

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 1359/95 /199

Date of Decision: 12-09-96

S.N.Khandekar & 48 Ors.

Petitioner/s

Shri G.S.Walia.

Advocate for the  
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri S.S.Karkera.

Advocate for the  
Respondent/s

CORAM:

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

Hon'ble Shri

( ) -

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

M.R.Kolhatkar  
(M.R.KOLHATKAR)  
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH.

Original Application No.1359/95.

Pronounced, this the 12<sup>th</sup> day of September 1996.

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

1. S.N.Khandekar.
2. M.S.Dalvi.
3. S.D.Satpute.
4. S.B.Deshpande.
5. V.M.Godbole.
6. S.M.Borkar.
7. R.D.Adhav.
8. C.B.Namjoshi.
9. K.G.Mangalani.
10. M.Y.H.Shaikh.
11. K.M.Shinde.
12. V.M.Dolare.
13. T.R.Machhi,
14. B.R.Pandey.
15. A.M.Mhadgut.
16. R.N.Joshi.
17. C.G.Ganacharya.
18. MS.N.D.Hotwani.
19. V.S.Tamhankar.
20. P.V.Bansode.
21. W.J.Bhanse.
22. J.Shyamdeoram.
23. Smt.V.C.Kulkarni.
24. S.N.Shaikh.
25. K.K.Pawar.
26. T.K.Wagh.
27. P.R.Raut.
28. D.S.Dhengle.
29. H.G.Gurubaxani.
30. Smt.S.V.Chhatre.
31. R.S.Kharat.

... Applicants.

32. N.K.Surve.
33. T.C.Kamble.
34. J.P.Tare.
35. H.S.Ranadive.
36. V.N.Rotkar.
37. Smt. S.D.Chavan.
38. D.K.Patil.
39. T.P.Thadani.
40. I.H.Ansari.
41. P.B.Rathod.
42. G.D.Punwatkar.
43. V.V.Kamble.
44. S.Y.Dethe.
45. -----
46. H.T.Vithalani.
47. S.L.Pednekar.
48. M.K.Ahuja.

49. P.A.Mhapankar. .... Applicants.  
C/o. G.S.Walia,  
Advocate, High Court,  
16, Maharashtra Bhavan,  
Bora Masjid Street,  
Fort, Bombay - 400 001.

(By Advocate Shri G.S.Walia).

v/s.

1. Union of India, through  
The Chief General Manager,  
Telecommunications,  
Maharashtra Circle,  
GPO Building,  
Bombay - 400 001.
2. The Chief General Manager,  
Telecommunications,  
Maharashtra Circle,  
GPO Building,  
Bombay - 400 001.
3. Chief Superintendent,  
central telegraph office,  
Bombay - 400 001.
4. The Director (Maintenance),  
Western Telecom Region,  
Bombay - 400 001.
5. Regional Controller,  
of Telegraph Traffic,  
Bombay - 400 001.

... Respondents.

(By Advocate Shri S.S.Karkera).

ORDER

(Per Shri M.R.Kolhatkar, Member(A)).

In this O.A. filed by 49 Senior Telegraph applicants Masters working under Respondents No.3 and 4, are seeking the relief of being paid the pay equal to the pay which C.B.Reghe a junior to the applicants started getting w.e.f. 1.1.1987 in the scale of Rs.1400-2300. In effect, the applicants are seeking relief of stepping up of pay in terms of the Judgments in O.A. 51/92 decided on 23.12.1993 and 52/92 and 53/92 decided on 17.6.1994 ~~and~~ which followed the earlier decision in 51/92. I have considered respective contentions of the applicants and the respondents. The counsel for the applicant contended that the issue is no longer res-integra. The counsel for the ~~however,~~ respondents contended that the facts are not identical for stepping up and that the ~~codified~~ condition No.3/ is not complied with in the instant case. I have considered the matter and I am not satisfied that the issue does not stand concluded. The learned counsel for the Respondents contended that Shri Reghe, a junior Officer with reference to whom the applicants seek stepping up, is in fact not a junior Officer at all, but he is a senior Officer to all applicants excepting the applicant at S1.No.48(M.K.Ahuja) and for this purpose, they have produced the seniority list. It may be that all the applicants except Shri Ahuja were junior to Shri Reghe in the basic grade in the cadre of Telegraphist. But it is not disputed that

Shri Reghe was considered by the DPC for promotion under One Time Bound Promotion (O.T.B.P.) w.e.f. 30.11.1983. Shri C.B.Reghe, however, was not recommended for promotion under first four DPC<sup>15</sup> and was ultimately promoted only w.e.f. 1986.

As per the instructions in para 8 of DOP letter dt. 17.12.1983, he lost his seniority in the lower grade for purpose of promotion vide para 7 of the reply. I therefore, do not see as to how on the relevant date viz. 1.1.1987 Shri Reghe can be said to be senior to the applicants. I am, therefore, unable to accept the contentions of the Respondents<sup>D</sup> on this point.

2. The respondents then contend that so far as relief given to applicants in O.A. 52/92 and 53/92 is concerned, it was given entirely conditionally, because the department was not satisfied that the case of the applicant~~s~~ was as meritorious as the case of the applicants in 51/92. It may be that the respondents imposed the condition that in case SLP is filed and the decision of the Supreme Court goes in favour of the department, they would refund the amount of arrears etc. because they were so advised. But such a condition does not detract from the fact that the relief was given to the applicants in OA 52/92 and OA 53/92 just as it was given to the applicants in O.A. 51/92 and it is not disputed that some of the applicants in OA Nos.52/92 and 53/92 are junior to the applicants in the present O.A.

3. It is next contended that the O.A. is barred by time. The Tribunal in O.A. 51/92 gave a finding that the cause of action arose on 13.9.1991 and therefore the O.A. was taken to be within limitation, but in the present O.A. the applicants have not at all chosen to agitate the issue in time and therefore they cannot be given the relief. I am unable to accept this contention. It is seen from the Exhibits filed by the applicants (vide Ex- 'C') that the applicants filed representations on or about 12.1.1995 and the replies were given by the respondents on or about 2nd August, 1995 (Ex. 'D') and the O.A. was filed on 3.11.1995. I, therefore, consider that the applicants cannot be non-suited on the grounds of laches, though the point<sup>about date of filing</sup> may be relevant in grant of arrears.

4. In the light of the discussion, I find that the applicants are similarly situated to the beneficiaries in OA Nos.51/92, 52/92 and 53/92 and the issue is no longer res-integra in view of the Judgment in O.A. No.51/92 which gives full reasons for the Judgment which need not be repeated. I, therefore, hold that the applicants are entitled to notional fixation<sup>of pay</sup> with reference to that of Shri Reghe w.e.f. 1.1.1987 and the applicants are <sup>also</sup> <sub>in</sub> entitled to arrears of pay on that basis from

one year prior to the date of filing of the O.A.  
(i.e. from 3.11.1994) with interest at 12% p.a.

The O.A. <sup>is</sup> disposed of. There will be no order as to  
costs.

*M.R. Kolhatkar*

(M.R. KOLHATKAR)  
MEMBER (A)

B.