

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 980/93

Date of Decision: 27.1.98

Shri S.K. Kamalhans Applicant.

Shri B. Dattamurthy. Advocate for
Applicant.

Versus

Chief General Manager Respondent(s)
Maharashtra Telecom Circle and others.

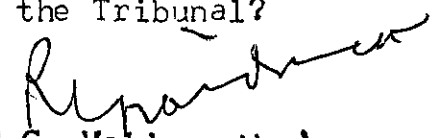
Shri R.C. Kotiankar. Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. **Justice R.G.Vaidyanatha**, Vice Chairman

Hon'ble Shri. **M.R. Kolhatkar**, Member (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?


(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO: 6
PRESCOT ROAD, MUMBAI:1

Original Application No. 980/93.

Tuesday the 27th day of January 1998.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri M.R. Kolhatkar, Member (A)

S.K. Kamalhans
Junior Telecom Officer
Staff No. 40940
O/O Asstt. Engineer
(RC/Tender)
Post Office Lane,
Parel East,
M.T.N.L. Bombay,

... Applicant.

By Advocate Shri B. Dattamurthy.

V/s.

Chief General Manager
Maharashtra Telecom Circle
Deptt. of Telecommunication
G.P.O. Building, Fort,
Bombay.

Chief General Manager,
M.T.N.L. - Delhi
Khurshid Lal Bhavan,
Janpath, New Delhi.

Chief General Manager
M.T.N.L. Bombay
Telephone House,
Prabhadevi,
Veer Savarkar Marg,
Dadar West, Bombay.

... Respondents.

By Advocate Shri R.C. Kotiankar.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed by the applicant under Section 19 of the Administrative Tribunals Act 1985. Respondents have filed reply opposing admission. We have heard both sides.

2. The applicant while he was working as Telephone Operator, was selected to the post of Junior Telecom Officer, MTNL, Bombay. The applicant underwent training and he was awaiting the order of appointment after the training period. It is

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stated that the department had posted the appointment order dated 13.11.87, but the applicant received copy of the order in June 1988. The applicant joined his duty on 26.7.88, but his juniors had joined duty on 24.11.87 itself. The applicant made a representation claiming the seniority over his juniors who had reported duty earlier than him and also claimed the salary for the period from November 1987 till 26.7.88. The representation came to be rejected by the department. Hence the applicant has approached this Tribunal for the same reliefs on the ground that he has been prevented from assuming charge on 24.11.87 when some of his juniors joined the duty. He therefore seeks seniority over his juniors with effect from 24.11.87 and he also claims arrears of pay from 24.11.87 till 25.7.88 and further he wants that this period should be treated as service for all purposes.

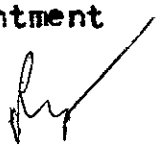
3. The respondents in their reply stated that the application is barred by limitation and the applicant is not entitled to stepping of pay on the ground that his juniors are getting higher pay. They also states that under FR 26 only actual service has to be counted for the purpose of increment, and the applicant cannot get deemed appointment with effect from 24.11.87 as claimed in the application. It is stated that appointment order of the applicant alongwith 76 others who were selected was sent simultaneously on or about 26.11.87. Therefore there was no delay in dispatching the order of appointment. The applicant may have deleberately delayed in joining the duty to his personal reasons. It is also stated that applicant's seniority in the cadre in no way ^{due} ^{affects} effect by delayed

joining. However he is not entitled to any monetary benefit on this ground.

4. The learned counsel for the applicant contended that since the applicant was deprived of joining the post when his juniors had joined the post, the applicant is entitled to the benefit of seniority from the date his juniors joined the duty and also pay emoluments from that date till he actually joined the service on 26.7.88. On the other hand the learned counsel for the respondents fairly conceded that the applicant is entitled to get the seniority from the date his juniors joined the service but he is not entitled any consequential monetary benefits.

5. As far as the main prayer of seniority is concerned, there is no dispute between the parties. The applicant is entitled to seniority on the basis of placement in the merit list.

6. Now the only dispute is about the arrears of salary from 24.11.87 to 25.7.88. One of the principles of service jurisprudence is that "no work, no pay". Admittedly the applicant has not joined the promotional post for whatever reasons it may be and therefore strictly speaking, he is not entitled to arrears of salary for that period. It is not as if the applicant had no job during the period but he continued in the previous post namely Telephone Operator till he joined the promotional post on 26.7.88. It is true that there was a delay in applicant's receiving the appointment order. It appears that the office of the applicant also received copy of the appointment



order in June 1988, but the record ^{do} did not show ^{as to} why there ^{was} a delay in applicant's receiving the order of promotion. It is brought to our notice that the applicant's position in the seniority list is 53. There is no question of appointment order ^{being} delayed due to any malafide on the part of the administration. It may be case of some lapses somewhere or it may be due to postal delay. But whatever reasons may be the applicant had not worked in the promotional post and therefore he would not be entitled to get any pay for that period.

7. The learned counsel for the applicant alternatively submitted that the applicant should be given notional increments after the expiry of one year from 24.11.87 when one of the juniors had joined the duty. The learned counsel for the respondents opposed this submission by relying the Rule under FR 26 and also Government's circular dated 4.11.93. As far as Government circular dated 4.11.93 is concerned, this is a case of stepping of pay with juniors with which we are not concerned at the present. In this case the only question to be considered is whether the applicant is entitled to earn increment after the expiry of one year from 24.11.87 when his juniors came to ~~be~~ joined the service. As far as FR 26 is concerned it provides that only duty on a time scale counts for increment, but here we find that the applicant is deprived of joining the post due to some lapses or omission on the part of the administration. Though the applicant is entitled to arrears of salary, since he has not worked for that period, the applicant be atleast

given the benefit of advancing the date of increment. It is also noticed that the claim arose in 1988 and the present application is filed in 1993. Merely sending repeated representation and getting one refusal in 1992 will not save the question of limitation. Even if there is no limitation, principle of lapses and delay are directly applicable to this case. Therefore, we feel that the applicant should be given advanced increment atleast from the date he filed this application. The present O.A. was filed on 15.9.93. The next date of increment would fall on 26.7.94. We feel that this increment is advanced to 24.11.93.


8. In the result, the O.A. is allowed partly as follows:

1. We hereby declare that the applicant is entitled to seniority as per placement in the merit list irrespective of date of joining.

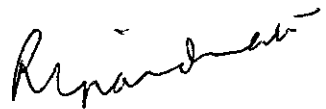
2. The applicant is entitled to advancing his increment of 1994 to 24.11.93. Similarly the subsequent increments shall be due on 24th November of each year.

The applicant is entitled to get monetary benefit that may arose out of these advanced dates of increment. However it is made clear that the applicant is not entitled to any monetary benefit prior to the date of filing the present application.

9. In the circumstances of the case there shall be no order as to costs.



(M.R. Kolhatkar)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

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