

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY-1

O.A. Nos. 1194/93 and OA No. 527/93

G.R. Iyer & 15 ors.

..Applicants in O.A.
No. 1194/93

M.B. Ambulkar & 39 ors.

..Applicants in O.A.
No. 527/93

Coram: Hon. Shri Justice M.S. Deshpande, V.C.

APPEARANCE:

Mr. M.W. Harsulkar
counsel for the applicant

Mr. V.G. Rege with Mr. P.S. Lambat
counsel for the respondents

ORAL JUDGMENT:

DATED: 15.7.1994

(Per: M.S. Deshpande, Vice Chairman)

These two petitions are identical. The prayers in O.A. No. 527/93 are (i) to quash and set aside the order dated 14.9.92 (Annex. 4) and direct the respondent no.3 to restore 30% Training Allowance from 9.11.92, (ii) direct the respondents to repay the amount paid less from the Training Allowance at the rate of 15% from 9.11.92, (iii) direct the respondents to treat the 30% Training Allowance for all purposes as pay, including pensionary benefits. The applicants are Instructors working on deputation under the control of Principal Zonal Training Centre, Bhusawal and have been drawn from various categories from various places and divisions of Central Railway for imparting training to the new entrants and refresher in various faculties. The contention of the applicants is that they are being called upon to perform altogether different trade of Instructors and came to be selected after undergoing class room and viva-voce test. The appointment involved transfer

and maintenance of two separate establishments.

By the order dated 14th September 1992 (Annexure 4) the rate of training allowance which was admissible to the applicants @ 30% came to be reduced uniformly from 30% to 15% of the basic pay drawn and these orders were to take effect from 9.11.1992.

According to the applicants they were assigned a tenure of five years on the basis of 30% allowance and the action in reducing this allowance to 15% was arbitrary. Though the grounds of challenge have not been specifically spelt out in the Original Applications, from the submissions of Shri Marsulkar, the learned counsel for the applicants, it is clear that the grievance of the applicants is that the change in the policy of reducing the Training Allowance was arbitrary, violative of Article 14 of the Constitution and without any convincing reasons thereby shattering the legitimate expectation of the applicants.

2. Shri V.G. Rege, the learned counsel for the respondents, pointed out that the very same objections have been raised in a petition for identical reliefs filed before a Division Bench in R.R. NAIR Vs. GENERAL MANAGER, TELECOMMUNICATIONS, KERALA CIRCLE, (1994)26ATC13 and came to be rejected. He also relied on the Single Bench decision of the Hyderabad Bench of this Tribunal in O.A. No. 1140/92 decided on 30.7.93 T. KAMESHWARRAO Vs. DIRECTOR OF TRAINING, DEPARTMENT OF PERSONNEL AND TRAINING. It appears that the Division Bench ^{decision} in R.R. Nair (supra) was not brought to the notice of the Single Bench which decided the application filed at Hyderabad. The Division Bench which decided R.R. Nair's case observed in para 21 of its judgment that though the respondents have not

cared to produce satisfactory material to satisfy that the implementation of the policy may cause unbearable financial burden on the Government the records produced in this case indicate that the decision to reduce the training allowance has been taken in the exigency of administration and having regard to 'financial crunch' but has not shown fairness which is expected of them to safeguard the interest of the applicants. The Division Bench held that the promissory estoppel would not apply to the impugned notification and that the change in the policy could not be violative of Article 14 of the constitution.

3. As I have already stated the learned counsel for the applicants wanted to raise the same points in the present case. Since, however, the issue has already been considered and decided by the Division Bench it would not be open to me, sitting as a Single Bench, to reconsider the entire position. Shri Harsulkar urged that a reference should be made to a larger Bench, if I were to disagree with the reasoning of the Division Bench. But having regard to the reasoning given by the Division Bench I do not think it is possible to disagree with the ultimate conclusions drawn by the Division Bench and no reference to a Larger Bench, therefore, is called for. Shri Rege urged that the respondents in R.R. Nair's feeling aggrieved by the order passed by the Ernakulam Bench approached the Hon. Supreme Court but it is not clear as to what is the position with regard to the Special Leave Petition at present. Shri Harsulkar states that the present

applicants are also not satisfied with the decision of the Division Bench in R.R. Nair's case and would like to take up the matter to the Supreme Court and that since I had already passed ~~an~~ interim orders on 10.9.1993 in OA No. 527/93 and on 8.11.93 in OA NO. 1194/93 staying the operation of the impugned order and had directed the respondents not to make any deductions in the 30% allowance which has been paid to the applicants until further orders, that direction should be continued.

4. I find that it would be only proper, having regard to the controversy, that the interim orders already passed should continue for a further period of four months in order to enable the applicants to approach the Supreme Court and obtain suitable directions.

5. While dismissing the O.A. No. 527/93 and O.A. No. 1194/93, I direct that the interim relief orders shall continue for a period of four months from to-day, subject to any modification which may be made by the Hon. Supreme Court in the meantime. This interim order will not prevent the respondents from transferring the persons who are on deputation or repatriate the applicants who have completed their tenure. Both the OAs are ^{dismissed} ~~disposed~~ of with no order as to costs.

(M.S. Deshpande),
Vice Chairman