

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO:560/1995  
DATED THE 11TH DAY OF JUNE, 2001

CORAM:HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)  
HON'BLE SHRI SHANKAR RAJU, MEMBER(J)

1. Shri A.J.Singh
2. Shri G.P.Lahim
3. Shri S.N.Jaqtap
4. Shri S.B.Barekar
5. Shri M.S.Kullarkar
6. Shri S.V.Lokhande
7. Shri R.R.Yadav
8. Shri V.D.Deogadkar
9. Shri J.B.Mendhe
10. Shri J.T.Rhoyarkar
11. Shri T.M.Jaiswar
12. Smt. V.Parvathy
13. Shri S.N.Indle
14. Shri U.K.Paygude
15. Shri J.N.Sharma
16. Shri J.A.Jesurajan
17. Shri D.V.Botale
18. Shri M.A.Qadri
19. Shri S.R.Yadav
20. Shri R.S.Pole
21. Shri V.M.Bhise
22. Shri P.B.Patil
23. Shri C.N.Sonar
24. Shri N.G.Ulhe
25. Shri M.Venkateshan
26. Shri K.T.Dhurandar

... Applicants

All are working as Asstt. Supdt.  
Telegraph (Traffic) in Maharashtra  
Tele-communication Circle

By Advocate Shri S.S.Karkera

V/s.

Union of India  
through

1. The Director General,  
Department of Telecommunication,  
Sanchar Bhavan,  
Ashok Road,  
New Delhi - 110 001.
2. The Chief General Manager,  
Maharashtra Telecom Circle,  
General Post Office,  
2nd Floor, Bombay-400 001.

...2.

3. The Chief Superintendent,  
Central Telegraph Office,  
Fountain,  
Bombay 400 001.

... Respondents

By Advocate Shri V.S.Masurkar

(ORDER)(ORAL)

Per Smt.Shanta Shastri, Member(A)

This applications if filed by the applicants to direct the respondents to treat the training period spent by the applicants as on duty for the purpose of fixation of pay with one increment in ASTT's grade and to refix the pay of the applicants in the ASTT's pay scale on notional basis by counting the training period for granting one increment in ASTT's grade and arrears of pay to the applicants with effect from 1/10/90 till date of pay to the applicants.

2. The applicants were working as Telegraph Assistants/Telegraphists/Upper Division Clerk/Section Supervisor in the department of Tele-Communication on various dates under the control of the Respondents. They were eligible for appearing for the departmental competitive examination of Asstt. Supdt. Telegraph (Traffic). After their successful declaration in the ASTT's examination, the applicants were supposed to undergo nine months training before their actual appointment as ASTT. The applicant Nos.1 to 8 were sent for training from 16/10/89 to 15/7/90 and the applicant Nos.9 to 11 were sent from 6/11/89 to 5/8/90. The Applicants Nos.12 to 26 underwent the training from 17/9/90 to 16/6/91. After the successful completion of training they were immediately promoted and appointed as ASTT. As per provisions of FR-26, the respondents treated the applicants' nine months training period as on duty in the feeder cadre and fixed

...3.

their increment in the same scale of feeder cadre, TA/Telegraphists/UDC/Section Supervisor. Being aggrieved by the said fixation, the staff side of the Union raised question of treating the period spent on training before taking charge in the department for regular duty for the purpose of fixation of pay and increment, before the National Council of JCM. The DOP&T vide OM dated 22/10/90 in paragraph 3 of the clarifications stated that where a person has been selected for regular appointment and before formally taking over charge of the post for which selected person is required to undergo training, training period undergone by such a Government servant whether on remun<sup>er</sup>ation or stipend or otherwise may be treated as x duty for the purpose of drawing increments. In spite of this clarification given by the DOP&T on 22/10/90, the Respondent No.2 denied the claim of the applicants for fixation of pay with one increment in the post of ASTT. Representations were made by the applicants. However, the Chief General Manager, Telecom, Maharashtra Circle stated that clarification on some point had been sought for implementation of the aforesaid orders of DOP&T and after considering it is clarified that these orders are applicable only in the case of Direct Recruits who were compulsorily required to undergo training before taking up Government employment. The orders are effective from 1/10/90. Thereafter, a further clarification was issued by the DOP&T vide OM dated 31/3/92 wherein it was decided that increment may be allowed in the case of Government servants even if they were appointed on promotion.

