The O.M. went on to explain how this fixation was to be done. The last paragraph of the O.M. reads as follows: "These orders will come into effect from the first of the month in which the orders are issued." Since the said O.M. was dated 22.1.1987, it came into effect from 1.1.1987. The applicant sought the benefit of this O.M. but the respondents turned down his request and the same was communicated in a letter dated 3.5.1988 issued by the Director General of Telecommunications, in which it was stated that "since the applicant was re-employed prior to the date of issue of the order dated 22.1.1987, he was

P. J. [Signature]

not eligible to the benefit of that order". The applicant is aggrieved with this decision which appears as Annexure-A3 to the application.

2. Dr. M.S. Nagaraja, appearing for the applicant submitted that what the order dated 22.1.1987 meant when it said that it would come into effect from the first of the month in which it was issued was that the benefit of the order would be available from that date and not that it would be denied to those who were re-employed as Telegraphists or Telephone Operators ^{before that date}; Otherwise it would be an invidious distinction to deny the benefit of fixation of pay conveyed in the O.M. dated 22-1-1987 to those who were appointed prior to that date and were still in service on that date. Relying on the decision of the Supreme Court in D.S. Nakara Vs. Union of India AIR 1983 SC 130. Dr Nagaraja urged that the applicant should have been allowed the benefit of refixation extended by the aforesaid letter of 22.1.1987 ~~benefit~~ ^{on} on and after 1.1.1987.

3. Shri M. Vasudeva Rao, appearing for the respondents submitted that the said O.M. dated 22.1.1987 had made it clear that the benefits of fixation of pay admissible to ex-servicemen re-employed as Telegraphists or Telephone Operators in civilian service ^{envisaged therein} would be available only to persons so appointed after 1.1.1987. That was the clear import of the O.M. The Director General, Department of

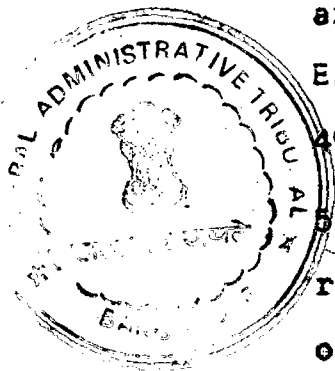


Telecommunications had merely clarified this in his communication dated 3.5.1988 rejecting the claim of the applicant. In view of this the applicant was rightly denied the benefit of fixation of pay admissible to ex-combatant clerks in terms of Government's O.M. dated 22.1.1987. Shri Vasudeva Rao pointed out that it was not as if ^H ~~that~~ the applicant had not been allowed any benefit whatsoever of his service rendered in the Army. He had been given 3 advance increments when he was initially appointed as Telegraphist. The Government of India's O.M. dated 22.1.1987 no doubt extended more benefits to persons appointed as Telegraphists and Telephone Operators which were hitherto available only to re-employed clerks. But since the orders were specifically made effective only from 1.1.1987, the applicant who was re-employed prior to that date could not seek the benefit of that order.

4. I have considered the matter carefully. To my mind it is indeed discriminatory to adopt a different method of fixation of pay for ex-servicemen appointed as Telegraphists and Telephone Operators prior to a particular date and to those appointed after that date. In my view the ratio of the judgement of the Supreme Court in Nakara's case would squarely apply here. I am, therefore, inclined to accept the interpretation canvassed on behalf of the applicants that when the O.M. dated 22.1.1987 says that

P. S. Rao

the orders containing therein would come into effect from the 1st of the month in which they were issued, it means that the benefit of pay fixation would be available only from that date and not that it would be denied to those who were appointed before that date. It seems to me that ex-servicemen reappointed as Telegraphists and Telephone Operators constitute a homogenous class irrespective of when they are so appointed. The date on which they are appointed does not provide an intelligible differentia classifying persons for the purpose of fixing the pay admissible to them, because pay is relatable to the duties discharged and there is no difference in this regard between persons appointed on different dates. Thus to deny the benefit of pay fixation under the orders issued on 22.1.1987 to those who are re-employed prior to 1.1.1987 is to make a classification having no ⁴nexus with the object sought to be achieved apart from being arbitrary in terms of the new dimension of article 14 unveiled by the Supreme Court in E.P. Royappa vs. Tamil Nadu & Others SLR 1974(1) 497.



In view of the above I direct the respondents to extend to the applicant the benefit of the orders dated 22.1.1987 issued by the Government of India subject to all the requirements that have to be fulfilled by the applicant in this regard otherwise. The applicant will however, be

P. S. The

entitled to the actual financial benefits of such fixation only from 1.1.1987 and not to any arrears for the period prior to that date. If as a result of extending the benefit of those orders to the applicant, he becomes disentitled to any other benefits which may have been given to him earlier, those benefits are liable to be withdrawn and the respondents are authorised to do so. I may mention that counsel for the applicant specifically conceded this in the course of his arguments.

7. The application is disposed of on the above terms, leaving the parties to bear their own costs.

Sd/-
MEMBER (A)

TRUE COPY

[Signature]
DEPUTY REGISTRAR (JDL) 24/11
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE