

Central Administrative Tribunal
Mumbai Bench

OA No.999/1997

Mumbai this the 18th day of June, 2002.

Hon'ble Mrs. Shanta Shastry, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl.)

Shri S.G. Bagde & 10 Others
(As per memo of parties)

-Applicants

-Versus-

Union of India through the
Chief General Manager,
Telecommunications,
Maharashtra Circle,
Mumbai-400 001.

Chief Superintendent,
Central Telegraph Office,
Mumbai-400 001.

-Respondents

(By Advocate Shri V.S. Masurkar)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Applicants in this OA have prayed for the following reliefs:

"a) This Hon'ble Tribunal will be pleased to declare the Applicants had exercised their options within the stipulated period from 16-05-1994 to 27.05.1994 and/or also during the extended period upto 20-06-1994.

b) This Hon'ble Tribunal will be further be pleased to direct the Respondents to pay the financial benefits by way of officiating promotions to the Applicants from the same date on which their juniors were given officiating promotions without any training.

c) This Hon'ble Tribunal will be further be pleased to direct the Respondents to treat the Applicants to be officiating as Senior Telecom Operating Assistants (T) continuously without any break, till they are deputed to the prescribed pre-appointment training.

d) This Hon'ble Tribunal will be pleased to direct the Respondents to depute the Applicants to the prescribed pre-appointment training immediately and give appointments in the posts of Senior Telecom Operating Assistants (T) immediately thereafter."

2. Applicants who belong to walk-in Group have been exempted from appearing in a test. In order to be included in the eligibility list they have to exercise their option. It is contended that the option could not be exercised as all of

them were on leave and in so far as the extended time for exercising the option upto 20.6.94 is concerned they have been deprived of an opportunity to exercise that option as the intimation regarding extended time to exercise option has reached the office admittedly on 22.6.94. Learned counsel appearing for the applicants stated that his case in all fours is covered by a recent decision of this Bench in OA-976/97 in Miss K.V. Kadam & Others v. Union of India & Anr. decided on 11.6.2002 wherein placing reliance on similar decision of the coordinate Bench in OA-18/98 in B.P. Tiwari v. Union of India & Ors. the claim of the applicants has been allowed by holding that receipt of the belated option ~~has~~ deprived an opportunity to the applicant to exercise option as such having meted out a differential treatment between the two groups i.e. walk-in and non-walk in under the new restructured cadre their option is deemed to have ^{been} exercised within time. However, applicants were entitled to get notional pay from the date their juniors have been granted. However, arrears have been paid only for the period one year prior to the date of filing of the OA, without benefit of the seniority.

3. On the other hand, learned counsel for the respondents stated that in the memo of parties it is stated by the applicants that they are presently working at various places as such they have no right to maintain a joint OA having different cause of action. It is also stated that the OA is barred by limitation and the MA for condonation of delay does not indicate any justifiable ground to condone the delay.

4. It is, however, admitted in para 19 of the reply that though the date of exercising option was extended till 20.6.94 but the same was received only on 22.6.94.

5. We have carefully considered the rival contentions of the parties and perused the material on record. In so far as limitation is concerned, in view of the justification of the applicants and the reasons given in the MA limitation is condoned. Moreover, the case is good on merits and in all fours covered by the decision of a coordinate Bench, applicants cannot be deprived of their legitimate right on this technical plea.

6. As to merits having regard to the admission of the respondents as to submission of late option in the office where all the applicants had been working and the same has administrative jurisdiction over them the maintainability of the joint application is upheld.

7. The decision of the coordinate Bench squarely applies to the facts ^{and} circumstances of the present case and in this view of the matter the present OA is partly allowed with the direction to the respondents to treat the applicants as having exercised their option within the extended period, i.e., the date from which their juniors have sought option. However, they would only be entitled for notional pay for the period from the date their juniors have been granted till they got their regular absorption in the restructured cadre. However, arrears shall be payable to the applicants only for the period one year prior to the date of filing of the OA. In view of the fact that the accord of seniority shall unsettle the settled position of a large number of officials the applicants are not entitled to get seniority on account of the aforesaid pay fixation. No costs.

S. Raju
(Shanker Raju)
Member (J) ~~Number~~

"San."

Shanta S.
(Smt. Shanta Shastry)
Member (A)