3. In this connection, the learned counsel has drawn our attention to a judgement of the Ernakulam Bench of this Tribunal



dated 15/10/92 in OA-101/92, wherein the Bench held that the applicants are entitled to one increment even though they might have been appointed by promotion. Similar judgements are delivered by the Madras Bench as well as the Ahmedabad Bench of the Tribunal. However, the respondents were not willing <sup>to</sup> grant the increment <sup>instead</sup> suggested to the applicants to make an application for stepping up of their pay. This was also examined and it was found that in the present case there was no direct recruits, there was no question of stepping up of the pay of applicants. Thus, the matter remained in cold-storage. The applicants did make representations. Only representations of few applicants are available on record. It is stated by the learned counsel for the applicants that no reply was received to the representations made by some of the applicants.

4. The learned counsel for the respondents submits that the OM issued by the DOP&T on granting of increment to those who have undergone training as a compulsory requirement is applicable in the case of direct recruits and not to promotees.

5. The respondents have also taken certain preliminary objections. Applicant No.14 had made representation on 22/9/92 for counting of training period for purpose of drawing increment and had also sent a reminder. The representation of Applicant No.14 was finally disposed of by letter dated 24/4/93. His case is therefore different from all the other applicants and therefore joint application is not maintainable. Further, the OA is clearly time barred. There is delay of almost one year and one month.

6. It has been reiterated that the applicants should apply for stepping up of pay for treating the training period ~~to be~~ treated as duty period for purpose of increment.

7. The learned counsel for applicant tried to explain the delay and laches and states that in view of the Supreme Court judgement in the case of K.Thimmappa and Ors. V/s. Chairman, Central Board of Directors, State Bank of India and Anr (2001 SCC(L&S) 374) it has been held that the petition cannot be rejected solely on the ground of laches when question of violation of fundamental right (Art.14) is involved in it. But when there is no infraction of Art.14 of the petitioner, question of delay in filing the petition cannot be ignored. The learned counsel has also cited the judgement in the case of M.R.Gupta v/s. Union of India and Ors (1995(2) SCCLJ 337 in support of condoning the delay in filing the application.

8. We take into consideration the arguments on both sides and have also perused judgements cited by both counsels.

9. In our considered view, the case of the applicant is squarely covered by the judgement of the Ernakulam Bench (supra). The judgement has already been implemented and it cannot therefore be denied to the applicants in the Maharashtra circle. The learned counsel for the applicant has also cited another judgement in OA No.444/PB/88 of the Chandigarh Bench, wherein it has been held that the benefit of decision rendered by Court should be extended to all those similarly situated.

10. The respondents have also failed to understand how the stepping up of pay can be claimed by the applicant when there was <sup>no</sup> direct recruitment at all. In our considered view, the applicants

are entitled to increment during training period as on duty subject to their having joined the post of ASTT cadre.

11. We therefore direct that the period of training of applicants be treated as on duty and to grant them the increments due to them with all consequential benefits.

12. The learned counsel also submits that the respondents have already treated the training period as on duty in the lower cadre. However, the applicants prayer is to get the benefit which has been granted by Ernakulam Bench. We also therefore direct that the applicants training period should be counted for grant of increment in the ASTT cadre. This may be done within a period of two months from the date of receipt of copy of this order. O.A. is allowed.

In the circumstances, we do not order any costs.

*S. Raju*  
(SHANKAR RAJU)  
MEMBER(J)

*Shanta Shastri*  
(SHANTA SHASTRY)  
MEMBER(A)

abp.